

suspender to Drumlanrig; it was desired to be suspended, because the suspender had never borrowed any sums, neither was there any cause of debt, whereby the suspender could be found debtor to the charger at any time, either at the making of that bond or before; which was referred to the charger's oath, and that the said bond was made upon hope and express condition, that such deeds should have been done by the charger to the suspender, and no otherways, which deeds and conditions were never fulfilled; and which point anent the said condition, whereupon the bond was granted, was offered to be proved by the witnesses inserted in the said bond, who were all *testes omni exceptione majores*. THE LORDS would not admit the same to be proved by the witnesses inserted, but only found that the condition whereupon the said bond was made, ought to be proved by the oath of the party, to whom the bond was given, or by writ, and no otherways. See WRIT.

Act. *Stuart & Cunningham.*Alt. *Hope & Nicolson.*Clerk, *Scot.**Fol. Dic. v. 2. p. 218. Durie, p. 205.*

1627. February 22. WILLIAMSON against TENNENT.

In a suspension betwixt Mr James Williamson and Joseph Tennent, wherein the said James Williamson *alleged*, He was wrong charged to pay L. 1000 conform to his bond, because the said bond was never delivered to the charger, but after the subscription thereof was deposited in Abraham Adamson's keeping, to be retained by him until the like sum addebted to the charger by the suspender's brother, should be discharged by the charger, which he hath not done, but by the contrary, in the depositer's absence, and by the knowledge or consent, either of the party or of the depositer, he hath opened the depositer's chest, and taken out the bond, and registered the same, and charged the suspender, which conditions he offered to prove by the depositer's oath. THE LORDS found this reason relevant to be proved only by the oath of the party charger, or writ, but not by the oath of the depositer, but found, that they would take the party's oath in presence of the depositer.

Act. *Nicolson.*Alt. *Stuart.* Clerk, *Hay.**Fol. Dic. v. 2. p. 217. Durie, p. 280.*

1628. March 21. SCOT against CREDITORS OF DISHINGTON.

In a double pointing, Sir William Scot against the Creditors of Sir Thomas Dishington, the LORDS found a bond produced by William Dishington, brother to Sir Thomas, one of the creditors, not to be a good writ, whereupon

No 63.

against Vallances Heirs,
supra.

No 64.

That a bond was deposited until performance of a condition, and that it had been surreptitiously taken away, was not allowed to be proved by the oath of the depositer, but only of the charger.

No 65.

It was alleged, that a bond had been surrepti-