

DIVISION II.

Transactions in a Foreign Country, will be judged of, as to Proof and Effect, by the Law of the Place, so far as founded in the *jus gentium*, not where merely statutable.

S E C T. I.

Payment.

1626. November 16. GALBRAITH *against* CUNNINGHAM.

No 10.

IN a pursuit upon a foreign bond, the defender *alleged*, that he had made payment in the country where the debt was contracted, and offered to prove the same by witnesses, which was sustained; for this being according to the law of the place, he had reason to trust the payment to that sort of evidence, since he could not foresee the creditor would be so unjust as to make a demand in another country.

Fol. Dic. v. 1. p. 317. Durie.

* * * See This case, No 2. p. 443^c.

1633. February 21.

LAIRD of BALBIRNIE *against* LAIRD of ARKHILL and RELLTREES.

No 11.

Found as
above.

THE Laird of Balbirnie, assignee constituted by Mr Robert Johnston, who is residenter in England, pursues the Laird of Arkhill and Relltrees, contained in a bond made by the defender's father to the said Mr Robert, after the English form. It was *alleged* for the defenders, That they offered them to prove, that the said bond was paid to the cedent in England. It was *replied*, That it must be proven by writ. To which it was *duplied*, Seeing the bond was made in England betwixt persons making at the time residence in England, the payment may be proven by witnesses according to the law and custom in England. Which duply the LORDS sustained, the defender proving the custom.

Fol. Dic. v. 1. p. 317. Auchinleck, MS. p. 114.