

1625. June 23.

WISHART against FALCONER.

Wishart, brother to the L. Pittarro, being charged at the instance of Falconer, brother to the L. Halcartoun, to pay the sum of £100 contained in a decret arbitral, made betwixt these parties; by the which decret he was decerned to pay that sum, in case he did not remove such a servant out of his company, named in the decret, and that he should never receive him again in his service, and if he failzied, to pay the said sum; this charge being suspended upon divers reasons, one whereof was, that the decret was null, because it proceeded upon an act of submission, alleged made betwixt these parties, which act was only subscribed by the clerk to the Justices of Peace of the Mearns, and was not subscribed by the two parties themselves, to be a warrant to the act of submission, without the which no act could be made, whereupon sentence could follow: This reason was found relevant, and the decret by way of suspension found null, for the same reason; notwithstanding that it was answered by the charger, that the same ought to be sustained, in respect that it was a matter of small importance; and also in respect of the matter whereupon the sentence is given, viz. For feeing of servants, and penalties depending thereupon, which is merely proper to be cognosced by the Justices of peace, and therefore might have been lawfully submitted in that Court, and the submission might be testified by the Clerk of that Court, and his act made thereupon ought to be a sufficient warrant to sustain the decret, without the subscription of the parties; which answer was not admitted; but notwithstanding thereof, the decret was found null, for the reason foresaid, viz. That the submission was not subscribed by the parties. But thereafter the submission was sustained, because the verity thereof was referred to the oath of the party, who now impugned the same, which the Lords found sufficient to be a supplement to sustain the submission.

Act. *Belshet.* Alt. *Falconer.* Clerk, *Gibson.**Durie, p. 164.*

1625. June. 30.—In an action betwixt Falconer and Wishart, whereof mention is made June 23, 1625, the Lords found the decree arbitral null, because by the submission both parties claims *hinc inde* against others, were submitted, and in the decree, the Judges had decerned by their sentence, only upon one of the party's claims, and the claim of the other party was not decided, but remitted to the Judge ordinary; which the Lords found to be a cause, to make the whole decree null, seeing the Judges ought to have pronounced sentence upon the whole matters submitted; and this not being done, that which was done in part was not effectual to produce execution. The parties compeared as is there noted.

Durie, p. 167.

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Formalities
of a sub-
mission.