

1625. June 30.

HALKERTON against WISEHART.

ARBITERS being chosen by any parties, they are holden to decide all the differences referred to them by the compromit; otherwise, if they decern in one part, and leave the other claims undecided, it will furnish an exception to any of the parties that und themselves hurt thereby.

Spottiswood, (ARBITER.) p. 13.

No 40.

The arbiters must decide upon the whole matter submitted.

1629. January 28.

HOWISON against GIBSON.

ONE Howison being charged for payment of 80 merks, conform to a decret-arbitral pronounced between him and one Gibson, he suspended; and also intended reduction thereof upon this reason: That the decret was null, in respect that the notar who subscribed the submission for the parties submitters, was one of the arbiters *in quem fuerit compromissum*; and it cannot stand in law, that one man should be both judge and notar subscriber for the parties: Yet the LORDS sustained the decret, in respect of the meanness of the matter, and that they were but poor parties, and dwelt far in the country where notars could not be easily had.

Spottiswood, (ARBITER.) p. 15.

No 41.

A decret-arbitral where the same person was notary; subscribing for a party, and also one of the arbiters, sustained only because *inter rusticos*.

1633. March 27.

FORRESTER against GOURLAY.

A MATTER being submitted to Mr Da. Forrester, minister at Leith, and David Gourlay, by submission, in the blank on the back whereof, the decret-arbitral should have been inserted, and a minute of the decret being drawn up in sundry articles, which were not formally conceived, but were subscribed by the judges, and also intimate to the parties in due time, before the expiring of the day appointed to decern: Long after the expiring of the said day, one of the parties intents action and summons against the other party, and judges, to hear the said minute of decret so subscribed, extended in form, and to be inserted at length in the blank: And the other party *alleging*, That now after the day was so long since expired, there was no liberty left to the judges to meddle any further upon these matters submitted, without a new submission and consent of both the parties; and now he dissents altogether therefrom:—THE LORDS found, That if it should be qualified, that this minute was intimate to the parties *debite tempore*, and so subscribed by the judges, before the expiring of the day, that the said judges might yet, albeit after that day, insert their decret-arbitral, by a formal extension thereof, and inserting of the same in the blank on the back of the submission, conform to the substance and matter pronounced by them, and contained in these articles, subscribed by the judges; but that they might insert no

No 42.

Arbiters who had written out, in due time, a minute of their intended decree, found entitled to fill it up formally, in the blank of the submission, although the term had expired.

No 42. other thing material, differing from these articles; and only ought to insert and fill up in the blank, that which was well warranted by the articles foresaids, and no more.

A&. ———

Alt. Gibson.

Clerk, Hay.

Fol. Dic. v. I. p. 50. Durie, p. 684.

1636. March 2.

L. ALTER against L. AFFLECT.

No 43.
Found as
above.

THE L. Alter pursuing the L. Afflect upon a decret-arbitral pronounced betwixt them, to pay a sum contained in the said decret; it being *alleged*, That the said decret was null, as being written in a several distinct paper, and not into the blank upon the back of the submission, as the submission appointed; by the which it was provided, that the decret to follow upon the said submission, should have been filled in upon the said blank, on the back thereof, which is not done: And therefore this decret being contrary to that which was agreed on, and appointed betwixt the parties, and being written on a distinct paper, as said is, and made by a writer, under the form of an instrument; albeit it was also subscribed by the judges, to whom it was submitted; it ought not to produce any action.— This allegiance was repelled, and the decret sustained, albeit not insert in the blank; for the LORDS found, That the not inserting thereof, was no cause to infringe the same, seeing the same might be yet insert therein, if the judges pleased; in respect that this decret produced, might be a warrant to do it, the same being done by the judges, and pronounced *debito tempore*.

A&. ———

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. I. p. 50. Durie, p. 799.

1666. February 28.

FREELAND of that ilk against FREELAND.

No 44.
A decree-arbitral was reduced, because some of the arbiters had subscribed after the time limited, though others had signed before it elapsed; and all had given command, before elapsing, to fill up the blank in terms concerted.

THERE being a submission made by James Freeland, and his Son, to some friends, jointly, all agreeing in one voice, and empowering them to fill up the blank betwixt the date of the submission, which was 25th November 1663; and the last January 1664; the blank being filled up and subscribed by the arbiters, James Freeland the father, *alleging* to be leased thereby, intents a reduction of the said decret, upon this reason: *imo*, That the decret was subscribed after expiration of the term contained in the submission, at the least by some of them, and so not jointly by them all, conform to the terms of the submission: Whereunto it was *answered* by the defenders, That the decret and submission are opposed, subscribed by all the arbiters; and if the pursuer will allege, that this decret was subscribed by the hail arbiters, after the expiring of the submission, the defender is