

- 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 con-
troversies,
questions,
sums, &c.
the arbiters
decerned one
party to re-
nounce 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-

nounce an heritable infeftment of an annualrent of L. 50, which he had out of the said Alexander's land in Edinburgh, redeemable for L. 500; which two particulars were never questioned betwixt the parties, nor mentioned, especially in the submission; neither can they be drawn under any word of the submission, being of the tenor foresaid.—The defender *alleged*, That the decret was good, notwithstanding of the reason, and not *ultra vires*, in respect the submission gave them power to decern anent all questions and sums controverted betwixt the parties; so that albeit the arbitrators had never taken in any claims from the parties, yet upon their own conscience they might have found, that any of the parties should pay to others such sums as they should think reasonable, that being within the power of the submission; and as they might do that, so they might very well decern in place thereof, the one to quit an heritable right to the other, instead of payment of money.—And the pursuer *replying*, That albeit the submission gave the judges power to decern sums of money, as they should find due in reason, yet under that clause they had no power to decern upon heritable rights, which were neither submitted, nor any pretext or claim made thereto by the party to whom the judge has decerned the heritable right to be renounced; the LORDS assoilzied from the reasons of reduction, and found, albeit the submission was of the tenor foresaid, yet that the said judges had not decerned *ultra vires compromissi*, albeit they had decerned upon the heritable securities of lands, as the same bears; but sustained the decret, and found the not giving in of claims, albeit it had been so, no cause to infringe the decret.

No 3.
heritable rights. The decree-arbitral was sustained, and the arbiters found not to have exceeded their powers.

Act. *Advocatus & Mowat.*

Alt. *Stuart & Burnet.*

Clerk, *Gibson.*

Fol. Djc. v. 1. p. 345. Durie, p. 609.

See ARBITRATION.

See No 10. p. 1405.

See APPENDIX.