

No 484.

1624. July 29.

LD COLLINGTON *against* FAA.

A BOND granted by a person interdicted to a workman for his wages, without consent of his creditors, found not probative of the onerous cause; but the LORDS allowed the creditor to bring evidence of the onerous cause.

Fol. Dic. v. 2. p. 256. Durie.

* * * This case is No 23. p. 7148, *voce* INTERDICTION.

* * * See the like, with regard to a bond granted for furnishing, 22d June 1697, Bowman *contra* Earl of Kilmarnock, No 25. p. 7149. *IBIDEM*

1637. July 28.

LO. DUNIPAGE *against* LITTLES.

No 485.

In a reduction of a bond upon minority and lesion, the Lords, before answer, admitted witnesses to be examined to contradict the narrative of the bond.

My Lord Dunipace, President, being made assignee to a bond of 2000 merks, granted to Adam Bothwell, by the bairns of umquhile Mr William Little, being minors for the time, the right of which bond was transmitted in the person of Mr James Aikenhead, and who had made the President assignee thereto, and who upon his assignation charging the said minors, and they suspending and reducing upon a co-incident reason, viz. minority and lesion; and the pursuer *answering*, That he offered to prove, that albeit the bond bore borrowed money, yet the true cause was for the acquiring of the teinds of his lands in Libberton from the Lord Holyroodhouse, whereby he could not be heard to allege lesion, and this was offered to be proved by witnesses, viz. the said Mr James Aikenhead the cedent, and his servant, which he alleged ought to be found sufficient in this case, where Alexander Spear, who was goodsire to the bairns, and was their sole *curator gerens*, and was only privy to the bargain, is now dead; and also consideration being had, that the bond, and the tack of the teinds granted to these minors, were both done at one time, and are both of one and the same date; and it being questioned, if this allegiance was relevant to be so proved by witnesses, and if Mr James Aikenhead and his servant might be witnesses to prove the same, the one of them being cedent, and the other his servant, the LORDS, before they gave answer thereto, found, that they would examine the said two persons, and hear their depositions, whom they found the rather might be admitted to be witnesses, seeing the cedent is not obliged to warrant this assignation, and so could neither win nor lose in the cause. See WITNESS.

Act. *Presens.*

Alt. ———.

Clerk, *Hay.*

Fol. Dic. v. 2. p. 257. Durie, p. 856.