

nee sufficiently tried, and decerned in favours of the pursuer, without any other adminicle of probation.

Act, Cockburn. Alt. Nicolson. Clerk, Hay.

Durie, p. 141.

1625. June 17.

L. KINALDIE *against* KALDIE.

No. 96.

Whether it is lawful to condescend on the witnesses?

See No. 105.

In a suspension at the instance of Aiton of Kinaldie, for suspending of charges executed against him at the instance of one Kaldie in Kirkcaldy, for payment of a sum contained in the suspender's obligation, whereof a reason was founded upon payment of 200 merks, and a discharge produced subscribed by Kaldie for proving thereof; this discharge was not found sufficient, because there were no witnesses inserted therein, and so the same was not sustained, in respect of the act of Parliament James V. Parl. 7. Cap. 117. ordaining that no faith be given to evidents or writs wanting witnesses; and albeit the suspender offered to prove, that the writ was subscribed by the charger, by the witnesses who were present the time of the subscribing thereof, and at the very date therein inserted; yet the Lords would not sustain the same, because the sustaining thereof was alike, as if it were permitted to prove payment of 200 merks contained in a bond by witnesses, which is not admissible of the law; so the letters were found orderly proceeded.

Act. Aiton.

Alt. M^cGill.

Clerk, Gibson.

Durie, p. 162.

1627. November 20.

LACKIE *against* CUNNINGHAM.

No. 97.

The creditor in a bond cannot be one of the witnesses.

In a reduction pursued by Lackie against Cunningham, a bond of £400 being desired to be reduced, upon the reason of the act of Parliament 1579, ordaining heritable writs and others of importance, to be subscribed by two notaries and four witnesses, otherwise to be null; this reason was found relevant to reduce this bond, albeit it was subscribed by two notaries and three subscribing witnesses, and albeit one of the two notaries was inserted as witness in the bond, which the defender alleged to be as sufficient as if four witnesses had been inserted, seeing one of the notaries being inserted witness, made up the fourth, and that one of the two might lawfully be witness; likeas, there were three witnesses beside, who subscribed as witnesses, and which subscription should be more respected, than if four unsubscribing witnesses had been inserted in the bond; likeas, the bond was not of that importance whereon the act of Parliament could strike; which allegiance was repelled, and the reason sustained; for the Lords found, that the act of Parliament required two notaries, and besides them other four witnesses,

and that a notary could not be witness to his own deed, so that this bond came under the said act of Parliament. No. 97.

Act. Aiton & Mowat.

Alt. Cunningham & Primrose.

Clerk, Hay.

Durie, p. 315.

1627. November 21. ROBERTSON against ABERCROMBY.

In an action betwixt Robertson and Abercromby, for payment of the sum of £500, contained in a bond made by Robertson to Anderson, and whereto Anderson had made the said Abercromby assignee; the Lords found, that the bond could produce no action, because in effect it had but one witness inserted therein, and so it was null of the law, for there were only two witnesses inserted therein, whereof Anderson's self was one, and so he being made witness to the bond, conceived in his favours, (which the Lords found could not lawfully be) and there being but another besides him, the bond was found to be as if it had contained only one witness, for he could not be respected as witness, and so the bond was found null; which decision differs not much from the decision immediately preceding here noted, that a notary might not be witness to his own deed.

Clerk, Hay.

Durie, p. 315.

1629. January 29. GIBSON against HOWIE.

A decreet-arbitral being subscribed by one of the Judges, to whom the two parties had submitted, he being one of the four Judges to all whom it was submitted, they agreeing together, and the said Judge having subscribed as notary for both the parties submitters, and also as Judge aforesaid, the same was sustained, seeing it was for a matter of small concernment, viz. 80 merks, and betwixt two friends, which were but poor men, and done in landwart outwith burgh, where notaries are not frequent.

Act. Gibson.

Clerk, Gibson.

Durie, p. 419.

* * Spottiswood reports this case :

One Howie being charged for payment of 80 merks, conform to a decreet-arbitral pronounced between him and one Gibson, he suspended, and also intended reduction thereof, upon this reason, That the decreet was null, in respect that the notary who subscribed the submission for the parties submitters was one