

1739. December 12. ANDREW WILLIAMSON *against* ISABEL, &C. FRASERS.

SOME merchants in St Andrews having freighted a ship to France, a submission was entered into, several years thereafter, by the Frasers, as having right to the freight, on the one part, and by the surviving partners, and by Andrew Turpie, as representing Andrew Smith deceased, and by Andrew Williamson a minor, with consent of his curators, as representing James Williamsons elder and younger deceased, likewise partners, on the other hand. Upon this submission a decret-arbitral followed, in which Andrew Williamson is decerned, not only for the shares of the two Williamsons, whom he really represented, but likewise he was found liable, conjunctly with one William Duncan, as representing the said Andrew Smith for his share, notwithstanding that Andrew Turpie above-mentioned was a party-submitter, as representing the said Andrew Smith.

Of this decret-arbitral Andrew Williamson brought a reduction, on the head of minority and lesion, upon the following grounds: *1mo*, That it was competent to him, being a minor at the time of the compromission, to reduce the same, if it appeared, that, in consequence thereof, he was leased, as is plain from many authorities of the common law, and which, it is believed, is not taken away by the general words of the statute 1695. *2dly*, By the tenor of the submission, the several partners, and the representatives of such as were dead, submit, *as we or our predecessors being concerned, and partners in a voyage of the ship called the James of St Andrews*, whereby it appeared, no power was given to the arbiters to tie any of the submitters, unless that either he was concerned in the voyage himself, or as representative of a person so concerned. But it was impossible that Andrew Williamson could be tied by these words, to leave it to the discretion of the arbiters to make him represent whom they pleased; for it cannot be maintained they could decern against him for the whole freight, because he represented all the partners, which they might have done by the same parity of reason, that they make him represent one of the partners, whose true representative is a party submitter, and designs himself the representative of Andrew Smith, for whose share the pursuer is decerned. And, indeed, if he were to be tied down by a decret-arbitral of this nature; on a submission in the terms above-mentioned, there can be no greater instance of levity and rashness, than going into it is; so that, whatever may be the rule in the general case, yet a minor, who enters into a submission, whereby he may be made liable for debts which otherwise he could never be made liable for, ought to be relieved. And therefore, the words, *as we or our predecessors*, must either be understood to signify the persons who really were their predecessors, and so the sentence is *ultra vires*; or if it be *contended*, That these words must be taken in a larger sense, and that thereby the arbiters had power to determine who were their predecessors, such submission was so extravagant that there can be no difficulty to impute the going into it to the rashness of

No 68.

A minor being capable, with consent of his curators, to enter into a submission, even he may not plead that facts were held to be true by the arbiters, although not so.

68. a minor. *3tio*, The arbiters having expressed a matter of fact, as the *ratio decidendi* against him, that being false, their decret fell to be reduced.

*Answered*, There could be no doubt but a minor, with consent of his curators, may effectually enter into a submission concerning any controversy, the same being a rational deed, in order to shun the expence of law-processes, otherwise minors would be in a worse case than majors, as being under an absolute necessity of spending their substance in law-suits, in place of having matters amicably determined by arbiters; and, therefore, there can be no lesion in entering into a submission concerning an inveigled affair, such as this claim for the freight was, it having been the subject of several law-processes for a considerable time; and, as the submission is binding, so, by our law, a decret-arbitral cannot be reduced on the pretence of iniquity. As to the allegiance, that the pursuer does not represent Andrew Smith, though he is expressly found by the arbiters, in conjunction with another, to represent him, it must appear exceeding improbable. The decret does not indeed bear the *ratio* of so deciding, neither is it usual, in decreets-arbitral to express the *ratio decidendi*, or the evidences that were brought before the arbiters of any fact. It is presumable, that it was either acknowledged or documented to them in what manner Duncan and the pursuer represented Smith, with relation to the matter submitted: But be that as it will, by our law, it is a *presumptio juris et de jure*, that the decret is right, and it is not quarrelable upon the head of iniquity, or any other pretence, except falsehood, corruption, or bribery. As to the argument, That falsehood may be here *alleged*, because it is a false fact, or a finding that which was not true, it was a playing on words; for it is plain, that falsehood, in the act 1695, means only, that the submission or decret are false or forged, but does not concern the finding or discerning that which is not true; for that properly is iniquity, which is no relevant objection against a decret-arbitral. As to the other pretence, That the arbiters exceeded their powers in finding the pursuer represented Smith; that must appear very frivolous, seeing it is admitted, the partners and the representatives of such as were dead, submitted what they should be liable for, in so far as they or their predecessors were concerned as partners in the said voyage, which behoved plainly to imply a power in the arbiters to determine how far they represented such as were dead, so as to be liable for their shares, otherwise the submission and decret-arbitral would have been to no purpose; for the submission is expressly with power to determine all debates and controversies between the parties submitters, and what they should pay or implement to others.

THE LORDS repelled the reasons of reduction.

*Fol. Dic. v. 3. p. 37. C. Home, No 136. p. 233.*