

1627. January 11.

HUME against HUME.

IN a suspension at the instance of Hume of Bassinden against Hume, who had charged for payment of a sum of money, conform to the suspender's bond; the reason of suspension was, That the charger had poided certain goods for the same debt; and because the poiding was not the suspender's evident, so that thereby he might verify the same instantly, he referred the poiding to the charger's oath, and the quantity and avail of the goods he offered to prove by witnesses. This was not sustained, but the LORDS found, that he ought to prove, not only the fact of the poiding, but also the quantity of the goods poided, and the avail thereof, either by writ or oath of party; whereupon the suspender offering so to prove the same by writ or oath, the charger thereafter *alleged*, That the suspender, after the poiding, had received the goods alleged poided back again from the officer, who delivered the same to him, hearing that there was a suspension purchased before his poiding: The suspender *replied*, That he offered to prove that the goods were yet in the charger's hands; and this being found relevant in fortification of the poiding, it was controverted how it should be proved, seeing it tended to take away the charger's registered bond; the LORDS found, that the poiding ought to be proved by writ or oath of party, as said is; but that the poider retained the said goods, the LORDS found it might be proved by witnesses, even as the charger might have proved his exception by witnesses anent the re-delivery again of the goods to the suspender, which being elided by that reply, might receive that same manner of probation; and found, that they would grant ordinary terms to prove the same, albeit it was in a suspension; and would not astrict the suspender only to one term allenarly, seeing the poiding was found only probable *ut supra*, by writ or oath of party.

Act. Belsher.

Alt. Sandilands.

Clerk, Hay.

Durie p. 255.

1627. June 26.

Earl GALLOWAY against TELZIEFER.

A RENTAL set by a burgh to a man and his heirs *ad perpetuam remanentiam*, which, by law, endures only for the setter's and receiver's lifetime *conjunctim*, was yet found to belong to the first heir of the rentaller, upon his proving, by sentences *in foro contradictorio*, or by oath of party, that such was the custom of the burgh.

Fol. Dic. v. 2. p. 232. Spottiswood. Durie.

* * This case is No 25. p. 7193. voce IRRITANCY.

No 248.

What proof of facts relative to a poiding, and re-delivery of the goods?

No 249.