Historic Scottish Arbitration Act 1426

Latin original

Ordinatum est super omnibus & singulis causis, infra regnum, nunc pendentibus sub compromisso, si inter clericos arbitri sint electi in pari numero, per diocesanum Episcopum de concilio sui capituli, dispar persona, partibus non suspecta eligatur. Si vero inter Barones vel quoscunque alios laicos, extra Burgum commorantes, tunc eligatur dispar persona neutri partium suspecta, per Vicecomitem, tunc disposonerentis partes compromittentes, quos Vicecomes ille commodò pro tempore habere poterit, neutri partium susceptorum. Si autem inter Burgenses, seu alios habitantes infra Burgum, arbitri sint electi, tunc dispar persona non suspecta, per Praepositum & Concilium Burgi, infra quem partes inhabitant, eligatur. Ad negotia vero causas & lites futuras per arbitria terminandas, arbitri de cetero in dispari numero & non in pari eligantur. Arbitria autem aliter inita & facta, nullius sint roboris vel momenti.

English translation

by Derek Roebuck
Sext Parliament. First of July 1426

87 Of the election of the Oversman in arbitrie.

It is provided for each and every cause within the realm, now pending under a compromissum, that if arbiters between clergy are chosen in an equal number, an independent person, mistrusted by neither party, shall be chosen by the diocesan bishop with the counsel of his chapter. And if [the dispute is] among the barons or lay persons of whatever kind dwelling outside the city, then let an independent person mistrusted by neither of the parties be chosen by the Sheriff within whose jurisdiction the parties to the compromissum dwell together, but with the counsel of the barons, whom that Sheriff may have conveniently for the time being, not mistrusted by either of the parties. But if arbiters are chosen in a dispute between burgesses or other inhabitants of the towns, then an independent person, not mistrusted, shall be chosen by the Sheriff and Council of the town within which the parties live. In the business of negotiating the settlement of causes and lawsuits by arbitrations, from now on arbiters shall be chosen in an odd number and not an even. And, if arbitrations are begun and accomplished otherwise, they shall be of no validity or force.

Remarks by Derek Roebuck

1. I’m not at all sure what suspectus means here.

2. Is ‘with the counsel’ right, rather than ‘from out of the council’ for de consilio?

3. It is clear, I think, that the third person is to act as umpire (or oversman) rather than an extra arbitrator to make up an odd number. The distinction is important because an umpire makes his sole decision rather than joining with the other arbiters to make possible a majority award.

[It is interesting that this legislation, if it was ever observed, would have made void an award by an even number of arbitrators, even though they were unanimous. In England at that time, an even number was usual].