

The like decision was done 27th February 1633, betwixt L. Balbirnie and L. Urtill, whereto Scot was clerk, that a bond made of borrowed money, done in England betwixt two Scotsmen then remaining in England, *animo remanendi*, and made after the English form of bonds, being pursued for payment here in Scotland, and payment thereof being alleged to be made in England, and offered to be proved by witnesses, which was alleged ought to be received by the laws of England, where both the bond was made, and the payment thereof; this exception to be so proven was found relevant, albeit it was *alleged* to the contrary, that it should not be proven but by writ, or oath of party, conform to the laws of Scotland, where the pursuit was moved; notwithstanding whereof, the exception so to be proven was admitted, the custom of England being proven. *Nam regulariter probatio fit secundum consuetudinem loci, ubi solutio fieri debet.* Socin. & Bartol. See PROOF. *Fol. Dic. v. I. p. 316. Durie, p. 232. & 233.*

No 2.

1630. February 15. HARPER against JAFFREY.

HARPER, as assignee by a Frenchman in Rowen, to a debt owing by Jaffrey to him, conform to his bond; pursues therefor, the bond being made in France, and done in Rowen, neither designing the writer thereof, and wanting witnesses, and so the defender *alleging*, That it could not furnish action against him, specially seeing he denied the subscription to be his hand writ.—The pursuer *re-plying*, That he offered him to prove that it was the custom allowed by the law of Normandy, where the bond was made, that such bonds were effectual against the maker, albeit both wanting witnesses and wanting the writer's name; and where he denied the subscription, he abode by the same, as subscribed truly; so that his denial ought not to be respected, except he would improve the same; and the defender *alleged*, That the pursuer ought to approve the bond to be the defender's hand writ; seeing the means of his improbation was taken away by the want of witnesses and writer.—THE LORDS found the reply upon the custom of Normandy relevant; which being proven, sustained the bond, and found no necessity to the pursuer to approve the bond, but that it was good, except the defender should improve the same, and had no respect to his denial of the subscription; and the LORDS would not burdén the pursuer, that this custom was observed in cases where the debtor denied his subscription.

No 3.
Found as
above.

Act. Nicolson & Lawtie.

Alt. Burnett.

Clerk, Gibson.

Fol. Dic. v. I. p. 316. Durie, p. 493.

1673. July 5. MASTER OF SALTON against LORD SALTON.

THERE was a bond of 20,000 livres granted by the Lord Salton, and several others, who were all Captains in France in the Earl of Irvine's regiment, to a

No 4.
Found as
above.

No 4.

Frenchman there, according to the style and form of France. The Master of Salton having procured right to this bond, and therewith intending to affect the lands of Balvenie, which the Lord Salton had disposed to Arthur Forbes, pursues the now Lord Salton and others, the heirs of line of the late Lord Salton, that upon their renunciation he might adjudge. Compearance was made for Arthur Forbes, as having interest by his disposition, to exclude any pretended debt that might burden the Lord Salton's heirs or estate; who *alleged* absolutor, because the bond was null, having no witnesses, and no designation of the writer, which are required by the act of Parliament.—It was *replied*, That albeit these be necessarily requisite to writs made in Scotland, yet it doth not extend to writs made elsewhere, being done according to the custom of the place, nor doth it extend to bills of exchange amongst merchants; and it is offered to be proven, that this bond is valid according to the custom of Rhiems in France, where it was made; for trying of which custom, commission was granted to the Presidial of Rhiems, who returned their report, that by their custom, and the common custom of France, such bonds were valid, though there were no witnesses insert, if by witnesses, or by comparison of writ, the hand-writ of the party were proven.

According to which report, the LORDS, by comparing of the Lord Salton's hand-writ, and other writs produced subscribed by him, did sustain the bond.

Fol. Dic. v. 1. p. 316. Stair, v. 2. p. 204.

S E C T. II.

Depositions not subscribed by the witnesses.

1673. June 5. SIR WILLIAM DAVIDSON *against* The EARL of MIDDLETON.

No 5.

Oaths of Scotsmen, taken by foreign judges, by virtue of commissions granted by the Lords of Session, ought to be subscribed by the party deponer, and the subscrip-

IN a pursuit at Sir William's instance against the Earl of Middleton, upon a bond granted by the Earl for a sum of money, there being a defence of payment proponed, and referred to his oath, and a commission granted for taking thereof in Norway, where he resided, the report whereof being advised, it was *alleged*, That his oath not being subscribed, but only attested under the hand of a stranger and judge, it could not be received to prove the defence.—It was *answered*, That the commission being directed to a judge in Norway, who had returned the report under his hand and seal, which was the ordinary custom of that place, it was sufficient to prove the defence; seeing the commission