

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 & 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.