

No 2. upon a submission of the said parties, the LORDS found, that the hail sentence fell and was null, in respect of iniquity committed by the said arbiters, and decret given *ultra vires compromissi*.

*Fol. Dic. v. 1. p. 462. Haddington, MS. No' 512.*

No 3. 1616. July 25. A. against B.

IN an action of reduction of a decret-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 proved by the Judge, and witnesses inserted.

*Fol. Dic. v. 1. p. 463. Kerse, MS. fol. 180.*

1630. March 20. JOHN STARK against THUMB.

No 4.

A decree-arbitral was sustained, tho' the arbiters remitted a point in dispute to the determination of other arbiters. The point remitted was not specially mentioned in the submission.

CERTAIN special controversies betwixt these parties being particularly expressed, and therewith all other questions betwixt them generally, whatsoever they were, being submitted to arbiters; who having decerned, the decret was quarrelled, by way of suspension, as null; because, in one article of the decret, the Judges had referred the payment of the taxation, whether of the parties should pay the same, to the judgment of two Lawyers, one to be chosen by each party; by the which reference, they not determining upon one article controverted, the whole rest of the decret was null; for the suspender *alleged*, That the Judge not deciding in all the questions, but remitting one to others, which they could not do, after they had accepted on them the decision of all, thereby the decret is null; for the which he *alleged*, L. 19. D. De Receptis. And the other party *alleging*, That the decret could not be null in all the articles, albeit it were yielded, that it were null in that head, because, *utile per inutile non vitiatur*, especially *ubi capita sententiae sunt separabilia*, as in this case. THE LORDS found the foresaid article of the decret, remitting to the Lawyers, to determine on the taxation, rendered not the whole decret null; because, though the civil law and reason declare such clauses to make the whole decret null, where any article specified in the submission particularly accepted, to be decided by the arbiters, is not decided, but referred to others, *quo casu nulla est sententia*, except by the power of the submission the Judge has warrant from the party, so to refer the same to others, et pro hoc facit, L. 32. § 16. D. De Receptis, &c. Vid. L. 19. § 1. et L. 21. § 12. D. eod. tit.; ex quibus scire licet an sententia lata super quibusdam rebus compromissis, super aliis autem non lata, valeat in iis, supra quibus lata est; but in this case question-