

1633. March 7.

BEATIE *against* DUNDIE.

No. 238.

Charges upon a decret arbitral being suspended, because the decret was inserted in a blank on the back of the submission, and the same was only subscribed by the Judges, to whom the matter was submitted, and was not subscribed by the parties submitters, as ought to have been done in such cases. ; the reason was repelled, and the decret was sustained, albeit the blank was not subscribed by the parties, but by the Judges only, in respect the submission on the other side of that blank wherein the decret is inserted, is subscribed by the parties, and there is no necessity found, that the decret should be subscribed by the parties, but by the Judges only.

Alt. Gibson.

Clerk, Hay.

*Durie, p. 678.*

\* \* The like found 12th March 1707, Knox *against* Home, No. 7. p. 625.  
*voce* ARBITRATION.

1701. June 17. ROBERT SMITH *against* The DUKE of GORDON.

By contract betwixt them, in 1684, the said Robert was to serve the Duke and his family in chirurgery and physic, and also to supervise his buildings and architecture ; for which services, the Duke is to pay him 200 merks of salary yearly and when he is at home to entertain him in his family, and when he is absent, he is to have allowance for his diet. Robert pursues the Duke, on this last clause, before the Sheriff of Edinburgh, and obtains a decret for £2823, for so many years board-wages, during the years the Duke did not live at home, at the rate of 12 pence *per* day. This decret the Duke suspended, on this reason, that by the contract produced by the charger himself, it appears, the clause pursued on is a marginal note, and which not being subscribed by the Duke, but only by Smith himself, can never oblige the Duke. Answered, *1mo*, There remain some dark vestiges of a subscription, though by the badness of the ink and the wearing of the paper, it is not so legible now ; *2do*, *Esto* it were not subscribed by the Duke at all, yet the principal, in his own custody, has the same marginal note, and though it be not signed by the Duke, yet it is subscribed by Robert Smith, and being so accepted by the Duke, it must certainly bind his Grace ; *3tio*, It is homologated by an account made betwixt Mr. Dunbar, the Duke's chamberlain, and the said Robert, where an article of board-wages, during the Duke's absence from home, is stated and allowed. Replied to the *1st*, They opposed the marginal note, where no subscription appeared, nor the least character of letters. To the *2d*, *Non relevat* that the Duke's double was signed by Smith, seeing the Duke never having signed it, evidences that he never acquiesced thereto. To the *3d*, the marginal note being a *non ens*, it can never be homologated. The Lords thought that mutual contracts having two doubles, needed not be subscribed by both

No 239.

If a mutual contract is executed by two counterparts, it is sufficient if each party subscribe the paper containing what is prestable on himself.

No. 239. parties-contracters, but it was sufficient in law if the Duke's principal was signed by Smith and his counter-part by the Duke ; and it was so found lately, in a case of Sinclair of Ossory in Caithness ; and therefore sustained the marginal note, though not signed by the Duke, seeing it was contained in his own double uncancelled : But in regard the said clause, in the two copies, seemed materially to differ, the Lords appointed them to be heard thereupon before the Ordinary.

*Fountainball, v. 2. p. 113.*

1706. *January 1.*

*Row against Row.*

No. 240.

The Lords sustained this reason of reduction relevant to reduce a decret-arbitral, That the blank on the back of the submission was subscribed by the arbiters at the same time that the submission was subscribed, and not after inserting the decret-arbitral ; and they found the allegiance proved by the docquet of the submission, in the following words, " And the parties and arbiters in token of their acceptance have subscribed these presents, with the blank on the back thereof, the said 7th January, &c."

*Forbes.*

\* \* This case is No. 219. p. 16971.

No. 241.

1708. *July 7.*

*PATON against LEITH.*

In a cause depending before the privy council, a committee of their number being delegated to examine witnesses, and the cause being submitted to this committee, a decree-arbitral, not signed by the plurality, but only by him who was chosen preses of the meeting, while they acted as a committee, was found null.

*Forbes.*

\* \* This case is No. 221. p. 16969, (16973.)

No. 242.

Three doubles of a writ having been made, it was found no nullity that in two of them the writer's designation was neglected, the third having been formal.

1716. *July 3.*

*POOR MARGARET CUBBISON and her Husband, against JOHN CUBBISON.*

There being mutual claims betwixt these parties, at length there was a communion set on foot betwixt John Sloan the pursuer's husband, and David Cubbison younger of Cullenoch the defender's son, which ended in an agreement ; and three doubles of a contract being drawn up, (one whereof only mentions the writer's designation), and the son having communed for his father, subscribes the same, but not the father, though it runs in Cullenoch's name, only these words occur in the body of the paper, " Cullenoch's son has offered 1500 merks," and in the end these are adjected, " David Cubbison of Cullenoch is the party here.