

1623. July 8.

SHERIFF OF CAVERS *against* HENDERSON.

In an action of redemption pursued at the instance of the Sheriff of Cavers, against Henderson, the Lords found a reversion null, which was subscribed by notaries, for the granter of the reversion, and not by the parties' own hand, because the same being made after the act of Parliament in October 1579, it had not four witnesses insert therein, at the usual clause in the end, namely, "Before thir witnesses:" In the which clause the Lords found there should be four witnesses insert, specially designed, that the witnesses may be known, who were present at the subscribing of the reversion; or other writ of importance, so that they found, that the writ should have the whole four witnesses' names, who were present at the subscribing, insert and designed in the body of the writ, otherwise the writ to be null; and this reversion was found null, albeit there were two witnesses insert in the body who were specially designed, and albeit it was subscribed by other two witnesses, by and attour the other two which were insert; and in respect the two subscribing witnesses were not also insert and designed in the body of the writ, nor yet designed by their subscription, the said reversion was not therefore sustained; and because the pursuer thereafter referred the verity of the reversion to the party's oath, he being yet on life, The Lords received the oath of the party to sustain the same, and to supply the foresaid nullity.

Actor, *Nicolson et Belshes.*Clerk, *Hay.**Durie, p. 70.*1624. July 27. LADY STANIPATH *against* Her SON'S RELICT, and BAIRNS.

The Laird and Lady Stanipath having assigned to Francis Lyle their son, their right which they had to a certain yearly duty, which was due to them, and to the longest liver of them, for either of their lifetimes, out of some lands; the Laird being dead, and also Francis who was assignee being dead, the Lady pursues the relict of Francis, haver of that assignation, for production thereof, and the bairns of Francis to hear them decerned to repone her against the assignation, and to hear it found, that their son's name, who was made assignee, was but borrowed to their own behoof, and that he promised never to prejudice his father nor his mother in their rights, but to use the assignation to their behoof. There was neither back bond made by the son, nor any adminicle in writ to verify the promise, nor any other thing extant to verify, that the deed was done upon trust or confidence; and both the father, who was one of the cedents, being dead, and also the assignee; yet the Lords took trial thereupon *ex officio*, by examination of the witnesses insert in the assignation, who were all but simple and poor folks, and by examination of the relict of the assignee, who had no interest in the right, but was convened as haver; and upon their delarations, found the trust, and confidence, and promise made by the assign-

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No. 94.

Designation
of the wit-
nesses.

See No. 104.

No. 95.

The evidence
of instrumen-
tary witness-
es admitted
to ascertain a
trust.See Crawford
No. 62.
p. 12304.
contrary.

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,