

1612. *January 28.* CAMPBELL *against* CALDER.

No 55.

In a submission, if there be a day assigned, betwixt and the which the arbiters may determine, and in case of their not agreeing before that day, power be given to the overman after that day to discern; if the overman discerns before that day, his decret is null. (See No 26. p. 637.)

*Fol. Dic. v. 1. p. 51. Haddington, MS. No 2371.*

1716. *November 30.* GORDON of Ardmelly *against* ABERNETHY of Mayen.

No 56.

GORDON of Ardmelly pursues a reduction of a decret-arbitral, pronounced upon a submission betwixt him and Abernethy of Mayen, concerning contraverted marches; on this reason, That the submission was pronounced by the overman alone, without the concurrence of any of the arbiters.

A decret-arbitral pronounced by an overman, found null, in respect it did not bear that the arbiters had varied, without which the overman could not interpose.

It was *answered*: The submission, according to common stile, did bear, that, in case of variance, the arbiters should chuse an overman, whose decision alone is sufficient: And in this case there was a prorogation of the submission, to this effect, that the parties and arbiter having met and examined witnesses, found it necessary to make choice of an overman, whom they did thereby name; therefore the said parties and arbiters did also thereby prorogate the submission to a further diet, betwixt and which time, the said parties, arbiters and overman were to meet at the same place, and fully to decide and determine all contraverties submitted.

By that prorogation, it was evident, that the arbiters had varied, whereby there was place for the decision of the overman, whose sole determination was sufficient, in case of variance, and was also a full probation that the arbiters had not agreed.

It was *replied*: *1mo*, The prorogation does not prove such a difference amongst the arbiters as could entitle the overman to decide; because it bears, that the parties, arbiters and overman, were to meet again, whereby the overman could not interpose, unless there had been a variance posterior to the prorogation. *2do*, Neither is the assertion of the overman a sufficient document that the arbiters had varied; but that ought to have been instructed by the concurrence of the arbiters for one of the parties, in pronouncing and signing the decret-arbitral. *3tio*, In this case the decret-arbitral does not so much as bear, that the arbiters had met and varied.

It was *duplicated*: Decreets-arbitral being firmly established by law as unquarrelable, except upon bribery or falsehood; they are not easily to be overturned upon formalities, which cannot be expected where arbiters are not lawyers, as it generally happens; and there is no need of the concurring of the arbiter for one party, seeing the trust is lodged in the overman; and it is easily presumed, that the arbiters for the party who acquiesces in the decret would concur, if that