

1633. March 7.

BEATIE *against* DUNDIE.

No. 238.

Charges upon a decret arbitral being suspended, because the decret was inserted in a blank on the back of the submission, and the same was only subscribed by the Judges, to whom the matter was submitted, and was not subscribed by the parties submitters, as ought to have been done in such cases. ; the reason was repelled, and the decret was sustained, albeit the blank was not subscribed by the parties, but by the Judges only, in respect the submission on the other side of that blank wherein the decret is inserted, is subscribed by the parties, and there is no necessity found, that the decret should be subscribed by the parties, but by the Judges only.

Alt. Gibson.

Clerk, Hay.

Durie, p. 678.

* * The like found 12th March 1707, Knox *against* Home, No. 7. p. 625.
voce ARBITRATION.

1701. June 17. ROBERT SMITH *against* The DUKE of GORDON.

By contract betwixt them, in 1684, the said Robert was to serve the Duke and his family in chirurgery and physic, and also to supervise his buildings and architecture ; for which services, the Duke is to pay him 200 merks of salary yearly and when he is at home to entertain him in his family, and when he is absent, he is to have allowance for his diet. Robert pursues the Duke, on this last clause, before the Sheriff of Edinburgh, and obtains a decret for £2823, for so many years board-wages, during the years the Duke did not live at home, at the rate of 12 pence *per* day. This decret the Duke suspended, on this reason, that by the contract produced by the charger himself, it appears, the clause pursued on is a marginal note, and which not being subscribed by the Duke, but only by Smith himself, can never oblige the Duke. Answered, *1mo*, There remain some dark vestiges of a subscription, though by the badness of the ink and the wearing of the paper, it is not so legible now ; *2do*, *Esto* it were not subscribed by the Duke at all, yet the principal, in his own custody, has the same marginal note, and though it be not signed by the Duke, yet it is subscribed by Robert Smith, and being so accepted by the Duke, it must certainly bind his Grace ; *3tio*, It is homologated by an account made betwixt Mr. Dunbar, the Duke's chamberlain, and the said Robert, where an article of board-wages, during the Duke's absence from home, is stated and allowed. Replied to the *1st*, They opposed the marginal note, where no subscription appeared, nor the least character of letters. To the *2d*, *Non relevat* that the Duke's double was signed by Smith, seeing the Duke never having signed it, evidences that he never acquiesced thereto. To the *3d*, the marginal note being a *non ens*, it can never be homologated. The Lords thought that mutual contracts having two doubles, needed not be subscribed by both

No 239.

If a mutual contract is executed by two counterparts, it is sufficient if each party subscribe the paper containing what is prestable on himself.