

1711. *February 15.* SHORT *against* HOPKINS.

HOPKINS, belt-maker in Edinburgh, being debtor to Short in a controverted sum, they submitted the claim to two arbiters, who decerned Hopkins in L.70 Scots. He suspends on this reason,—That the decret-arbitral is null, wanting the name and designation of the writer.

ANSWERED,—Decreets do not require the writer's name to be inserted, their validity depending on the authority of the judge-pronouncer thereof and the clerk's subscription; and here this decret-arbitral is duly subscribed by the parties, arbiters, and witnesses: and it will be obvious to any, by inspection and comparing the submission with the decret, that the writer of the submission, who is mentioned, has also wrote the decret, they being both one hand. But the truth is, law does not require the mentioning of the writer; for arbiters have a greater latitude than other judges, and may proceed *secundum bonum et æquum*, and cannot be tied to such nice formalities. Besides, the 25th article of the Regulations 1695, secures decreets-arbitral against all objections and quarrels, save only for corruption, falsehood, and bribery.

REPLIED,—Decreets-arbitral have ever been reputed private writs, and subject to the same legal solemnities of writer's name and witnesses, else the subscription is not probative; and they never had the privilege of judicial acts, or decreets of a court of record; such as the session and sheriff-court, or other inferior judicatories. And the regulations suppose the decret-arbitral to be formal, else it is no decret; for what if it be *ultra vires*, or null, then the said article no-ways confirms it: and this was lately found in a case of *Halliburton of Pitcur's*, within these few years.

The Lords remembered they had sustained decreets-arbitral, though filled up after the day to which they were limited, if they were extended conform to minutes agreed on within the time, though they bore not the writer's name; as was found *27th March 1633, Forrester and Gourlay*; and therefore the Lords repelled the nullity, and found decreets-arbitral need not mention the writer's name.

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1711. *February 20.* SIR ROBERT GORDON of GORDONSTON *against* ARCHIBALD DUMBAR of THUNDERTON.

MR Archibald Dumbar of Thunderton having bought the barony of Duffus, and intending to inclose a park near the house; but finding Sir Robert Gordon of Gordonston's lands come so near that he behoved to take in a part of them within his inclosure, he applies to the Justices of Peace of the shire of Murray, who adjudged several parts of Gordonston's adjacent lands to Thunderton, for his park, and in recompense adjudged a part of the lands of Duffus of equal value in favours of Gordonston, and ordained the highway to be cast about 200 ells, as the 41st Act 1661 allows. Of this decret Gordonston raised suspension, on thir reasons, That it was not in terms of the 17th Act 1669, which pre-