

1707. March 12.

ANDREW KNOX, Tenant in Harley, against GEORGE HUME of Kames.

GEORGE HUME of Kames being charged at the instance of Andrew Knox tenant in Harley, to pay a certain sum contained in a decret-arbitral, as the price of some corns submitted by them to two arbiters, he suspended upon these grounds: *Imo*, That the decret was *ipso jure* null, because the blank on the back of the submission in which it was filled up, was not subscribed by the parties submitters; which, according to constant custom, is essential to a decret-arbitral, as an evidence that they submit implicitly to the arbiters' determination, whatever it be. *2do*, Though the decret should not be found null for want of the party's subscription to the blank it was filled up in; it could not be a warrant for a summar charge of horning; because, albeit the submission bears a clause for registering thereof, it bears no consent to the registration of the decret-arbitral, to follow thereupon; but only the arbiters do most irregularly, in their decret, consent to the registration thereof in any competent judge's books: And their consent to registration can be no ground to raise horning against the parties who subscribed not the blank in which the decret was filled up.

Answered for Andrew Knox: Albeit ordinarily submissions bear the blank on the back on which the decret-arbitral is to be filled up, to be subscribed by the submitters, and they actually do subscribe the same: Yet that is not essential to the validity of a decret-arbitral, more than the clause *renouncing the exception of not numerate money*, and the clause *but prejudice of suing execution hereupon*, &c. are necessary clauses in bonds. The decret is indeed most frequently written upon the back of the submission, that it may be insert in the same register with the submission: But *nihil impedit*, why a decret-arbitral may not be on a paper apart. Since a verbal decret-arbitral, proceeding upon a verbal submission, hath been sustained; February 7. 1671, Hume *contra* Scot*. And as a testament may be validly made up of three words, *Lucius Heres esto*; any words though never so few, importing the acquiescence of parties in what shall be determined by arbiters, are infallibly binding, as if they should submit thus, *Lucius Arbitrator esto*.

THE LORDS found the decret-arbitral was no warrant for summar diligence: referring the consideration of the other point anent the annulling of the decret, because the blank on the back thereof was not subscribed by the parties. But they were generally of opinion that the want of the party's subscription to the blank, was not a nullity in the decret filled up therein.

Fol. Dic. v. 1. p. 49. Forbes, p. 142.

1738. June 22.

LORD LOVAT against FRASER of Phopachy.

THE effect of arbiters not determining the whole particulars submitted, is settled by a distinction, whether it be a submission only of particulars, or only general, or of particulars with a general.

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* Stair, v. 1. p. 716. *voce* PROOF, verbal contracts.

No 7.

Arbiters cannot discern that their decrees shall take effect by summar diligence, unless the parties submitters interpose their consent thereto.

No 8.

In a case, where a submission to arbiters was made of cer-