ed, viz. anent the taxation, it was not specially submitted, but mentioned in a clause of the decreet, so that the law militated not against the same: Likeas, the party renounced simply that clause, and all interest and benefit which he could have by virtue of the same, or for relief of any taxation, so that there needed no sentence thereon, albeit it had been specially set down in the submission, as it was not, and, therefore, they decerned as said is. No 4.

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 463. Durie, p. 511.

1702. *December* 25. PATRICK CRAWFURD *against* HUGH HAMILTON, *&c.*

THERE being a decreet-arbitral pronounced betwixt Patrick Crawfurd, merchant, Hugh Hamilton, Campbell of Glasnock, and Hugh Gordon; and Patrick Crawfurd finding himself enormly lesed thereby, in ordaining him to pay L. 10,000 for lands that were not worth 10,000 merks; and that now, by the late act of regulations, 1695, decreets-arbitral may not be quarrelled on lesion and iniquity, but allenarly in corruption and falsehood; he raises a reduction of it on this reason, that the decreet was intrinsically null, as *ultra vires compromissi*, he having only submitted some particular claims, and yet they had determined upon the right of lands, and decerned each party to give general mutual discharges to the other. *Answered*, 1*mo*, The arbiters have noways transgressed the limits of their power, for the general discharges must be limited, and restricted to the *subjecta materia* of the claims submitted, and can go no farther. 2*do*, *Esto* they had exceeded their power, yet that *excessus* can never annul the decreet-arbitral *in toto*, but only be a ground to redress and reform what they determined beyond warrant; even as in decreets *in foro*, nullities do not lay them open, farther than to rectify the error complained on, all the rest standing firm and fast; and, by the article relating to decreets-arbitral, they are declared irreducible upon any ground or reason whatsoever, except bribery, corruption, and falsehood: Now, if all be excluded except those cases excepted, then the being *ultra vires* will not reduce and annul the decreet-arbitral, *quoad* the articles expressly submitted, and so *intra vires*; else that act of regulation would signify nothing; whereas, decreets-arbitral are the strongest of all sentences proceeding on the parties own consent, and are not regulated by the precise terms of law, but only may be reviewed *quoad* any debordments, as was found, Feb. 20. 1633, L. Athol against the E. of Athol, (see APP. to ARBITRATION), and as transactions, though reduced, as proceeding *super falsis instrumentis*, in one particular, yet subsist *quoad reliqua capita separata*, *l. penult. C. De Transact.* even so in compromits. *Replied*, That the act, making judicial sentences *in foro contradictorio* only null *pro tanto*, and not *pro toto*, is a correctory law, and cannot be extended *de casu in casum*; and a decreet-arbitral is *jus indivisibile*, and so connected, that the loosing of one point makes

No 5.
A decree-arbitral was sought to be reduced upon this head, that it was *ultra vires compromissi*, in so far as the arbiters had decerned the parties to grant mutual general discharges, tho' they had only submitted some particular claims. The Lords rectified this part of the decree, but sustained it *quoad ultra*.

No 5. all to fall asunder, like a sheaf of arrows, whereof one is pulled out; and, by the Roman law, if all the points referred be decided save one, that one keeps the whole open; and the excepting bribery, &c. was never intended to exclude nullities, such as the determining *ultra vires*, and the submission's wanting writer's name or witnesses. THE LORDS thought the argument from the judicial decreets to consensual ones, proceeding on arbitration, not convincing; but found, by the regulations 1695, decreets-arbitral were so secured, as to be unquarrellable *quoad* what was legally and formally determined, by what was therein *ultra vires* and unwarrantable, else such decreets had no strength nor firmness by that act; and, therefore, found the decreet binding and obligatory, *quoad* all that was submitted, and only null as to the general discharges, which they rectified by this interpretation, that they should extend no farther than what was contained in the claims given in; and so here *utile per inutile non vitiatur*.

Fol. Dic. v. 1. *p.* 463. *Fountainhall, v.* 2. *p.* 168.

1709. *February* 23.

STEWART of Invernytie *against* Sir JAMES MERCER of Aldie.

No 6.
Contending parties having submitted all their differences in general, and one *per expressum*, the arbiters determined the special difference, and referred another point to the determination of a third party. The decree was sustained, in respect the party, whose claim was referred, judicially passed from that claim.

STEWART of Invernytie, having married a daughter of Sir James Mercer of Aldie, pursues for her tocher, which ended in a submission and decreet-arbitral, ordaining them to pay 26,000 merks. Of this decreet Sir Laurence Mercer, now of Aldie, raises a reduction on sundry nullities; 1*mo*, That it was a sum far beyond what the estate could bear; but decreets-arbitral are not quarrellable on iniquity, by the new regulations 1695; therefore, he recurred to nullities, *viz.* that the submission being general, of all debateable matters betwixt them, yet the arbiters had only decided one article, and left the others undecided; 2*do*, That they had delegated their power of judging on the article of the aliment, and referred it to the determination of the old Lady, for her decision therein, which no arbiters have power to do, *industria personalis* being elected and relied on in such cases. *Alleged* for Invernytie, That, though the submission bore a general clause, yet it was only special *quoad* the quota of the tocher, which was the only proper subject submitted, and was accordingly determined, the other article of the aliment being inconsiderable; and so have the Lords decided, March 1630, Stark against Thumb, No 4. p. 6834. where a decreet-arbitral was sustained good, though only deciding one particular, and remitting the rest to the judgment of Lawyers; and, lately, Dec. 1702, Crawfurd against Hamilton, No 5. p. 6835. where the Lords found the arbiters had gone *ultra vires*, yet, in regard the party had restricted it, the Lords would not annul it, except *quoad excessum*; and, by the late regulations, a decreet may be opened on a nullity *quoad* a part, and yet stand good as to