

No 2.
Found as
above.

1626. *November 15.* GALBRAITH *against* CUNNINGHAM.

JAMES GALBRAITH, as assignee made by Sir John Stuart of Methven, pursues Andrew Cunningham, brother to the L. Glengarnock, for payment of a sum contained in a bond made by him to the said Sir John, and made in Ireland, and after the manner of bonds formed in that kingdom. It being *alleged*, That the defender could not be pursued in Scotland, in respect it was a pursuit founded upon an Irish bond made in that kingdom, and pursued against the defender, who with his wife and family were actual residents in Ireland *animo remanendi*; and where he had so dwelt, and remained these 14 years bypast; likeas he was denized an Irishman, and so ought to be pursued in that kingdom, as his proper *forum*; this allegiance was repelled, in respect the defender was a Scotsman, and that the pursuer declared, that he sought only execution against the defender, for such lands and goods as the defender had within Scotland; and which the LORDS sustained for that effect.—It being also *alleged*, That the bond was null, because it wanted witnesses, and designed not the name of the writer; and seeing it was sustained, to produce action here in Scotland, it ought to be judged by the Scots laws; this allegiance was also repelled, in respect the pursuer offered to prove by the custom of Ireland, that bonds made after the tenor and form of this bond produced, were sufficient, and that it was the custom in that kingdom to make them so; which custom and form the LORDS found to be proven, and admitted the same to probation.

Act. *Beishes.*

Alt. *Cunninghame.*

Clerk, *Gibson.*

November 16.—In the foresaid action of Galbraith *contra* Cunningham, mentioned *supra*, 15th November, an exception of payment of the sums contained in the bond being proponed, and offered to be proven by witnesses, which the defender *alleged* was admissible to be proven *hoc modo*, being payment of an Irish bond, and paid in Ireland, where the form in that country allowed probation by witnesses, the LORDS found this exception probable after that manner by witnesses to be relevant, the defender always proving therewith, that by the laws of Ireland, payment of sums contained in such bonds may be proven by witnesses, and that that probation by witnesses is received and allowed by the Irish laws. Neither was it respected by the LORDS, where the pursuer *replied*, That this pursuit being made in Scotland, and betwixt Scotsmen, the probation ought only to be admitted therefor, which is allowed by the laws of Scotland; which was repelled, because the bond being made in Ireland, and after the manner of the laws there, albeit betwixt Scotsmen, the payment might be made, and proven to be made, according to the same laws where the bond was granted, and so it might be dissolved as it was knit. *Partibus ut supra.*

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 *replying*, 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 & Lawrie.

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.