

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

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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