

1634. February 7. HYDE *against* WILLIAMSON.

AN Englishman, Hyde, pursues Williamson, *Scotum*, for payment of a certain sum of money which he was obliged to pay him by a bond made at London, at a certain day. The defender offered him to prove that the sum was paid. It was *duplied*, That the bond being made in England, to an Englishman, might be proven by witnesses, as use is in England; which the LORDS sustained.

No 12.  
Found as  
above.

*Fol. Dic. v. 1. p. 317. Auchinleck, MS. p. 17.*

1702. January 10. WILLIAM CHATTO *against* WILLIAM ORD.

IN a case between William Chatto and William Ord, Englishmen, who being pursued on a double bond, in the English form, *alleged*, The same was not probative by the law of England, unless the witnesses compeared, and, by affidavit, attested the verity of their subscription. *Answered*, Though that was the form and procedure in England, yet hundreds of these bonds had been pursued for in the courts of Scotland, and that never was demanded nor exacted. THE LORDS found, though as to the manner of probation, and solemnities in writs, the Lords judged conform to the municipal customs of other nations; but to refuse to sustain process on English bonds, till they were adminiculate and fortified by the witnesses oaths, was impracticable here, and therefore repelled the allegiance; but thus far they sustained the English custom, that the currency of annualrent should stop, when it came to equal the principal sum, and that payment of a sum contained in a written bond may be proven by witnesses, though none of these hold as to bonds drawn up in the Scots form.

No 13.  
Found as  
above.

*Fol. Dic. v. 1. p. 317. Fountainball, v. 2. p. 138.*

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S E C T. II.

Cedent's Oath.

1666. June 28. JOHN M'MORLAND *against* WILLIAM MELVILL.

WILLIAM MELVILL, and one Hatter an Englishman, both residing in England, gave bond to Gawin Lourie residing there, after the English form, who assigns it to John M'Morland. Melvill suspends upon this reason, that he had made

No 14.  
A bond was  
executed in  
England after  
the English  
form, and as-

No 14. signed there also. The cedent's oath was found good against the onerous assignee, tho' it was argued that the assignation was according to the Scots stile, and that the debtor, tho' residing in England, was a Scotsman, and knew the custom of Scotland.

payment to Gawin Lourie the cedent, which he offered to prove by Gawin's oath, and which could not be refused, because he offered to prove that it was the custom of England, that the cedent's oath can never be taken away by assignation, as it is in Scotland, but that assignations are only as procuratories, and that payment might be proven there by witnesses, to take away writ. It was *answered*, that the law of Scotland must regulate the case, because the assignation is according to the Scots stile, and the debtor, albeit residing in England, was a Scotsman, and knew the custom of Scotland.

THE LORDS found that the manner of probation behoved to be regulated according to the custom of England; and so, that payment might be proven by witnesses, or by the cedent's oath, yet so, as the cedent could not be holden as confest, but the debtor or suspender behoved to produce him, and move him to depone. Wherein the LORDS so declared, because they were informed, that the suspender proponed the allegiance, because the cedent was quaker and would not swear at all.

*Fol. Dic. v. 1. p. 318. Stair, v. 1. p. 382.*

\* \* \* Newbyth reports the same case :

JOHN M'MORLAND, assignee constitute by Gavin Lourie to a decret of L. 200 Sterling, owing by William Melville to him, pursues the said William Melvill for payment; and it being *alleged* for the defender, that he had paid the debt to the cedent, Gavin Lourie, which ought to liberate him, and which payment he would prove by the cedent's oath; to this it was *answered*, not relevant to be proven by the cedent's oath, but only *scripto vel juramento* of the assignee, according to the laws of Scotland, which behoved to be the rule in this case, being amongst Scotsmen. It was *replied*, the bond was an English bond, granted to the cedent who lived in England, and was there *animo remanendi*; and albeit the assignation was conceived after the way of Scotland, yet that could not alter the nature of the bond, nor of the manner of probation of the payment of the debt according to the law of England. THE LORDS found the defence of the payment made to the cedent relevant to be proven by the cedent's oath, in prejudice of the assignee, in regard the bond was an English bond, subscribed in England, the nature whereof could not be changed by the assignation. But found, that if the cedent were holden as confest, and would not depone, it should not be profitable to the defender, which the LORDS so qualified, because the cedent was a quaker, and so would not give his oath, and which the LORDS thought was proponed of purpose by the defender, because he knew the cedent would not give his oath, nor depone.

*Newbyth, MS. p. 65.*