Omes Exercising the office of Notary without being created is punishable by death and Nullity of the instruments. 24 Parl. 5 Act 79 Parl. 9 & 11. Mr. Aud albeit for George Mc Lean Servon. d act 24 says, that he never knew death inflicted upon the Usurpers of that office: Yet persons for using and Exercising the office of an Ordinary Notary without being admitted, or having a Local Book Marked by the Clerk Register & their Deputed were judged to be hanged 8 Feb. 1597 John Moscrop. June 1662 Alex. Morrival. The instruments and deeds of a pretended Notary are Reputed as a Notary the Un lawfully admitted Deprived, the time of the instrument after he had been once duly admitted will be sustained in favour of persons bona fide Ignorant of Illegality of the Admission, or of the Deprivation before it is Commonly known, or letters of publication thereof intimated at the Market Cross Crosp. Fatin. ibid. Quas. 155 n. 92-94 Bo Liggan lib. 2 Tit. 3 s. 18. Mckenzie observ. on act 78 Parl. 9 & 11. 24 Feb. 1690 M'Lury contra Blackwood. For a Notaries being held and Reputed is all the Liges can know. And where the instrument or a Notary is quarrelled upon pretence that he was not Legally admitted the Effect of the instrument is not obliged for supporting the to prove that he was admitted Notary Conform to Law; and who quarrels the instrument must prove the Nullity by way of Action as Recorder 26 June 1634 Lord Johnston contra E. Lauderdale.

In foreign Countries, many Acts are passed before Notaries of which the originals are left in their hands, such as Contracts of Marriage Deeds of Gift, Contracts of sale Mortgages Compromises &c. And the Notaries grant only Exemplifications or Duplicats to the parties or other persons who Ought to have them or who have a right to Demand them. In which case Exemplifications or Duplicats Signed by the Notaries, who keep the originals or papers subscribed by the parties do prove sufficiently. In France the Acts which Contain some obligation of one party towards another, being signed by a Notary publick give a right of Mortgage on the Estate of the person who is bound. Loadet Cur. Lets &c. Tom. 2 Liv. 2 Tit. 1 Sect. 1 Art. 29.

By the Custom of Scotland, the presence and Signatures of Notaries serve as a proof of the Acts which are signed in their presence. Thus instruments of Notaries are the ordinary Mean of proving the performance of some solemnities of Law, as the Giving of Seisin making Resignations, Premonition Requisition, Consignation &c. But are not Credible in any thing Except what falls under the Senses of Hearing

Seeing

seeing &c. Craig Feud. lib. 2 Tit. 7 § 5 in fine. And Doe not prove points of Right or Mere possession therein Related; Unless Admiminiculated by the Warrandd thereof. Notaries subscribe writs in subsidium for persons known, Declaring to them that they cannot write, and allowing Notaries to sign for them in taken whereof they bidth the Notaries pen Stair lib. 4 Tit. 42 § 9. The signature of such a publick officer carries along with it proof of the truth of what is transacted. Notaries must know the persons for whom they subscribe or else designed in the writs, or have the same Attested by the subscribing Witnesses or other credable person, which the Notaries must Mention when they subscribe, Act of Sedr. 21 July 1606 that they Reynol the mutile deed of one person upon another. The publication of a Notary was instances, which the Notaries portion bore that that the contract the pen, but only that he Commanded to could not write her Sign & affirmed with the witnesses or 7 July 1710 Mavor & Cornwall contra Lowle. In which case of Notorial signature or subscription for parties who cannot write, he relate Rights or Matters of Importance must be signed by two Notaries and four Witnesses Act 30 Parl. 6 J. David Lesser Matters by one Notary and two Witnesses. Two Witnesses are sufficient in Sisins and other Notorial instruments proceeding upon a signed warrant 15 Feb. 1667 Buchan contra Keith 13 July 1680 Bishop of Aberdeen contra E. Kinnoure. Instruments upon a Judicial Act, must be taken in the hands of the Clerk of court. But if the party Dislodge the Clerk the may call another Notary pass within the Burgh and take instruments in both their hands; and Each of the two Notaries with some Member of Court or other Honest man are to be witnesses to the Act. Instrument, otherways the instruments Makes no Faith. The Notary of Court refusing to give instruments loseth his office, and is punishable in his person and goods in the Kings Rick Act 81 Parl. 6 J. 5. Albeit Notaries are not now as formerly, Admitted by the Bishops or Chancellors; Yet that so much of the old Stile is Retained, that Notaries at their day express in all the instruments and other papers signed by them, that they are Notaries of such a Diocie Mckenzie observ. on act 31 Parl. 5 J. 3.

Notaries being Required, are obliged to give instruments upon what soever is said or done, at the Protesting or taking instruments in their hands, whether it be any part of the Requisite solemnity or not: But such things as are part of the Necessary solemnity of the Act, must be instructed by