

1711. *February 15.* SHORT *against* HOPKINS.

HOPKINS, belt-maker in Edinburgh, being debtor to Short in a controverted sum, they submitted the claim to two arbiters, who decerned Hopkins in L.70 Scots. He suspends on this reason,—That the decret-arbitral is null, wanting the name and designation of the writer.

ANSWERED,—Decreets do not require the writer's name to be inserted, their validity depending on the authority of the judge-pronouncer thereof and the clerk's subscription; and here this decret-arbitral is duly subscribed by the parties, arbiters, and witnesses: and it will be obvious to any, by inspection and comparing the submission with the decret, that the writer of the submission, who is mentioned, has also wrote the decret, they being both one hand. But the truth is, law does not require the mentioning of the writer; for arbiters have a greater latitude than other judges, and may proceed *secundum bonum et æquum*, and cannot be tied to such nice formalities. Besides, the 25th article of the Regulations 1695, secures decreets-arbitral against all objections and quarrels, save only for corruption, falsehood, and bribery.

REPLIED,—Decreets-arbitral have ever been reputed private writs, and subject to the same legal solemnities of writer's name and witnesses, else the subscription is not probative; and they never had the privilege of judicial acts, or decreets of a court of record; such as the session and sheriff-court, or other inferior judicatories. And the regulations suppose the decret-arbitral to be formal, else it is no decret; for what if it be *ultra vires*, or null, then the said article no-ways confirms it: and this was lately found in a case of *Halliburton of Pitcur's*, within these few years.

The Lords remembered they had sustained decreets-arbitral, though filled up after the day to which they were limited, if they were extended conform to minutes agreed on within the time, though they bore not the writer's name; as was found *27th March 1633, Forrester and Gourlay*; and therefore the Lords repelled the nullity, and found decreets-arbitral need not mention the writer's name.

*Vol. II. Page 637.*

---

1711. *February 20.* SIR ROBERT GORDON of GORDONSTON *against* ARCHIBALD DUMBAR of THUNDERTON.

MR Archibald Dumbar of Thunderton having bought the barony of Duffus, and intending to inclose a park near the house; but finding Sir Robert Gordon of Gordonston's lands come so near that he behoved to take in a part of them within his inclosure, he applies to the Justices of Peace of the shire of Murray, who adjudged several parts of Gordonston's adjacent lands to Thunderton, for his park, and in recompense adjudged a part of the lands of Duffus of equal value in favours of Gordonston, and ordained the highway to be cast about 200 ells, as the 41st Act 1661 allows. Of this decret Gordonston raised suspension, on thir reasons, That it was not in terms of the 17th Act 1669, which pre-

supposes that the corners of the designed park must be in the incloser's own ground, and the line betwixt the two to be on the common march; which is not so in this case. *2do*, Part of the lands craved to be inclosed in Gordonston's ground lie run-rig, and the 23d Act 1695 is for exchanging them wholesale; whereas Thunderton, by the scheme and draught of the park, cuts them through the middle, and halves them at the tail; by which subdivision some of the kail-yards and rigs of Gordonston's tenants are lopt off, and lands given to them at a considerable distance, to the prejudice both of master and tenant; which could never be the meaning of the said Act of Parliament for dividing run-rigs. *3tio*, There can be no excambion here; for Duffus's lands are so affected with incumbrances that he cannot effectually transmit the property of one foot of ground thereof.

ANSWERED,—He opponed the Act of Parliament empowering justices of the Peace to cognosce, march, and meith adjacent lands, and give off lands for making the dyke even, which is a public good for improvement of the policy; and run-rig can never hinder the same. And if his right be questioned, he will give absolute warrandice, or the equivalent in money, at the current rate of such lands in the country.

The Lords turned the justices' decreet into a libel, and ordained a new visitation and perambulation of the ground. *Vol. II. Page 638.*

1711. *February 28.* JOHN CHAPMAN *against* COMMISSARY BRYSSON.

BAILIE Brysson in Glasgow having left a good estate, without any children; Commissary Brysson's son, his cousin-german once removed, takes briefes out of the Chancery for serving himself heir to him before the Sheriff of Lanark. John Chapman, brother to Bailie Brysson's wife, had, by his sister's influence, prevailed with him, when on death-bed, to grant him a disposition; and finding he could not stop the service himself, being in no blood-relation to the defunct, he procures an advocation of the service, wherein he makes use of her Majesty's advocate's name, on this ground, that the Bailie had no friends that were able to instruct kindred to him, and so it was devolved to the Queen, *tanquam hæres ultima*. When the reasons of advocation came to be debated, Commissary Brysson craved to have it remitted back to the Sheriff. The advocate and solicitors appeared to have it advocated to the macers, and the Lords to name some of their number to assist them as assessors; and insisted on this ground, that the Commissary could not instruct the remotest degree of propinquity; and all that was trumped up was a declaration under the Bailie's hand, calling the said Commissary his cousin and apparent heir, without so much as telling the steps or degrees wherein the contingency lay; which emendicat paper can never be a document to prove sibness, to the exclusion of the Queen's right: and if he can instruct his blood, why should he endeavour to huddle it up before the Sheriff?

ANSWERED,—Chapman has only brought in the Queen's advocate upon the stage to palliate his own by-ends. And in his imagination he sets up a man of straw of his own making, that he may the more easily pull him down; for they