

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.*

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## 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

directed from the Lords, did not bear that he should cause Sir William subscribe. — THE LORDS bid Sir William to be re-examined, and to subscribe his oaths; seeing he being a Scotsman, and the commission granted in his favours, he ought to have known what our law did require; and the LORDS did declare, that as to all commissions that should be directed hereafter, that it should be ordained particularly.

*Fol. Dic. v. I. p. 317. Gasford, MS. No 583. p. 331.*

No 5.  
tion and seal of a foreign judge, is not sufficient, although it is the custom of that place.

1675. February 5. BURNET against LUTGRUE.

A COMMISSION being directed for taking the oath of a stranger residing in Holland, the report was questioned upon that pretence, that the stranger's deposition was not subscribed, albeit the commission did bear, that he should subscribe the same; and yet it was sustained, because of the custom of Holland, that the judges only subscribe, and the same was subscribed by them; and it was adminiculated with a letter from him, bearing that he had declared before the commissioners, and that he would adhere to what he had declared.

Clerk, Gibson.

*Fol. Dic. v. I. p. 317. Dirleton, No 239. p. 115.*

No 6.

1707. March 19.

SIR ALEXANDER CUMING against SIR ANDREW KENNEDY, Conservator.

THE LORDS in July last, decreed a commission to the staple port of Campvere in Zealand, for examining witnesses on either side, either to prove the alleged articles of malversation, or Sir Andrew's grounds of exculpation; and Sir Alexander having reported the commission, but being in low Dutch, the LORDS appointed the preparer of the cause to call for Gilbert Stewart, or any other sworn interpreter, to translate it into Scots; and this having been accordingly done, and the report coming to be advised, it was objected by Sir Andrew Kennedy, 1st, That it was returned nowise executed in terms of the commission, in so far as it named two Scotsmen, condescended on by the other party, to be the judges and commissioners in taking the oaths; and though failing of them, it delegated the Baillou and Schepins (Scabine) of Campvere in subsidium, yet he neglected Sir Andrew's nominees, and applied to the magistrates of Zealand, and employed them to examine his witnesses.—Answered, Sir Andrew's commissioners having shifted, and then falling sick, he was necessitated to go to the next appointed substitute; and Sir Andrew being debarred *personali exceptione* from quarrelling this, *causam dedit* why Sir Alexander recurred to the

No 7.  
A commission was granted by the Court to examine witnesses in Holland. The report was not signed by the witnesses, but only by the examiner and clerk; and, on a paper apart, this was declared to be the custom of the country, and that they were in use only to give out notarial extracts. There was likewise