DECREET-ARBITRAL.

1776. *July* 20. DAVID NAYSMITH *against* MAGISTRATES of GLASGOW.

ALTHOUGH, by the regulations 1695, all reasons of reduction of a decreet-arbitral founded on alleged iniquity, are excluded, yet an *error calculi* is not excluded; and therefore, this day, 20th July 1776, in a reduction of a decreet-arbitral pronounced on a submission between the Magistrates of Glasgow and David Nasmyth, mason in Glasgow, undertaker for building a breast-work on the Clyde, between the old and new bridge at Glasgow, wherein it was alleged by Nasmith, that the arbiters had proceeded upon a wrong measurement;—the Lords pronounced this interlocutor:—" Adhere to the Lord Ordinary's interlocutors so far as they find that the pursuer Nasmyth has not proved enmity, corruption, or falsehood against the arbiters; and so far as they find that it cannot be taken under consideration whether or not the decreet-arbitral is iniquous. But, as the pursuer alleges an error in the measure, which resolves into an *error calculi;* before further procedure, remit to to visit the work in question, and to report to this court the measurement thereof; after which they declare, that they will resume consideration of the cause."

1777. *November* 18. NASMYTH *against* MAGISTRATES of GLASGOW.

DAVID Nasmyth, mason in Glasgow, having entered into a contract with the Magistrates of Glasgow, for building a bulwark along Clydeside from the new to the old bridge, and differences having happened, these were submitted to two arbiters; and they having differed, the questions came before an oversman, who pronounced a decreet. Of this decreet Nasmyth brought a reduction. But the Lord Kenet, Ordinary, having found that Nasmyth, the pursuer, had not proved enmity, corruption, or falsehood against the arbiters, and that it could not be taken under consideration whether or not the decreet-arbitral was iniquous;—the Lords in so far adhered, (20th July 1776.) But then, it being alleged that the arbiters had proceeded upon an error in the measurement; the Lords held this to be an *error calculi*, and remitted to a person named by the Court to take the same of new, and to report. This report being made, it thence appeared probable that the arbiters had proceeded either without a measurement, or upon a wrong one. The Lords, therefore, before further procedure, ordered the Magistrates of Glasgow to produce the measurement either taken by the arbiters or upon which they had proceeded. The Magistrates did so; and, thereupon, the Lords were of opinion that the arbiters had proceeded upon an *error calculi*, and gave a deduction from the sum in the decreet-arbitral. But, on a reclaiming petition, with answers, they altered, and

assoilyied from the reduction of the decreet-arbitral, (18th November 1777.) They found that there was no proper *error calculi;* that the arbiters had had the mode and extent of the measurement expressly under their consideration, and had determined upon it. Therefore any error which could be charged against them, if there was any, was not an *error calculi* but iniquity; which was clearly incompetent.

COLIN DUNLOP *against* WALTER RALSTON, &c.

IN a dispute betwixt Colin Dunlop, merchant in Glasgow, and Walter Ralston &c., in Carmyle; Mr Wallace of Cairnhill, advocate, sole arbiter, pronounced a decreet-arbitral. In the reduction, whereof it was objected that he had decerned for £40 for his own trouble, and £6 for his clerk;—it was argued, that, though an arbiter is justly entitled to a gratuity for trouble, and may even prosecute for it before the Judge Ordinary, yet it is not lawful for him to modify the extent of it himself, or to decern for it. So that, in so far, the decreet-arbitral was *ultra vires*. The fact was admitted as to the decerniture. But it was said that the scroll of the decreet had been shown to the parties' agents, and not objected to. This was refused; at least that they had not agreed to the sums awarded. The Lords, *inter alia*, repelled the objection, as it did not appear that any thing unfair was meant; and though Ralston reclaimed against the interlocutor, as to the other points, this point was not mentioned.

1777. *June* 18. WILLIAMSON of PATTERHILL *against* DINWIDDIE of GERMISTON.

SHOULD it so happen that a decreet-arbitral is so indistinctly worded as not to be intelligible, it can receive no execution, and must go for nothing;—an arbiter cannot be allowed to explain his meaning. It is the same in judicial proceedings, if a decreet is pronounced and extracted, the Judge is *functus*, and all explanation is at an end; at the same time, if the terms of a decreet-arbitral are clear, it would seem to be good, although some further steps may be necessary to give it *parata executio*. Thus should an arbiter find, that one of the parties must repair or rebuild such parts of a dike, or ditch, which he had thrown down; nothing hinders further proof to be led before a Court to ascertain this in order for execution, without infringing on the decree. This occurred in a case between *Williamson of Petershill* and *Robert Dinwiddie of Germiston*, (8th February 1775,) two heritors in the neighbourhood of Glasgow. They had quarrelled about cleaning a gott between their lands; Dinwiddie alleging that Williamson had not only cleaned it, but deepened it, and thereby damaged his property, by bringing down the sides of it in several