ced by the overſman, with concourſe of one of the two arbiters, bearing, that 'the arbiters diſagreed, was found a preſumptive proof of it.' No 59.

Now, here we have one of the arbiters concurring with the overſman, and even joining with him in the choice of a clerk; and we have the other arbiter concurring in the nomination of this overſman, and ſigning a minute to that purpoſe; which, in common ſenſe, can import nothing elſe than that they differed in opinion, and therefore devolved their powers on the overſman, who accordingly pronounced his deciſion upon the expreſs recital of a difference in opinion; for ſo the decreet-arbitral bears; nor can the charger enter into the criticiſm, that the words, 'not preciſely agreeing,' mean, 'that they did not differ.'

The minutes, and whole procedure, though briefly expreſſed, do clearly ſhow, in the *firſt* place, That the two arbiters met, and, not agreeing in opinion, choſe an overſman. 2*dly*, That this overſman accepted, and ſigned his acceptance. And, 3*dly*, That the overſman, along with one of the arbiters, appointed a clerk to the ſubmiſſion. And, *laſtly*, That he pronounced a diſtinct and full decreet-arbitral on the ſeveral matters in diſpute; which decreet-arbitral was favourable to the ſuſpender, ſo far from containing the leaſt matter of complaint at his inſtance.

The proceedings, in ſhort, are ſufficiently complete of themſelves, and require no extrinſic evidence to ſupport them. And, as to the obſervation, that the arbiters do not appear to have accepted, How can this poſſibly be maintained, when they acted under the ſubmiſſion, and even went the length of appointing an overſman? An acceptance of a ſubmiſſion does not require to be minuted in any preciſe form of words. It is enough if the proceedings ſhow that the arbiters did accept and act.

Obſerved on the Bench, The deciſion quoted from Dalrymple is not a good one. Here, *res ipsa loquitur*, that the arbiters differed, from their naming an overſman.—Nor ought the circumſtance of the minute naming the overſman, not being properly teſted, create a difficulty, where a formal decreet-arbitral followed in conſequence thereof. Decreets-arbitral ought not to be got the better of upon critical forms, where they are ſubſtantially right; and there is full evidence here that the preſent was a very moderate one.

THE LORDS adhered; and, farther, decerned for the expence of the anſwers.

Act. *Ilay Campbell.* Alt. *Walter Campbell.* Clerk, *Tait.*

Fol. Dic. v. 3. *p.* 36. *Wallace, No* 45. *p.* 119.

1780. *January* 20. JAMES HERRIOT *againſt* JOHN WIGHT.

No 60.
The devolution to an overſman muſt be ſigned by the arbiters before witneſſes.

THESE parties ſubmitted all diſputes between them to James Ronaldſon and John Scott as arbiters; with powers, in caſe of variance, to elect an overſman. The arbiters differed in opinion, and made choice of Robert Wight, who gave a judgment in favour of Herriot.

No 60. In a ſuſpenſion of this judgment, 'the LORDS found, That the devolution to 'the overſman, not being atteſted by witneſſes, in terms of the ſtatute 1681, was 'void and ineffectual.'

Lord Ordinary, *Alva.* Act. *Little, R. Dundas.* Alt. *Maclaurin.* Clerk, *Tait.*
Fol. Dic. v. 3. *p.* 36. *Fac. Col. No.* 102. *p.* 195.

Reduction of Decree-Arbitral.

1540. *February* 11. HAMILTON *against* HAMILTON.

No 61. NA exception of iniquitie, nullitie, or uther quhatſumever, may be proponit or alledgit contrare the executioun of an decrete-arbitral lauchfullie gevin: Bot the proponer thairof ſould uſe and alledge the ſamin be way of actioun gif he pleiſis for reduction and retractatioun of the ſaid decrete.

Balfour, (ARBITERIS.) *p.* 415.

1541. JANET BLAK *against* ANDRO HAMILTOUN.

No 62. DECRETE-ARBITRAL beand gevin be the arbiteris choſin be baith the pairties quhairby ather of the parties is heavilie and enormlie hurt in all his ſubſtance, gudis, or geir, or, in the maſt pairt thairof, the ſamin decrete is of nane avail and may be reducit.

Balfour, (ARBITRIE.) *p.* 414.

1616. *July* 25. A. *against* B.

No 63. Some heads of a decree-arbitral being *ultra vires*, it fell *in toto*. IN an action of reduction of a decreet-arbitral, the LORDS found, That one or two heads being *ultra vires*, the reſt ſhould fall. *Item*, in the ſame cauſe, the LORDS refuſed to admit the exception founded upon conſent of party to be proven by the Judge and witneſſes inſert.

Kerſe, MS. (ARBITERS.) *fol.* 181.

1617. *January* 7. A. *against* B.

No 64. THE LORDS found a ſubmiſſion null, becauſe it was ſubſcribed only by one notar, it being about the heritable right of an acre of land; and, when the truth