

1738. *January 12.—February*LORD LOVAT *against* FRASER of Phopachie's Children.

No. 4.

Effect of arbiters
not determining
the whole particu-
lars submitted.

DECREET-ARBITRAL upon a submission of one particular claim, and in general of all other claggs and claims, to two arbiters, and in case of variance to an oversman; the arbiters determined the article specially submitted, and many others; and several others they referred to the oversman, and for some they reserved action; and the oversman only affirmed what the arbiters had done; and as to the articles referred to him by the arbiters, he referred some to the Judge Ordinary, and others he ordered more special condescendences to be made, which was never done: Yet in a reduction of this decret, for that the hail matters submitted were not determined, the Lords repelled the reasons of reduction; and some of the Lords thought, that though in special submissions every article must be determined, or none at all, yet that in general submissions some articles may be determined, and others having no connection with them left undecided. (See DICT. No.8. p. 6251.)

1741. *July 10.*GARDENER *against* M'ILHOSE.

No. 5.

Prorogation,—
Variance of the
arbiters.—
Penalty.

DECREET-ARBITRAL objected to because a prorogation by arbiters had not the writer's name and designation. Some of the Lords doubted if that was any nullity; but there being a proof that after the prorogation parties compeared and gave in claims and answers, that homologation was found relevant and proven. Second objection, The submission being to two arbiters, and in case of variance to any one of them with the oversman, the decret was given by one of the arbiters and oversman, upon a narrative of variance betwixt the arbiters, but no reference by the two arbiters signed. The Lords repelled the objection, and thought the evidence of variance sufficient, unless a contrary proof were offered, that either the arbiters did not meet, or had not finally varied. Third objection, The submission contained only L.100 Scots of penalty, whereas the decret decerned a sum to be paid under a penalty of L.7 sterling, and separately decerned them to obtemper the decret under the penalty of L.100 Scots. The Lords found that both penalties could not exceed L.100 Scots, but found it no nullity.

* * In the case of Walter Grosett, against Colonel Erskine and Creditors of Balquhan, the point anent the penalties was determined in the same way. (See DICT. No. 9, p. 626.—No. 10, p. 627.)