

GENERAL SUBMISSION.

1607. *March 4.* L. of INCHCHEFFRAY *against* OLIPHANT.

MY LORD of Inchcheffray, as assignee constituted by my Lord Oliphant to the reversions of Turings, pursued Peter Oliphant now of Turings, for the redemption of the same lands.—It was *excepted*, That by a bond given by the Lord Oliphant, gudsire to this Lord Oliphant, to umquhile Peter Oliphant, father to the defender, he had suspended that reversion, and all redemption to follow thereupon during the lifetime of the said Peter, and one heir after him, in case Peter died in his service, and of the authorities, or tint his hail gear in his service; to the which umquhile Peter, this defender, is heir, at the least apparent heir: Which exception was repelled, because it was not competent against this person, as being singular successor to the giver of the bond.—It was thereafter *alleged*, That no redemption could be granted upon that reversion, because the said umquhile Lord Oliphant and Peter Oliphant having submitted certain matters debateable betwixt them, they decerned the said Peter, &c. to have right and possession of the said lands, &c. for verification whereof they produced the decret.—To the which it was *answered*, That the decret in that point was null, because it was given *ultra vires compromissi*, no power being given to the judges by the submission, to decern upon the lands contraverted by Turings, but only of the third of the lands of Turings, during the lifetime of Dame Elizabeth Keith; and so whatever was further decerned anent these lands, nor the said third, was null *ultra vires, &c.*—It was *duplicated*, That the pursuer could never be heard to allege this point of the decret to be *ultra vires*, because there was a general clause contained in the submission, anent all actions, questions, quarrels, and controversies betwixt the said parties, which might lawfully comprehend the said lands; especially, seeing they offer them to prove that these same lands were expressed in Peter Oliphant's claim, and so the general clause contained in the submission and claim given, gave sufficient power to the judges to decern.—It was *answered*, That the general clause can never be extended to matters of greater consequence nor the particulars expressed in the submission, viz. to the said Peter's liferent, alleged disposed by the

No 1.
A general clause in a submission, 'anent all matters debateable,' was found not to extend to matters of greater consequence than those expressed.

- No 1. said Lord to John Oliphant, his son, and the said third part of the lands of Turings, during the lifetime of Dame Elizabeth Keith; and this right of the lands of Turings is a far greater matter nor those other particulars submitted. —THE LORDS found the decret null, in so far as it concerned the said lands, which were not expressly submitted; and that the said general clause could not comprehend greater matters than were particularly submitted.—It was then *alleged*, That the pursuer could never be heard to quarrel this decret, because he had homologated the same, and so could never impugn any part of it.—It was *answered*, That the allegiance should be repelled, unless it was condescended that the party had homologated that part of the decret which was given *ultra vires compromissi*; because that which the arbiters had done according to the power given to them by the submission, was lawful, and must subsist, and the rest of the decret was null, which exceeded the bounds of the submission. —THE LORDS found, That the decret was null *pro parte*, in so far as it exceeded *vires compromissi*; and that the said decret was lawful for the rest, which was decerned according to the power given to them by the submission.—Last it was *alleged*, That the decret was homologated by the Lord Oliphant, because he had sinceyne possessed the land which was decerned to him, continually since the date of the said decret.—THE LORDS found, that the possession could not be an homologation, unless the defender would offer to prove *scripto vel juramento partis*, that the party had either homologated *per expressum*, or had possession by virtue and occasion of this decret, because the homologation should be express.

Fol. Dic. v. 1. p. 345. Haddington, MS. No 1346.

- No 2. 1612. March 4. PATERSON *against* LAIRD OF FORRET.

IN an action betwixt Mr Andrew Paterson and the Laird of Forret, the LORDS fand, That a general submission could not give the Judges power to pronounce upon heritable rights.

Fol. Dic. v. 1. p. 345. Kerse, MS. fol. 180.

1631. December 15. DR KINCAID *against* ALEXANDER AIKENHEAD.

No 3.
In a general submission of all controversies, questions, sums, &c. the arbiters decerned one party to renounce two

IN a reduction at the Doctor's instance of a decret-arbitral, pronounced betwixt them, by Mr Thomas Sydserff and Mr John Maxwell, upon this reason, That the same was *ultra vires compromissi*, and that there were no claims given in; for the submission was of all controversies, questions, sums of money betwixt the parties, and what either of them should do to others thereanent; and the judges have decerned the Doctor to renounce a bond of 500 merks, being an heritable bond owing to him by the said Alexander Aikenhead; and also to re-