

No. 33. It was alleged: That the *casus amissionis* was not circumstantiate, and the bond might have been paid and retired; and this were of a dangerous-preparative, seeing persons after payment destroy their bonds; and here debtor and creditor are both dead.

The Lords sustained the *casus amissionis*, and documents in writ as adminicles; and found the tenor proved by the depositions; though the witnesses inserted deponed, that they did not remember of the bond. But here were great presumptions of the not-payment; for my Lord Lanerk died at Worcester in the year 1651, and the bond was pursued against the executors of Lord Dirleton, the cautioner, *in anno* 1653, and assigned by them to Mr. John Ellies. The bond was also registered in the year 1654, after the debtor's death; and a year's annual-rent was paid after the act of "debtor and creditor."

*Harcarse, No. 811. p. 227.*

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1682. February 2. LESMORE against MARQUIS of HUNTLEY.

No. 34. The tenor of a bond of 13,000 merks, and an assignation, found proved by writs and decrees before the Lords, narrating the substantial of them, viz. debtor, creditor, sum, annual-rent, penalty, and term of payment of the bond, and the substantial of the assignation, so much as uses to be recited in writs and productions in a decree before the Lords. Here there were no witnesses deponing on the tenor, the writs being dated in the year 1636, and the witnesses inserted being dead since intending of the tenor, which was delayed through the defender's litigiousness. And the *casus amissionis* was, that the writs were delivered to my Lord Argyle, as appeared by his receipt produced.

*Harcarse, No. 812. p. 227.*

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1682. February.

A. against B.

No. 35.

In a proving of the tenor of two bonds, the *casus amissionis* being libelled, that they were given in to the register of the shire in the year 1656, as appeared by extracts produced,

The Lords ordained the pursuer to adminiculate that *casus amissionis*, in respect, in the year 1656, the principals of registered writs were allowed to be given back.

*Harcarse, No. 813. p. 227.*