

No 18. articles libelled, is null, the clause irritant therein mentioned being committed.

THE LORDS refused to sustain the pursuit, unless the minute were produced; albeit it was *alleged* there could be no prejudice, in respect a minute of another tenor could not be prejudged; and a minute of that tenor libelled should be declared void upon the reason libelled.

*Dirleton, No 118. p. 49.*

No 19.

A bond, containing a submission, accepted of a party, was considered a binding him to the submission, although not subscribed by him.

1669. February 3. JOHN BOSWEL against LINDSAY of WORMISTOUN.

JOHN BOSWEL being appointed Commissary of St Andrews by the King and before the restitution of bishops, after their restitution the archbishop named Lindsay of Wormistoun Commissary, and agreed him and John Boswell on these terms, that John should have the half of the profit of the place; whereupon Wormistoun grants a bond to John Boswel, to compt and reckon for the profits of the half, and to pay the same to John Boswel termly, and quarterly; and if any question should arise betwixt them in the account, that he should submit himself to the archbishop's determination, and acquiesce therein. John Boswel charges upon his bond; Wormistoun suspends. It was *alleged* for Wormistoun, That his bond did contain a submission to the archbishop, who is thereby the only judge constitute in these accounts. It was *answered*, That this bond was only subscribed by Wormistoun himself, and a submission must be subscribed by both parties, and that it behoved to be understood to last but for a year, and not to import a liferent submission, neither could it be exclusive of the LORDS to decline their authority. The suspender *answered*, that this submission being a provision in the bond charged on, which bond being accepted by the charger, his acceptance makes his consent to the submission, in the same way as if he had subscribed the same; and there is no law to exclude a submission for two years, or a lifetime, more than for one, and it is not a declining of the LORDS' jurisdiction, it being most ordinarily sustained, no process, because there is no submission standing.

THE LORDS found that there is here a submission, not ending by a year, and accepted by the charger, and that thereby the archbishop, in the first place, ought to give his sentence; which if he refused, or if it was iniquous, the LORDS would cognosce thereupon, as in the case of other arbiters; and assigned therefore to the archbishop the first of June to determine thereupon.

*Stair, v. 1. p. 596.*