

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*.

No 46. day was valid and sufficient, seeing *interest reipublicæ ut lites sopiantur*; even as if I be bound to pay a sum betwixt and such a day, under a penalty or forfeiture of the case if I fail, I have that whole day introduced in my favours. But what made the difficulty here, was, they had referred the meaning of parties to Haddo's oath, and he had deponed that it was understood, the decret was to be given before the 6th, and so was not to be included. Yet the Lords found *ut supra*, notwithstanding of the oath, which was not *in factò* but *in jure*, on his opinion of the thing, and so was only *juramentum credulitatis*: And, least it should be pretended to be a contradiction, they declared the oath consistent with their interlocutor.

*Fol. Dic. v. I. p. 50. Fount. v. I. p. 624.*

1696. November 18.

WATSON against MILNE.

No 47.  
Found as in  
No 35. and  
No 45. that a  
decret-arbitral  
was null,  
being subscribed  
after the submission  
was expired,  
though pronounced  
in due time.

IN a case of slander, in calling one a thief, pursued by Mr David Watson against Milne, who was ordained by the Commissary of St Andrews to crave Mr David's pardon before the congregation, and to pay a pecuniary mulct; the reason of suspension of this decret was, a transaction by a submission and decret-arbitral following thereon.—*Replied*, The decret-arbitral was null, because, *imo*, Though it was pronounced within the time prescribed in the submission, yet it was not filled up, nor subscribed by the arbiters, till long after it was elapsed. *2do*, That it was referred to four arbiters, who were to chuse an oversman; and yet this decret is given out only by two who took on them to nominate an oversman, the other two dissenting.—It was answered to the *first*, That law required no more but the pronouncing the sentence before the day elapsed; but it might be extended at any time. To the *second*, Though two proceeded to elect an oversman and determine, yet one of the two was one of Watson's arbiters; and so he concurring it was sufficient.—THE LORDS thought them both informalities, but laid most stress on the last; because, at least, there should have been three, as the major part of the arbiters, who should have agreed in the electing the oversman; for, if two had the power, then, by the same rule, the other two might have as well chosen another oversman; and so this could never explicate the business; therefore the Lords rejected the decret-arbitral as null.—Then it was *objected* against the probation in the Commissary's decret, that each deposition was not signed by the judge, but only once for all at the foot of the page. *2do*, That the testimonies wanted these words in the end, 'as they should answer to God,' and allennarily bore, what they said was true upon their conscience.—*Answered* to the *first*, That the whole depositions being on one side of paper, the judge's signing the botom might suffice, as if every individual testimony had been subscribed by him. To the *second*, Their declaring upon their conscience was equivalent; and at the beginning of the deposition it bore they were sworn.—Yet the LORDS thought the precise *formula* in oaths ought to be observed.—But in regard it was