

On the 15th January 1778, "The Lords remitted to the Sheriff *simpliciter*."  
*Act.* A. Crosbie. *Alt.* R. Cullen.

*Reporter*, Kennet.

*Diss.* Covington, Monboddo, Elliock, President.

*N.B.* The judgment of the Court ought not to have adopted the whole of the Sheriff's judgment; and probably it did not.

1776, March 8, and 1778, January 20. EARL of SELKIRK *against* ROBERT  
 NAESMITH.

#### SALE—ARBITRATION.

A reference of the Price, in a Contract of Sale, to Arbiters, found to be binding on the Heirs of the Referrer.

[*Fac. Coll.*, VIII, 9; *Dict.*, 627.]

GARDENSTON. There is a just distinction between *arbiters* and *arbitrators*. An *arbiter* is named to determine to whom the subject shall belong; an *arbitrator* to value the subject,—it being already determined to whom the subject shall belong. By the death of one of the parties submitting, the office of *arbiter* ceases, but I do not see why the same rule should prevail as to *arbitrators*.

On the 8th March 1776, "The Lords stopped the sale of the lands in controversy."

*Act.* A. Crosbie. *Alt.* W. Craig.

1778. January 20. GARDENSTON. Parties may conclude a bargain by reference to *arbitrators*. *Arbiters* determine as to matter disputed, but *arbitrators* as to the extent of what parties agree in.

PRESIDENT. *Res non erat integra* by any means: much money had been actually paid in part of the price. Had the arbiters died, the Court might have named other arbiters.

BRAXFIELD. The only question is, Whether there was truly a bargain; and whether Lord Selkirk may proceed to an adjudication in implement? When a submission is once entered into, and part of the price paid, *res non est integra*. The death of the arbiters would not vary the matter, for the Court might interpose.

On the 20th January 1778, "The Lords found that there was a concluded bargain, and remitted to the Ordinary."

*Act.* A. Crosbie. *Alt.* W. Craig.

*Reporter*, Covington.