

and spuilzied and distressed by the said Fedderat's father to be proved, with certification, if he insisted not, he should be debarred from any pursuit of the same. It was answered by Fedderat, that he would pass from his summons, because there were other parties that had interest in the matter which he had not summoned, et de jure nemo invitus agere vel accusare cogitur. To the which it was answered, that in this case the pursuer could not pass from his first pursuit, because the Lords had ordained him to pursue, and that he might not maliciously delay the party in taking to prove infeftments, the which were never in rerum natura, in prejudicium tertii, which was the Laird of Drum, and certain others that had coft sundry lands from him. The Lords, after long reasoning, assigned a term *de novo* to the parties to pursue, and answer, with certification they would decern the parties to have no action to prove the tenor of the said infeftments, if he insist not at the term assigned.

*Fol. Dic. v. 2. p. 444. Colvill MS. p. 423.*

1588. June.

FALCON *against* TOURS.

There was a poor woman called Falcon pursued one Tours, burgess of Edinburgh, to hear and see the tenor of ane liferent sasine of a land of houses, to be proved per testes insertos in the sasine, and libelled no other causam amissionis præductæ sasinæ, than that the notary of the instrument, who was called, became poor into his latter age, and for poverty was put into the hospital, and his protocol books thereafter came into the hands of the party defender; and so it was to be suspected, that he had given furth of the protocol the said minute of the instrument. It was answered, That there was no relevant cause expressed in the libel to admit the tenor of the instrument to probation; and therefore, except it was clearly understood to the Lords, et clare constaret de fortuito amissionis casu, they would in no manner of ways admit to prove the tenor; and as to the poverty of the notary, it was no cause, quia paupertas non reddebat illum suspectum qui aliquando rebus potitus fuit: And as, where they offered them to prove by witnesses inserted, quomodo constabat that they were inserted witnesses. The Lords refused to admit the reason of the summons, and thought it was a weighty matter, et res magni præjudicii et periculi plena.

*Fol. Dic. v. 2. p. 356, 443. Colvill MS. p. 425.*

1611. February.

LORD ELPHINSTON *against* LORD SALTON, &c.

In an action of proving the tenor of certain assignations pursued by Alexander Lord Elphinston against Lord Salton and others, it was found that the pursuer,

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adminicles in writ were produced, although the tenor of the writ was shown, and the faith of it offered to be proved, as also the *casus amissionis*.

No. 6.

The Lords refused to admit the tenor of an evident to be proved by witnesses, unless the *casus amissionis* were clearly proved.

No. 7.

- No. 7. in the probation of the tenor, might not have condescended upon the names of the witnesses who were present at the time of the subscribing of the same, and also upon the name of the writer, because they were dated after the act of Parliament 1593; and it was found, that the want of the writer and witnesses could not be supplied by the parties oaths, who were makers of the assignation, and who were on life, in respect the allegiance was proponed by Lord Salton, who was a third party, and had interest to propone the same.

*Kerse MS. p. 187.*

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- No. 8. 1612. *January 22.* MR. DAVID OGILVY *against* NAPIER.

In an action for proving tenor pursued by Mr. David Ogilvy against William Napier, the Lords found no necessity to libel an adminicle in writ.

*Kerse MS. p. 187.*

\* \* \* This case is reported by Haddington :

In probation of a tenor, *casus amissionis* is not necessarily and precisely to be proved. Neither do all deeds necessarily require adminicles in writ, because acquittances and writs of that nature hardly admit adminicles.

The pursuer may protest for exhibition of a writ to prove a summons, exception, and reply: Albeit it should not be by way of incident, he may call for it *via actionis*, and his action will be sustained.

*Fel. Dic. v. 2. p. 443. Haddington MS. No. 2362.*

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- No. 9. 1612. *March 6.* DRUMLANRIG *against* MR. JOHN MURRAY.

In an action of tenor, the Lords found this exception relevant: The cause of omission cannot be proved, because the person alleged destroyer of the evidents is assoilzied by the Lords' decret being pursued for exhibition.

*Kerse MS. p. 187.*

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- No. 10. 1616. *March 19.* BRUCE *against* BRUCE.

In an action for proving the tenor pursued by Sir Robert Bruce of Clackmanan against Adam Bruce, the Lords repelled a witness produced by the pursuer, because he could not read nor write.

*Kerse MS. p. 187.*