

No 15.

sententiam dicant when they had once accepted, and that there was not *locus penitentiae*; but that law could not compel Sir William to concur with the other three in their sentiment, but only to give out his determination as he was persuaded to be just in his own conscience; so the LORDS granted letters of horning against him to this effect, that he might give his opinion as to the claim and controverted points, but nowise to oblige him to join with the other three in their decision, unless he thought it just.

The Lords of Session, and all other judges, are bound *impertiri officium suum*, and to discern when required by the parties; and by the same rule arbiters accepting are tied to do the same.

Fountainball, v. 2. p. 163.

1708. *Janaary 31.*

HAMILTON of Bangour *against* LORD and LADY ORMISTON.

No 16.

THE LORDS sustaiued a bond, although the party did therein bind his heirs and successors, but not himself, that subtilty of the common law having been repudiated by the latter constitutions, as a mere nicety.

Fol. Dic. v. 2. p. 15. Fountainhall.

*** This case is No 118. p. 5909, *voce* HUSBAND AND WIFE.

1708. *July 6.* Mr GEORGE SKEEN *against* The LAIRD of SKEEN.

No 17.

In conformity
with No 15.
P. 9435.

Mr GEORGE SKEEN of Robslaw, by a petition, represents, that a difference having emerged betwixt the Laird of Skeen and him about the succession to Sir George Skeen of Fintray; and they having submitted to arbiters, who accepted and agreed on the tenor of their decreet-arbitral, but one of them was dissuaded to sign by Skeen's influence; therefore craved horning against them to give out their decreet in what terms they pleased, without prescribing or imposing on their judgment any manner of way. *Answered*, Where arbiters had not clearness, the Lords could not compel them; and they were willing, seeing both parties did not acquiesce, to let the submission expire. *Replied* That submissions were *ab initio* before acceptance *voluntatis*, but after it *necessitatis*; and as the Lords used to give compulsitors against witnesses to compare before them for clearing points in controversy, so, to make submissions effectual *ad sopiendas lites*, they have been in use likewise to force them to emit their decreet-arbitral, but so as to leave them to God and a good conscience in their determination; and so they did lately, *Jerviswood, No 15. p. 9435.*, in ordering Sir William Bruce, one of the arbiters, to give his opinion in what