

1625. June 30.

HALKERTON against WISEHART.

ARBITERS being chosen by any parties, they are holden to decide all the differences referred to them by the compromit; otherwise, if they decern in one part, and leave the other claims undecided, it will furnish an exception to any of the parties that und themselves hurt thereby.

*Spottiswood, (ARBITER.) p. 13.*

No 40.

The arbiters must decide upon the whole matter submitted.

1629. January 28.

HOWISON against GIBSON.

ONE Howison being charged for payment of 80 merks, conform to a decret-arbitral pronounced between him and one Gibson, he suspended; and also intended reduction thereof upon this reason: That the decret was null, in respect that the notar who subscribed the submission for the parties submitters, was one of the arbiters *in quem fuerit compromissum*; and it cannot stand in law, that one man should be both judge and notar subscriber for the parties: Yet the LORDS sustained the decret, in respect of the meanness of the matter, and that they were but poor parties, and dwelt far in the country where notars could not be easily had.

*Spottiswood, (ARBITER.) p. 15.*

No 41.

A decret-arbitral where the same person was notary; subscribing for a party, and also one of the arbiters, sustained only because *inter rusticos*.

1633. March 27.

FORRESTER against GOURLAY.

A MATTER being submitted to Mr Da. Forrester, minister at Leith, and David Gourlay, by submission, in the blank on the back whereof, the decret-arbitral should have been inserted, and a minute of the decret being drawn up in sundry articles, which were not formally conceived, but were subscribed by the judges, and also intimate to the parties in due time, before the expiring of the day appointed to decern: Long after the expiring of the said day, one of the parties intents action and summons against the other party, and judges, to hear the said minute of decret so subscribed, extended in form, and to be inserted at length in the blank: And the other party *alleging*, That now after the day was so long since expired, there was no liberty left to the judges to meddle any further upon these matters submitted, without a new submission and consent of both the parties; and now he dissents altogether therefrom:—THE LORDS found, That if it should be qualified, that this minute was intimate to the parties *debite tempore*, and so subscribed by the judges, before the expiring of the day, that the said judges might yet, albeit after that day, insert their decret-arbitral, by a formal extension thereof, and inserting of the same in the blank on the back of the submission, conform to the substance and matter pronounced by them, and contained in these articles, subscribed by the judges; but that they might insert no

No 42.

Arbiters who had written out, in due time, a minute of their intended decree, found entitled to fill it up formally, in the blank of the submission, although the term had expired.