1798. *June* 13.

HUGH MONTGOMERY, *against* STRANG, LENNOX and Company.

No 13.
A arbiter cannot award a gratuity to himſelf; but if he do ſo from innocent miſtake, the other parts of the decree-arbitral will not on that account be ſet aſide.

THE arbiters, in a ſubmiſſion between Hugh Montgomery, and Strang, Lennox and Company, having differed in opinion, they named Mr John Orr, advocate, as umpire.

Mr Orr pronounced a decree-arbitral, by which he, *inter alia*, 'decerned a-'gainſt the ſaid Company, and the ſaid Hugh Montgomery, jointly and ſeveral-'ly, in payment to James Knox, the clerk, his account of expences, amounting 'to the ſum of L. 14: 2: 11 Sterling.'

One of the articles of Mr Knox's account was, a fee of five guineas to Mr Orr, which appeared to have been given on the day the award was pronounced.

Hugh Montgomery brought a reduction of the decree-arbitral, in which he, *inter alia*,

Pleaded: The umpire's having given a gratuity to himſelf muſt be fatal to the award. The payment of an honorary cannot be enforced by diligence; and if arbiters were permitted to fix the extent of their own remuneration, it would be the ſource of much oppreſſion; Blair againſt Gib, *infra h. t.*; 15th December 1789, Elliot againſt Elliot, *infra h. t.*

Answered: If the award is to be ſet aſide on the ground ſtated by the purſuer, it muſt either be on the footing of corruption, or becauſe the umpire has exceeded his powers. But corruption is not even alleged; and nothing is more common than for arbiters to give a decree againſt one or both of the parties, for the expences of the ſubmiſſion, which muſt neceſſarily include the gratuity to themſelves; Dunlop againſt Ralſton.*

At all events, the purſuer's plea can ſet aſide only the particular clauſe which awards the gratuity, it being wholly unconnected with the other parts of the decree-arbitral; 6th March 1777, Jack againſt Cramond.†

THE LORD ORDINARY, 'in reſpect the decree-arbitral under reduction, decerns for payment of an account of expences, wherein there is five guineas ſtated as paid to the arbiter himſelf, reduced the ſaid decree-arbitral.'

On adviſing a reclaiming petition, with anſwers, it was

Observed on the Bench: Caſes may be figured, where an arbiter's giving decree, for a gratuity to himſelf, would ſet aſide the decree-arbitral *in toto*. But as it happened in this from no improper motive, that branch of the award only ought to be reduced as *ultra vires*.

THE LORDS 'found the laſt article in the decree-arbitral, decerning againſt the parties, conjunctly and ſeverally, for a ſum of expences, was *ultra vires compromissi*, and that the decreet falls to be ſet aſide to that extent: But found, That

* Not collected, and the date not mentioned in the printed papers. *See* Appendix.

† Not yet collected. *See* Appendix.

No 13. the arbiter's having exceeded his power in this inſtance, affords no objection to the other parts of the decree-arbitral.'

Lord Ordinary, *Juſtice Clerk Braxfield.* Act. *Geo. Fergusson.*
Alt. *H. Erskine.* Clerk. *Home.*

Davidson. *Fac. Col. No* 82. *p.* 189.

Arbiters may be compelled to determine.

No 14.
A party ſubmitter, petitioned the Lords to compel an arbiter who had accepted, to meet and determine. There happened to be no clauſe of regiſtration; The Lords declared, if there had, the arbiter might have been charged with horning, but they would not ſupply the defect.

1699. *June* 30. CHEISLY *againſt* CALDERWOOD.

SIR ROBERT CHEISLY, late provoſt of Edinburgh, gave in a petition againſt Mr William Calderwood, advocate, complaining, That though the ſaid Mr William had accepted to be his arbiter, in a ſubmiſſion betwixt him and Cheiſly of Dalry, his nephew, he refuſed to meet, though the term prefixed was near expired; therefore craved the Lords might ordain him to meet and determine, conform to the title of the common law, *de receptis qui arbitrium in se receperunt ut sententiam dicant.*—*Answered* by Sheriff Calderwood, That the Provoſt's claim did not appear ſo clear and legal, and for that and other reaſons he reſolved to let the ſubmiſſion fall.——THE LORDS conſidered, if there had been a clauſe of regiſtration he might have been charged with horning to meet and determine; but this being omitted, the LORDS refuſed to interpoſe in this caſe, or ſupply their defect.

Fol. Dic. v. 1. *p.* 49. *Fount. v.* 2. *p.* 55.

1704. *February* 8.

WALTER CAIRNCROSS of Hillſlop *againſt* JAMES HUNTER.

No 15.
Found, that an arbiter cannot renounce a ſubmiſſion accepted of, ſince he can be charged with horning determine.

HILLSLOP having obtained a decreet againſt Hunter his tenant, for ſome rents; he ſuſpends, and when the ſuſpenſion comes to be diſcuſſed by the courſe of the roll, Hunter *alleges*, You cannot inſiſt, becauſe the affair ſtands ſubmitted.—*Answered*, One of the arbiters, by a writ under his hand, has declared he will not meddle in the concern any more, ſo it is deſerted and expired.—*Replied*, Having no definite time filled up therein, it laſts year and day from its date; and the renouncing of his arbiter, at his interpoſition and deſire, cannot make it expire; 1*mo*, Becauſe he can be charged with horning, to meet and give out his decreet. 2*do*, The other arbiter, with the concourſe of the overſman, may determine without him.—*Duplied*, The other party's deſign is not that the affair ſhould come to any ſentence or determination, but to poſtpone Hillſlop in diligence, while the tenant is *vergens ad inopiam*, and putting all his goods and ſtocking away; ſo that before the year expire, there will be nothing left to affect. ——THE LORDS found the ſubmiſſion was yet ſtanding, notwithſtanding one of