

No 291. authent. Si quis in aliquo, C. De edendo, si notarius ex proprio originali sumpserit exemplum et authenticat. non dicitur exemplum sed originale; and so the extract given forth by the Sheriff-clerk behaved to be holden as authentic, as the principal letters and executions were margined, the extract was more authentic than the principal letters, and that in consideration of the writ in the margin.

*Fol. Dic. v. 2. p. 161. Colwil, MS. p. 410.*

1632. December 1. HUNTER against HALYBURTON.

No 292.

By the conception of a submission, an oversman was to be chosen by all the arbiters, in number four. This was presumed to have been done accordingly, though not expressed.

THERE being a submission betwixt these two parties, who were both burgesses of Dundee, to four con-burgesses, with power to them four to choose an oversman, and whatsoever the oversman so chosen, either by himself alone, or with one of the judges chosen for ilk party, should decern, they should abide thereat; whereupon decret being pronounced by an oversman, and by a judge for each party, but not by the other of the two judges elected by one of the parties; for these two judges elected for each side, and the oversman, should have been chosen by all the four, albeit a judge for each of the parties, with the oversman, so chosen, had power to decern; and the party decerned to pay a sum to the other being charged to do the same, who suspending, That the decret was null, because there was nothing extant to show that the oversman was chosen by all the four judges, as was appointed in the submission; for albeit that the decret bore, 'that he was chosen by the judges,' yet, seeing it was not subscribed by them all four, it could not be reputed lawfully done, and that he was so chosen, and consequently was null; likeas there were neither witnesses named nor inserted, neither in the submission nor decret; these reasons were rejected; and the decret sustained, bearing, 'that the judges had elected 'the oversman;' and there was no necessity for witnesses, seeing the submission was subscribed by both parties, and by the four judges, who accepted the same, and the blank whereon the decret on the back of the submission was inserted, was also subscribed by the parties, and oversman, and three others of the judges, which was sufficient without witnesses, being done amongst con-burgesses, and for a sum of money not exceeding a thousand pounds, and not in an heritable matter. See WRIT.

Act. Stuart & Pitcairn.

Alt. Nicolson & Russel.

Clerk, Gibson.

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*Fol. Dic. v. 2. p. 161. Durie, p. 655.*