

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,