

III.

NOTICE OF A BOND BY THE EARL OF IRVINE, COLONEL, LORD SALTOUN AND OTHER OFFICERS OF THE SCOTS GUARD OF THE FRENCH KING (LOUIS XIV.), FOR EXPENSES OF THE CORPS, WITH PROCEEDINGS TAKEN FOR RECOVERING THE MONEY IN THE SCOTTISH COURT, WHERE EVIDENCE WAS REQUIRED OF THE FORMS REQUISITE BY THE *LEX LOCI CONTRACTUS*. BY PERMISSION OF THE EARL OF FIFE. BY JAMES LAW, Esq., W.S.

By permission of the Earl of Fife, there were exhibited to the meeting two original documents, from the Fife Charter Chest at Duff House—viz., 1st, A bond in the French language and form, signed by the Earl of Irving, Lord Salton and other officers of the Scottish Guard of the French King (Louis XIV.), for expenses of the corps, dated 1st April 1643. 2d, Act in the Court of Session, setting forth the proceedings taken for recovering money upon the bond in Scotland, wherein evidence was required from the supreme court at Rheims, in France, of the forms requisite by the *lex loci contractus* in relation to the bond, of dates in the years from 1670 to 1673. The bond may be given *in extenso*.

The French bond is very interesting, not less in its style and its other details than in the names and autograph signatures, indicating the exclusive *Scottish* element in the Body Guard of Louis Quatorze.

“Nous soussignez Les Seigneurs Jacques Comte de Yrwin, Colonel du regiment des gardes Escossois pour le service de sa Majeste, le Cheualier Robert Moray lieutenant Colonel, Cheualier Bannatyne premier capitaine, Sergent major, le milord Lorne, le milord Kelpont, le milord Salton, Le milord Sintcolme, Le Cheualier Keithe, le cheualier Georges Hamilton, Le cheualier Grhame, le cheualier Jacques Hamilton, le Cheualier Blaicketer, Jean Trail, Guillaume Moray, Robert Hacquet, le cheualier Colin Campbell, le cheualier Joseph Douglas, le cheualier

Georges Curren, Colin Campbel, Guillaume Stuart, Georges Gordon, Jacques Macmath, Jean Lesley, le milord Sinclair, Estans tous Capitaines du dict regiment Escossois pour le service de sa Majeste estant presentement en garnison en la ville de Reims confessons devuoir et promettons lun pour laultre et chacun deulx seul pour le tant sans diuision ni discussion rendre et payer a monsieur Robert Murray, marchand Escossois demeurant a Paris Rue de Saine a la Harpe jusques a la somme de Trente mil liures tournais qui sera touche et receu par cellui qui commande le dict regiment soubz son recipiee Et telle aultre somme qui sera touche et recu par le dict officier commandant le dict regiment jusques a icelle somme de Trente mil liures tournais quil tirera par Lettre de change sur le dict Sieur Murray, laquelle somme est pour subuenir et faire subsister nostredict regiment des gardes Escossois pour la retardement des moustres et deniers de sa Majeste pour le payement dicelles a nos soldats de notredict regiment, laquelle somme de Trente mil liures tournais nousontz soubz signez promettons l'un pour l'aultre et chacun deulx seul pour le tant, sans diuision ni discussion en nos pures et preves noms rendre et payer audict Sieur Murray ou au porteur de la presente ensemble l'Interest et Rechange et Prouisionnes et courtages Renongons a cest fin par presente benefice de diuision droit et ordre de discussion Et pour l'execution de la presente nous eslizons nostre domicil irreuocable chez Jean Arel M^{re} Talleur dabitz demeurant Rue Chanfleury aunom Jesus auquel lieu nous voullons et entendons que tous exploicts de Justice significations et autres actes y estre faictz que nous voulons auoir pareill force et vertu que sy a nos domicilz et parlans a nos propres personnes Ilz auoient este faictz Et ce nonobstan mutation par le dict Sieur Conte et autres de Logis et demeure ou de son decesse fait audict Reimes le premier Jour dapreuil lan Mil Six cens Quarante Trois Infoy de qua y nous auons ici Signez

“ IRWIN Colonel MORAY lieutenant Collonel J BANNATYNE premier Cap. et Serg. major SAINT COLME capitaine R KEITH capitaine JOHN TRAILL capitaine MORAY capitaine J DOUGLES capitaine WILLIAM STEUART capitaine J MAKMATH capitaine J HAMILTON capitaine SALTONE.”

This bond appears to have been put in suit before the Supreme Court in Scotland, at the instance of Alexander the Master of Salton of the time (1670) against the then Alexander Lord Salton and other parties in Scotland, representing the deceased Lord Salton, one of the parties obligant in the bond. The pursuer was assignee of the original grantee, Sir Robert Murray of Preistfield, designed in the said bond "*Robert Murray, Scots merchand at Paries,*" and sues for a balance of L.18,343, 3s. Scots money by an adjusted account.

The Act of Council and Session is too long to be given entire, but the preamble, mentioning the names of the parties, is as follows:—

"At Edinburgh, The Twenty fourt day of July 1^mvi^c and sevintie years, Anent the sumonds reased and perseued before the Lords of Counsell and Session at the instance of Alexander now Maister of Saltoun against Alexander now Lord Saltoun, Margaret Lindsay, eldest law^{ll} daughter to Lindsay, brother german to Lodovick Earle of Crawford, procreat betuixt him and Abernethie father sister to the deceast Alex^r Lord Saltoun and James Murray her husband for his intres and Jean Lindsay relict of um^q^{le} Capitan Leslie her sister, And Anna Gordoun, daughter to the deceast Gordoun of Ardestie, thereafter of Kincadrum, who wes son to the deceast S^r George Gordoun of Geight, procreat betuixt him and the said Abernethie; And Alex^r Bowar, younger of Kincadrum, her husband, for his intres, and the tuttors and curators of so many of the saids defenders as are minors, if they any have, for ther entresst, Mentioning that wher the deceast James Earle of Irving, Collonell of the regiment of the Scotts guard for the service of the French king; Sir Robert Murray, Leivtenant-Collonell to the said regiment; S^r Ballantyne, ffirst Captane and sairgeant major; the deceast Alexander Lord Saltoun and several other persones therein men^oned, all in the Scotts regiment in France, be thir bond all written in French Language of the dait the first day of Apryll J^mvi^c and fourtie thrie years, granted them to be debtors, and obleist everie one for another, and everie one for the wholl, without devesion or decision, to render and pay to S^r Robert Murray of Preistfield knight, designed in the said band, Robert Murray, Scots merchand at Paries, untill the somme of threttie thousand Leivers Current that should be uplifted and received be him that comanded the said regiment upon his precept, and

such other sommes that should be uplifted and received be the s^d officer commanding the said regiment untill the somme of Threttie Thousand Leivers That he should draw by Lres of exchange upon the said Sr Robert Murray. The qth soname wes to furnish and make subsistance to the sa Scots regiment of guard in France that should be occasioned be want of thir pay payed to them be the French King ffor pay^t of the souldiers of the said regiment.”

Exceptions to the form of the action having been taken, but overruled, a more serious objection was raised on the bond itself, which led to a remit of the point in dispute to the competent court in France. On a return by the latter judicatory, the Scottish judges, as stated in the following extract, came to a final decision, as appears in the concluding note by the Judges of the Court of Session, on the 5th of July 1673:—

“Thairafter the said action being called in presence of the saids Lords, and both parties compeiring be ther pro^{rs}, abovenamed The said Mr Andrew Birnie and pro^{rs} foresaid for the said Arthur fforbes, alleaged that ther could be no proces sustened upon the band produced, becaus the samen is null be act of Parliat wanting wryters name and witness. 2^{do} The bond wes granted for the use and standing of the regiment, and it is not made appear that the money was so employed. Whereunto It wes ansuered be the persewars pro^{rs} @ named To the first, that the bond being drawin in ffrance by souldiers in the compt to bankis in Paris and in the French styll and language, ther wes no necessatie of such solemnities which were not requisit be the Law of Franncce. Lykewayes there are threttein persones subscriyving, which may be witnesses one to another. And the band is fortified by the subsequent accompt in anno J^mvi^c and fourtie four years. To the second by the conception of the bond, the money is payable to the officers commanding the regiment; and it appears by the accompt sub^t be the Collonell, Leivtenant Collonell, and Major, that the money was advanced and payed be Sr Robert Murray, and that he wes repayed allenarlie of Ten Thousand merks, which wholl dispute abovewritten being this day considered be the saids Lords, They (before ans^t to the dispute above written) Allowes and Ordaines the perss^r to adduce what evidents he can for instructing of the custoume of ffrance anent the subscriyving of bands, whether they be

valide, not being sub^t before witness^s; Or, if being sub^t be mae pairties Granters therof everie one of them, Is esteemed witnesses to the subscription of the remanent subscribers, As also to adduce what he can for instructing that the lait Lord Saltoun did homologate the band in controversie by any deid of his, and Assignes to the persewar, the

day of next to come, with continuat^on off dayes for that effect. Thairafter The said Alex^r., Mr off Saltoun, persewar, meaned himself To the saids Lords by supplication, Shewing that wher be action persewed at his instance againest my Lord Saltoun and others, the representatives of the deceast Lord Saltoun, for pay^t of ane somme of money contained in ane band granted be the deceast Lord Saltoun and others, the officers of the lait Earle of Irvine's regiment, to the deceast S^r Robert Murray, wherein ther is ane defence propouned that no respect can be had to the band, becaus ther is no witnesses ins^{re} nor subscribing. To the which It wes answered, that the samen is ane militarie band and sub^t be officers of ane regiment, And that it is not only the ordinar custome in ffrance and other Nationes to subscrive bands without witness^s when there are more subscrivers then one, as wes notour to some of the Lords' number, and may be cleared be many persones in this toun.

As Sinclair of Rosslie, Mowat lait factor in France, John Inglis advocat, and such others as the Lords pleased to call for, ffor the defence wes onlie propouned to delay and frustrat the petitioner of dilligence. Ther being severall creditors who have action depending of the same nature, with whom Arthur Forbes who propounes the defence, concurre and intende to have them preferred. And therefore Crawing that the saids Lords wold be pleased, in caise ther Lordships were any wayes unclear in the forsaid defence, To call for the forenamed persones, or any others the Lords pleased, That the petitioner might not be farder delayed, nor other Creditors prevent him in dilligence. Which supplication being read in presence of, and considered be the saids Lords, They ordained Inquyrie to be taken anent the Custome, above written upon the place wher the bond, which is the ground of the debait, wes granted, and for that effect that the cauce be staited, and the Judges of the Court of the place be desyred to inquyre thereanent, and to return ther Judgements theranent, As the said suplication and delyverance wryten theron bears. And in the mean tyme Continewes the said

matter untill the said day. The pairties Compeirand as s^d is, are wairned heiroy apud acta.

Extractum de Libro actorum per me.

J. PRIMEROSE, *Cls Regr.*

5th of July 1673, *Partibus ut intus*. The Lords hauing considered the answears made to them anent the quærees within specifit by the Presidiall at Rheimes in ffrance, Repels the alledgeance founded upon the nullittie of the bond as wanting wryter's name and witness in respect of the ansuear made therto and custom of Rhemes.