

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

content to find the allegiance relevant, of consent; and albeit it had been subscribed by one of the arbiters, after expiring, yet being subscribed by a quorum, before expiring (which they might draw up in write) cannot be reduced. *2do*, Offers to prove the haill arbitrators command on the haill articles of the said decreet, before expiring; which they might draw up in write after the expiring; and that Baruchan, one of the arbitrators, ratified the same thereafter.—To which it was *replied*, That the submission being made to four parties, jointly, who were all to agree in one voice, and to pronounce, and insert the said decreet; so that the major part was no quorum, who could pronounce; seeing four concurring in one voice are only empowered. And as to Baruchan's ratification after the expiring, it is *answered*, The reason is opposed, and that no submission of one of the arbiters, after expiring of the day, could be sufficient, or supply the same. *2do*, Albeit the haill arbitrators had, within the day, made a minute of the decreet, and subscribed the same; the same might have been extended after elapsing of the day, there being no difference, *quoad substantialia*, betwixt the minute and the decreet so extended; yet it is absurd to pretend, that a verbal communing among arbitrators, within the time limited by the submission, could, after elapsing of the day, be extended in a decreet, there being no minute subscribed by the arbitrators within the day.—THE LORDS found the reason of reduction relevant and proven; and therefore reduced.

Fol. Dic. v. 1. p. 50. Newbyth, MS. p. 60.

1680. December 2.

PITCAIRN against MORE.

MR DAVID PITCAIRN pursues reduction of a decreet-arbitral, on this reason, That it was *ultra vires compromissi*, not being perfected by writ, till the time of the submission was expired.—It was *answered* for the defender, That albeit the extension of the decreet was after that time, yet there was a minute of it pronounced to the parties before that time.—It was *replied*, That the minute was not subscribed before the day.

THE LORDS found the decreet-arbitral null; because neither it, nor the minute, was subscribed within the day prefixed for that effect.

Fol. Dic. v. 1. p. 50. Stair, v. 2. p. 811.

1694. June 30.

WILSON against HADDO.

IN a cause between Wilton and Haddo, it fell to be debated, where a submission bore that they should determine betwixt and the 6th of January, if it was exclusive of the 6th or inclusive, seeing the decreet-arbitral was on the 6th.—THE LORDS were clear, that in all these favourable cases, the day betwixt and which it was to be done, was included; so that the decreet pronounced on that

No 44.

No 45.

A decree-arbitral found null, subscribed after the submission was expired, though pronounced within the time.

No 46.

A decree-arbitral sustained, (as in No 37.) though pronounced *in ipso termino*.