

## SECT. XIII.

## Laws, Customs, &amp;c.

No 242. 1542. July 9. FINLASON *against* The Laird of KEIR.

IN action of removing, gif ony temporal man's tenent alledge he sould not be removit, because it is the consuetude within the landis and baronie quhair he dwellis, that, the takisman beand deceist, his bairnis sould not be removit, thay payand to the Lord of the ground ilk five zeiris thair gressum, the samin consuetude, and all uther consuetudis of the tenentis richt in bruiking and joising of landis, may not be provin be witnessis, bot be writ in temporal men's causis; bot in kirk landis, and spiritual men's actiounis, ony sic consuetude may be provin be witnessis.

*Fol. Dic. v. 2. p. 232. Balfour, (OF PROBATION BY WRIT.) No 20. p. 366.*

\* \* Sinclair reports this case :

*Quidam ut reor* Thomas Keir in Salton would have proved, That by the consuetude of the barony of Salton, the Lord might not put out the bairns of them that are the tacksmen during the years of the said tacks; and that of the said consuetude, the tenants and their bairns may not be removed, they paying ilk year their grassum. THE LORDS by interlocutor decerned the consuetude to be proved by writ, and not by witnesses in temporal mens causes; albeit, in kirklands are consuetudes proved de practica per testes, as was lately done in causa cujusdam mulieris contra abbatum de Kilwinning. In this same cause, John Finlayson was actor against Thomas Keir.

*Sinclair, MS. p. 30.*

No 423. 1566. January 21. Lady EDMONSTON *against* THOMAS EDMONSTON.

IN a removing pursued by the Lady Edmonston against Thomas Edmonston, to remove from the lands of Edenham, he *alleged*, That he was rentalled therein, and none could be removed that was rentalled in Edenham, except for common theft and breaking of the border laws; which custom of the barony was admitted by the Lords to be proved by the defender by witnesses; because they thought it probable only that way, it being *lex non scripta*, and next, the rental was a part of the exception, which was in writ, so that the liferent tack was not proved only by witnesses, which was that which the pursuer objected against the pursuer, viz. that the defender might make up a liferent tack to

himself by deposition of witnesses, who will not be admitted to prove above a year's tack.

No 243.

*Fol. Dic. v. 2. p. 232. Spottiswood, (RENTAL.) p. 290.*

1619. July 1.

DINGWALL against VANDOSME.

No 244.

FOREIGN laws and customs found relevant to be proved by witnesses.

*Fol. Dic. v. 2. p. 232. Nicolson.*

\* \* This case is No 15. p. 4449. voce FOREIGN.

1620. November 25.

PATERSON against HALL.

No 245.

PATRICK PATERSON, burges of Edinburgh, suspends against James Hall, and charges upon a bond granted to Patrick Fyfe, cedent to James Hall. Admitted to John Hall's probation an allegiance founded upon the custom of the subscribing the writs in Ireland by parties that cannot write; and for pursuing thereof, Hall produced a testimonial subscribed by three Justices of Peace in Ireland 2d June 1620, bearing, that it is sufficient that the party who cannot subscribe set to his seal, and deliver the writ in presence of famous witnesses; and is much the stronger, if the party set to his mark, and the witnesses subscribed the time of the sealing and delivering of the writ. Finds that the testimonial proves not, and therefore assigns 15th March to produce a testificate of a sitting Judge in Ireland having power to decide on the validity or invalidity of the writs.

Testimonial of Justices of Peace in Ireland, proves not the custom of Ireland to make a writ there by one that cannot write valid, but the testificate of a supreme Judge there, having power to decide in such cases.

*Hope, Cunninghame, Nicolson, Oligbant.*

*Fol. Dic. v. 2. p. 232. Nicolson, MS. No 207. p. 149.*

1626. July 25.

L. ROWALLAN against MUIR.

No 246.

In a removing pursued at the instance of the Laird of Rowallan against Janet Muir, she compearing, *alleged*, That this same pursuer, by his discharge produced in process, granted the receipt from her husband and her, and satisfaction of an herezeld, when the same should fall out to be due to him, which is alike as if she herself had paid it after her husband's decease, seeing the pursuer hath beforehand granted him, as said is, to be satisfied by him and her for the same herezeld, when it should happen; and it is true, that it is the custom of the barony, that where the relict pays an herezeld, she bruiks the land for payment of the old duty during her lifetime; which custom hath been kept

Custom of a barony, as to effect of a relict paying herezeld, to be proved by writ or oath, not by similar instances.