

decret without the rest, the same is of no avail, because he being allenary but one colleague adjoined to the rest, has no power to give any decret without their consent.

*Fol. Dic. v. 2. p. 387. Balfour, p. 286.*

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1605. June 5. SUTHERLAND against TORRIE.

No. 122.

IN an action betwixt Sutherland and Torrie, the Lords found, that one decret-arbitral being given by three arbiters proceeding upon a submission, whereby the matter was referred to four, to be null, because it behoved to be supposed to be submitted to them conjunctly, seeing it was not otherwise provided, and that the registration of the submission and decret by compearance and consent of a procurator, could not stay the party to impugn the decret-arbitral of nullity by way of exception.

*Fol. Dic. v. 2. p. 387. Haddington MS. No. 790.*

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1624. January 10. M'MATH against POURE.

No. 123.

IN an action betwixt M'Math against Poure, a commission being given by the Lords to four judges, whereof two were chosen by each one of the parties, to hear the counts betwixt the said parties, and thereafter to report to the Lords their proceedings, the commission not bearing to be given to them conjunctly, but only that it was given to the said four judges, two nominated for the one, and the other two nominated for the other; and the report being returned to the Lords, subscribed only by three of the judges, and not by the fourth, the report was sustained and found sufficient; for it was no reason that the commission and report should be elusory, if any one of the four, either of himself or at the desire of the party, should refuse his concurrence and consent. The four judges were four merchants.

*Act. Stuart.*

*Alt. Larmont & Sandilands.*

*Clerk, Hay.*

*Fol. Dic. v. 2. p. 387. Durie, p. 97.*

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1624. February 13. HUNTERS against M'QUHARS.

No. 124.

IN the action pursued, by Hunters, bairns of John Hunter, against M'Quhars, executors of Thomas M'Mitchell, who was ordained by his defunct wife's testament, to employ 2,000 merks to the behoof of the said Hunters, her oyes, by advice of David Johnston, Mr. John Hay, the said M'Mitchel, John Hunter, and Johnston