

No 46. day was valid and sufficient, seeing *interest reipublicæ ut lites sopiantur*; even as if I be bound to pay a sum betwixt and such a day, under a penalty or forfeiture of the case if I fail, I have that whole day introduced in my favours. But what made the difficulty here, was, they had referred the meaning of parties to Haddo's oath, and he had deponed that it was understood, the decret was to be given before the 6th, and so was not to be included. Yet the Lords found *ut supra*, notwithstanding of the oath, which was not *in factò* but *in jure*, on his opinion of the thing, and so was only *juramentum credulitatis*: And, lest it should be pretended to be a contradiction, they declared the oath consistent with their interlocutor.

Fol. Dic. v. I. p. 50. Fount. v. I. p. 624.

1696. November 18.

WATSON against MILNE.

No 47.
Found as in
No 35. and
No 45. that a
decreet-arbitral
was null,
being subscribed
after the submission
was expired,
though pronounced
in due time.

IN a case of slander, in calling one a thief, pursued by Mr David Watson against Milne, who was ordained by the Commissary of St Andrews to crave Mr David's pardon before the congregation, and to pay a pecuniary mulct; the reason of suspension of this decret was, a transaction by a submission and decret-arbitral following thereon.—*Replied*, The decret-arbitral was null, because, *imo*, Though it was pronounced within the time prescribed in the submission, yet it was not filled up, nor subscribed by the arbiters, till long after it was elapsed. *2do*, That it was referred to four arbiters, who were to chuse an oversman; and yet this decret is given out only by two who took on them to nominate an oversman, the other two dissenting.—It was answered to the *first*, That law required no more but the pronouncing the sentence before the day elapsed; but it might be extended at any time. To the *second*, Though two proceeded to elect an oversman and determine, yet one of the two was one of Watson's arbiters; and so he concurring it was sufficient.—THE LORDS thought them both informalities, but laid most stress on the last; because, at least, there should have been three, as the major part of the arbiters, who should have agreed in the electing the oversman; for, if two had the power, then, by the same rule, the other two might have as well chosen another oversman; and so this could never explicate the business; therefore the Lords rejected the decret-arbitral as null.—Then it was *objected* against the probation in the Commissary's decret, that each deposition was not signed by the judge, but only once for all at the foot of the page. *2do*, That the testimonies wanted these words in the end, 'as they should answer to God,' and allenerly bore, what they said was true upon their conscience.—*Answered* to the *first*, That the whole depositions being on one side of paper, the judge's signing the botom might suffice, as if every individual testimony had been subscribed by him. To the *second*, Their declaring upon their conscience was equivalent; and at the beginning of the deposition it bore they were sworn.—Yet the LORDS thought the precise *formula* in oaths ought to be observed.—But in regard it was

alleged, This was the peculiar form of examination in that Commissariat, and that the Lords had formerly sustained their depositions, they forbore till that interlocutor should be sought out.—It may be very unfit to allow various forms in adhibiting oaths, and that is what the Quakers plead for, that their declaration, ‘as in the presence of God,’ may be accepted in place of the oath, and which the English Parliament has allowed lately. (*See solidum et pro rata.*)

Fol. Dic. v. 1. p. 50. Fount. v. 1. p. 733.

No 47.

1699. January 4. EARL OF CRAWFORD against ALEXANDER BRUCE.

ARRBRUCHALL reported the Earl of Crawford and Alexander Bruce, son to Broomhall. It was a reduction of a decreet-arbitral as subscribed of a false date, in so far as it was not signed till after the day to which the submission was confined was elapsed, yet it is made of an ante-date.—*Answered, Esto*, That were true, yet *primordium habet veritatis*; for the minute, which is the warrant, was truly subscribed by the arbitrators within the time prefixed.—THE LORDS found the minute being subscribed within the time, was sufficient, though extended thereafter, providing there was no more in the extension than in the minute, and the date at the head of the minute must be presumed to be the date of the subscription, unless it were redargued; for *omnia presumuntur solemniter acta, et interpretatio sumenda ut actus valeat*. See 27th March 163: Forrester *contra* Gourlay, No. 42. p. 645. It was here also debated, but not determined, whether a decreet-arbitral opened upon a nullity, falls *in toto*, or be like an *articulatus libellus* only *quoad* that article, as is provided for securities of decreets *in foro* by the late regulations in 1695; and though decreets-arbitral are there exempted from being reduced upon iniquity, but only upon corruption and falsehood, yet if that will exclude nullities.

Fol. Dic. v. 1. p. 51. Fount. v. 2. p. 31.

No 48.

Found in conformity with No 42. p. 645.

1714. July 30. COLONEL ERSKINE against LADY MARY COCHRANE.

THE Lord President of the Session and Lord Dun having pronounced a decreet-arbitral, upon a submission made to them by Colonel Erskine and Lady Mary Cochrane and her Husband, concerning their differences, and several claims to and upon the estate of Kincardine: The Colonel raised a suspension and reduction of the said decreet, upon this ground, that the same is entirely *ultra vires compromissi*.—*1mo*, As to the subject matter of it, in so far as the arbiters have determined things not submitted to their judgment. For, *1mo*, By the submission nothing is referred to them but the parties differences concerning the estate of Kincardine; and yet they are decerned to grant general discharges of all actions or claims competent to each other. *2do*, The parties are decerned to ratify others

No 49.

Arbiters may ordain all writs in implement, and prosecution of their decreet, to be extended at their sight, after expiring of the submission.