

But, on a second bill, and answers, and it appearing that, of the above £18:15:6d., twelve guineas had been stated for the arbiters,—though not paid them,—at least they so averred; the Lords found it a practice illegal and corrupt, and therefore they reduced the decret-arbitral, and found expenses due by the party. They would have found them due by the arbiters,—but they were not parties to the process. (18th December 1776,) “Found that the arbiters decerning twelve guineas for their own trouble was illegal, and corrupt; and therefore sustains the reasons of reduction of the decret-arbitral, and reduce, decern, and declare accordingly. Found expenses due, and ordain the pursuer to give in an account thereof.”

On advising another reclaiming petition and answers; the Lords continued to be of opinion, That, although it was usual, and not unlawful for parties to give, and for arbiters to accept of a gratification for their trouble,—yet that, *de jure*, they were not entitled to any; much less could they award such in their own favours. But, as in this case, it appeared to have been done from ignorance of the law, and from *no bad* intention; it did not merit the epithet of corrupt: they therefore returned in effect to the Ordinary’s interlocutor, annulling the decret-arbitral, so far as it related to the decerniture of twelve guineas to the arbiters; but supporting it *quoad ultra*. (4th March 1777.)

---

1773. February . . . EWING *against* GARDNER.

AN oversman, in a submission, cannot intermeddle,—unless the arbiters differ in opinion, and choose him to be oversman on that account. See *Gordon against Abernethy*, 30th November 1716, observed by Dalrymple. *June 1724, Rigg*, observed by Lord Bankton, *B. I. tit. 23, § 9*. The point again occurred, *Ewing and Gardner*, February 1773. In this last case, the oversman was appointed by an inaccurate minute signed by the arbiters, but not formally tested,—and which did not bear that the arbiters had differed. But the decret-arbitral pronounced by the oversman bore it, and was signed by him with concurrence of one of the arbiters.

---

## DELINQUENCY.

---

1774. July 6. . . . WARRAND *against* FALCONER.

FALCONER, merchant at Inverness, wrote a letter to Mr Oliphant, Postmaster-General of Scotland, accusing Mr Warrand of malversation in office. Mr Oliphant, considering the charge against Warrand to merit cognition, transmitted the letter to him, in order to give him opportunity to vindicate himself. Upon this, Warrand brought an action of damages against Falconer, who