

“ motives in them ; and find that the award of the arbiters for the above sum
 “ as part of the expense of the submission, is totally distinct from and uncon-
 “ nected with the matters submitted and determined by the decree arbitral, and
 “ that the decree-arbitral may and ought to subsist in all its parts, notwith-
 “ standing the avoidance of what was so illegally awarded, and therefore repel
 “ the reasons of reduction of the decree-arbitral *quoad ultra*, and discern, and
 “ find no expenses due to either party.”

No. 5.

In a petition against this interlocutor by the pursuer Jack, after resuming the argument that the stipulation of fees by the arbiters inferred corruption, he contended, that if so, the decree being indivisible, could not subsist in part and fall in part. He quoted various cases in the Dictionary, *voce* INDIVISIBLE, particularly, Lockhart, November 1582, No. 1. p. 6833. ; A. against B. July 1616; No. 3. p. 6834.

The defenders, in answer, contended, that if the Court remained satisfied, that the decerniture for expenses proceeded from no corrupt motive, and only fell to be set aside as *ultra vires* of the arbiters, it came in reality to be no part of the decree, and being ineffectual, was to be held *pro non scripto*. They quoted, as precisely in point, the case Craufurd against Hamilton, 25th Dec. 1702, No. 5. p. 6835. where a decree-arbitral, in similar circumstances, was only partially reduced, and sustained *quoad ultra*.

At this stage of the cause, new parties appeared, viz. certain creditors of Jack, who craved reduction of the submission, as executed by Jack in a state of bankruptcy, to the prejudice of his creditors. This circumstance prevented the case from being finally decided exclusively upon the point of law above agitated ; but it is believed the Court would not have swerved from the principle of their last interlocutor.

Lord Ordinary, Hailes. For Jack, Crosbie. For Cramond, &c. Ilay Campbell & B. W. M. Leod.

W. M. M.

1798. November 15.

WALTER LOGAN, Superintendent of the Forth and Clyde Navigation, and the Company of Proprietors, against ROBERT LANG.

THE canal between the Forth and Clyde being to pass through the property of Robert Lang, a submission was entered into, in order to ascertain the amount of the damages to be allowed him, and a decree-arbitral was pronounced, by which the arbiters, after “ having heard parties at length, *viva voce*,” and “ taken what proof appeared to them necessary,” found him entitled *inter alia* to thirty years purchase of a rent of £5. 5s. Sterling *per acre*, “ which “ the said Robert Lang brought evidence that he was offered, for six acres of

No. 6.

A decree-arbitral reduced, which had been obtained by the fraud of one of the parties.

Act. Reg. 1695. § 25.

No. 6. "his ground on a nineteen years lease, for the purpose of making a bleach-field."

The Canal Company brought a reduction of this decree, alleging, *1mo*, That Lang, after receiving a circular letter, intimating that an application was to be made to Parliament for an alteration in the course of the canal, by which it would pass through his property, had, concealing this circumstance, advertised his lands for a bleachfield, and obtained the offer upon which the arbiters proceeded, by holding out that the lessee would have right to a stream of water through it, though Lang knew that this stream, in its ordinary state, was wholly diverted in order to supply the works of a superior heritor, and had no intention of concluding a bargain. *2do*, That the decree was incomplete.

A proof before answer was allowed and taken.

The Lord Ordinary ordered informations, in which the first ground of reduction was chiefly insisted in.

The defender objected: That it resolved into an averment, that the arbiters had pronounced an erroneous decree, proceeding on insufficient evidence, and consequently was irrelevant in terms of the Regulations 1695, which make decrees-arbitral challengeable only on the grounds of bribery, corruption, or falsehood; by which last expression, is meant the forgery of the submission or decree; Ersk. B. 4. T. 3. § 35.; *D. De recept qui arbit.* L. 27. § 2. Dict. *voce* ARBITRATION (Reduction of decree arbitral).

Answered: The regulations 1695 meant only to prevent decrees-arbitral from being reducible on the common ground of iniquity, or error of judgment. But the submission and decree founded on it, form a contract, which like every other may be set aside for any reason necessarily implying an inconsistency with the consent of parties at entering into it. The decree is null, if it either exceed or do not exhaust the submission: It would be so, if the arbiters had been forced by one of the parties to pronounce it; and for the same reason the defender cannot take advantage of his own fraud. See Ersk. B. 3. T. 1. § 16.

At advising the cause, doubts were entertained by some of the Judges upon the construction of the Regulations 1695. It was likewise observed, that the proof on the merits was not conclusive.

But the general opinion seemed to be, that the plea of fraud in this case was relevant and proved.

The Lords, by a great majority, sustained the reasons of reduction.

Lord Ordinary, *Glenlee*.
Clerk, *Sinclair*.

Act. *Arch. Campbell, jun.*

Alt. *W. Baird*.

D. D.

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