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tain particulars, as also a general submission of all other claims, the arbiters having determined only as to the particulars, but not as to the general, the decree was found, notwithstanding, good.

In the first and second case, the leaving any thing open, voids the whole: in the third case, the particulars being determined, the decree stands good, though there be nothing done upon the general; *provided* that no claim upon the general, having connection with any of the particulars determined, be left undetermined.

Accordingly, in this case, where the submission was of particulars, with a general subjoined of all other claims, the LORDS sustained the decret-arbitral, whereby all the said particulars were determined, although there were other claims, falling under the general, left undetermined by the arbiters.

Fol. Dic. v. 3. p. 35. Kilkerran, (ARBITRATION.) No 1. p. 33.

1739. *January 24.*

WALTER GROSAT, Charger, *against* HENRY CUNNINGHAM, &c. Suspenders.

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Arbiters cannot decern for a penalty, other or greater, than is contained in the submission. The penalty will be restricted *quoad excessum*.

THESE parties entered into a submission, wherein they bound themselves to obtemper the decret, under the penalty of 20l. Sterling; and, by the decret-arbitral following thereon, the suspenders were decerned to pay 200l. Sterling, by equal portions, at Lammas and Martinmas then next, with 20l. Sterling of penalty for each term's failzie; and likewise it decerned for a penalty of 20l. Sterling, to be paid by the party failing to observe, to the party performing, or willing to perform.

It was *objected*, in a suspension of the decret-arbitral, That the arbiters had acted *ultra vires*, in decerning for 20l. Sterling of penalty for each term's failzie.

Answered: Wherever a liquid sum is found due, or decerned for by arbiters, they can either make it payable by the decret-arbitral at a certain term, or they can decern the party debtor to grant bond for it, payable at a certain term; and, in this last case, they would decern the bond to be extended in common form, that is, with interest from the date, or term of payment, and a fifth part of the principal, as penalty: And the case is the same where they decern a sum to be paid by their decret-arbitral; the decret-arbitral is, in that case, the bond, and the fifth part for penalty is, of course, a part of the bond. There is no absurdity at all in supposing two different penalties to be due, one by the bond, and one by the obligation to submit; and both are incurred in case of disobedience, the penalty in this submission by disobedience, and the other by failure of payment.

THE LORDS restricted the penalty in the decret-arbitral, to the penalty in the submission*.

C. Home, No 117. p. 188.

* This case in *Fol. Dic. v. 1. p. 49.* is named, Boquhan against Groffart, and dated 24th February 1739.