

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.

No 246. past memory of man. This exception was found relevant, but the alleged custom was ordained to be proved by writ expressly or oath of party, and no otherwise, and so it was admitted to be proved, and not by instances of others, who having paid the like, bruiked for their lifetime; which was not found sufficient.

Act. ———.

Alt. *Miller.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 232. Durie, p. 227.*

No 247.

1626. December 6. STRANGER of MIDDLEBURG against EXECUTORS of SMITH.

IN an action pursued by a Stranger of Middleburg against the Executors of one Smith, for payment of a sum contained in the defunct's bond made in Flanders, which wanted witnesses inserted therein; the LORDS sustained the bond, albeit it was *alleged*, That it wanted witnesses, and so was null; because the pursuer offered to prove that it was the custom of the country that such bonds, albeit wanting witnesses, yet were effectual against the subscribers thereof; which the LORDS admitted to probation, but found, that that custom should not be proved by the declaration of witnesses, but by a testimonial of the Judges of the country.

Act. *Rig.*Alt. *Belsher.*Clerk, *Gibson.*

December 8.—IN the above-written action of the Stranger against the Executors of Smith, the defenders denied the subscription of the obligation to be the hand-writ of the alleged maker thereof, and so *alleged*, That except the same were approved by the pursuer, no action could follow thereon, seeing the same wanted witnesses. THE LORDS found no necessity of approbation, but that the defenders ought to improve the same, if they doubted of the subscription thereof; and the want of witnesses was not respected as a motive, thereby to urge the pursuer to approve in respect, as is above-written, that the pursuer was ascribed to prove that the custom of the country is, that such obligations are sufficient, albeit wanting witnesses inserted; and so being proved, he had no necessity further to approve, but the same ought to be respected as a perfect bond, and as any other bond in this country with witnesses, *quo casu* the defender behoved to improve, and the user of the bond needed not to approve the same.

*Fol. Dic. v. 2. p. 232. Durie, p. 242. & 243.*