

to nominate an oversman, the other two dissenting, although one of these two was the pursuer's own arbiter. No. 127.

*Fol. Dic. v. 2. p. 387.*

\* \* \* This case is No. 47. p. 648. *voce* ARBITRATION.

## SECT. XXI.

### Quorum of Commissioners.—Managers.

1672. *January 13.*

MR. JOHN STRACHAN *against* The LAIRD OF TOLQUHON.

IN a process at the instance of Mr. John Strachan and his wife against Tolquhon, there was a commission granted to two persons jointly to take the pursuer's oaths anent writs they were to deliver, whereof either party named one; but the parties were examined only by one of the commissioners, advertisement having been given to the other named by Tolquhon, who, by his letter, showed, that upon the Sabbath he was advertised to meet upon Tuesday, but refused to meet, the advertisement being so short, and not having seen the commission; yet the oath was taken clear by the other; but it was alleged no respect to the oath, because it was not taken by the two jointly, so that one had no commission. It was answered, That the allegiance was relevant to any one who were not *in culpa*, but Tolquhon having named that person who was absent, should have procured him to come, and so he could make no objection upon his own fault. It was answered, That though he were *in culpa*, yet that could not make a null act valid, albeit the Lords might modify expenses of the new commission upon his fault.

The Lords considering that the oath was clear, and nothing objected that could have been further interrogated, they sustained the commission and advised the oath; but if the suspender would pay £.500 of expenses to the charger, they would renew the same commission to the same persons, or either of them, both being advertised.

*Fol. Dic. v. 2. p. 388. Stair, v. 2. p. 45.*

No. 128.

A commission being granted to two persons to take an oath, the report was sustained, though one of the commissioners did not attend.