1754. *August* 8.

GEORGE OCHTERLONY, Merchant in London, *against* FRANCIS GRANT, Merchant in Edinburgh.

No 29.
A decree arbitral subscribed at London, proceeding upon a submission, bearing a consent to registrate the decree-arbitral in the books of Session, could not be suspended for iniquity.

By Ochterlony and Grant a submission of all debateable matters was subscribed at London, according to the Scotch form, and the submission bore a consent to registrate the decreet-arbitral in the books of Council and Session, in order to execution. A decreet-arbitral followed, decerning Grant to pay to Ochterlony the sum of L. 331 Sterling. It was suspended upon an allegeance of gross iniquity, which the suspender insisted to be competent against a decreet-arbitral pronounced in England, though registrable in Scotland; because such a decree has not the privilege of the regulations 1695, not being pronounced in Scotland, nor the privilege of the statutes 9th and 10th William III. the parties not having agreed in the submission that the award should be made a rule of Court. The Court, before answer, allowed a proof of the lesion; and the same coming to be advised, I gave the following opinion: By the regulations 1695, § 25. the Lords of Session are directed, 'to sustain no reduction of any decreet-arbitral that shall be pronounced hereafter upon a subscribed submission, unless upon corruption, bribery, or falsehood.' By the law of England, 9th and 10th William III. cap. 15. an arbitration or submission agreed to be recorded in a particular court, and recorded accordingly with the award, has the authority of the court; and the person refusing to fulfil is subjected to all the penalties of contemning the court. 'And such an arbitration is not to be set aside, unless procured by corruption or undue means.' This premised, I observed, *1mo*, that Grant having signed the submission, with a clause of registration, in the books of Session, this, in effect, was consenting, that the law of Scotland should take place in all questions arising upon the decreet-arbitral; and that, to imply a consent here is most natural, for the same consequence would have followed of baring a challenge, except upon bribery and corruption, had registration been consented to in any English court of record. *2do*, The meaning both of the English and Scotch regulations is the same, viz. to put a decree-arbitral upon its just and true foundation of a mutual contract, which cannot be reduced upon iniquity; in place of considering it, as formerly, to be of the nature of a judicial proceeding, which may be reviewed upon iniquity. And therefore, as the law both of England and Scotland is altered in this particular, and established upon more solid principles than formerly, it is of no consequence where a decreet-arbitral is executed. It is sufficient to say, that, by the law of this island as it now stands corrected, a decreet-arbitral is a mutual contract, and cannot, more than any other contract, be challenged upon iniquity.

3tio, I observed, that taking the decreet-arbitral upon the footing of the old law, as challengeable upon iniquity; it must, however, be presumed just, unless iniquity be proved. But how can this be done when the decreet is in general

terms, and no person can say upon what facts the arbiters proceeded, or what was their opinion in point of law? Therefore that iniquity, supposing it relevant, could not be otherwise proved but by Ochterlony's oath. No 29.

The Lords found no ground for setting aside the decreet-arbitral; and therefore repelled the reasons of suspension.'

Beside the above points, the Lords had under consideration the proof of the alleged iniquity, which appeared to them at best extremely doubtful. For this reason, they avoided determining whether the decreet-arbitral was challengeable upon the head of iniquity; but pronounced the interlocutor *super tota materia.*

Fol. Dic. v. 3. *p.* 214. *Sel. Dec. No* 68. *p.* 91.

1759. *December* 20.

John Clerk, Advocate in Aberdeen, *against* Alexander Brebner, Merchant in Aberdeen.

No 30.
English letters of administration equivalent to a license to pursue in Scotland.

Brebner and Company, Merchants in Aberdeen, in December 1755, commissioned from Arthur Fletcher of London six hogsheads of vinegar; which were delivered to them accordingly.

Fletcher died in the end of the same month; and his sister, the wife of John Pott, obtained letters of administration from the prerogative-court of Canterbury, as executor to him; and granted a power of attorney to her husband.

In January 1756, Pott sent an account of the vinegar to Brebner, and desired payment at the usual time of six months after the furnishing.—Brebner, for himself and Company, thereupon wrote to his factor at London, 26th February 1756, in these words: 'We received per the Charles, Alexander Gordon master, the six hogsheads sent us per Fletcher; and as he is since dead, let his executors know, that we have given him credit for same, which shall be paid at the usual time of six months.'

Pott drew a bill upon Brebner and Company, payable to John Clerk, for L. 12 : 4s. Sterling, as the price of the vinegar; which was protested for non-acceptance, and a process thereupon brought before the Sheriff of Aberdeen; who decerned against Brebner, his partner having, by that time, failed.

Pleaded for Brebner, in a suspension, The process was brought before the Sheriff without the pursuer's instructing a sufficient title, as the letters of administration were at no time produced there. And, 2*do*, Such letters, though they may have been sustained *ad inchoandum litem*, yet have not hitherto been found a sufficient title for the administrator to recover payment in Scotland, or to grant a valid discharge of a Scots debt.

Answered for the charger; No objection was made to Mr Pott's title in the inferior court; and therefore such objection comes now too late in the way of