

No 42. other thing material, differing from these articles; and only ought to insert and fill up in the blank, that which was well warranted by the articles foresaids, and no more.

A&. ———

Alt. Gibson.

Clerk, Hay.

Fol. Dic. v. I. p. 50. Durie, p. 684.

1636. March 2.

L. ALTER against L. AFFLECT.

No 43.
Found as
above.

THE L. Alter pursuing the L. Afflect upon a decret-arbitral pronounced betwixt them, to pay a sum contained in the said decret; it being *alleged*, That the said decret was null, as being written in a several distinct paper, and not into the blank upon the back of the submission, as the submission appointed; by the which it was provided, that the decret to follow upon the said submission, should have been filled in upon the said blank, on the back thereof, which is not done: And therefore this decret being contrary to that which was agreed on, and appointed betwixt the parties, and being written on a distinct paper, as said is, and made by a writer, under the form of an instrument; albeit it was also subscribed by the judges, to whom it was submitted; it ought not to produce any action.— This allegiance was repelled, and the decret sustained, albeit not insert in the blank; for the LORDS found, That the not inserting thereof, was no cause to infringe the same, seeing the same might be yet insert therein, if the judges pleased; in respect that this decret produced, might be a warrant to do it, the same being done by the judges, and pronounced *debito tempore*.

A&. ———

Alt. Stuart.

Clerk, Gibson.

Fol. Dic. v. I. p. 50. Durie, p. 799.

1666. February 28.

FREELAND of that Ilk against FREELAND.

No 44.
A decree-arbitral was reduced, because some of the arbiters had subscribed after the time limited, though others had signed before it elapsed; and all had given command, before elapsing, to fill up the blank in terms concerted.

THERE being a submission made by James Freeland, and his Son, to some friends, jointly, all agreeing in one voice, and empowering them to fill up the blank betwixt the date of the submission, which was 25th November 1663; and the last January 1664; the blank being filled up and subscribed by the arbiters, James Freeland the father, *alleging* to be leased thereby, intents a reduction of the said decret, upon this reason: *imo*, That the decret was subscribed after expiration of the term contained in the submission, at the least by some of them, and so not jointly by them all, conform to the terms of the submission: Whereunto it was *answered* by the defenders, That the decret and submission are opposed, subscribed by all the arbiters; and if the pursuer will allege, that this decret was subscribed by the hail arbiters, after the expiring of the submission, the defender is