

1712. July 17. HUME *against* HUME.

No. 52.

The depositions of the drawer and writer of a disposition were allowed to be taken summarily, without a formal proving of the tenor, for supplying two sheets of the narrative of the decd, which had been through carelessness torn off, the whole descriptive part, subscriptions, and margins, being entire.

Forbes.

* * This case is No. 7. p. 14967. *voce* SUMMARY APPLICATION.

1712. June 26. INGLIS *against* LORD ALEXANDER HAY.

No. 53.

An instrument of sasine taken upon an heritable bond in favour of the original creditor, a precept of *clare constat*, and sasine thereupon in favour of his heir, being all three lost; the Lords found the tenor sufficiently made up upon the following adminicles; *1mo*, The extracts of the two sasines out of the record; *2do*, The heritable bond their warrant; *3tio*, A decret of pointing the ground founded upon them.

Fountainhall.

* * This case is No. 81. p. 2744. *voce* COMPETENT.

1713. July 7. HAMILTON *against* HAMILTON.

No. 54.

In a proving of the tenor of a disposition, the allegation, that the writ at issue had been innovated, cancelled, and retired, was repelled *hoc loco*, reserving to the defender to be heard thereon after the tenor had been proved.

Forbes.

* * This case is No. 82. p. 2745. *voce* COMPETENT.

1713. July 17.

JAMES BLACKWOOD of London, Merchant, *against* JOHN HAMILTON of Grange and his Tenants.

No. 55.

In an action of mails and duties pursued by James Blackwood against the tenants of the estate of Grange, John Hamilton their master compeared and repeated a reduction of the pursuer's title, which was an adjudication, upon this ground, That the same proceeds upon a decret proving the tenor of a bond

A decree proving the tenor of a bond therein libelled,

No. 55.
 blank as to
 writer's name
 and witnesses,
 and not prov-
 ed in the pro-
 cess of tenor
 to have had
 these solemn-
 ities, found
 null, because
 that decree
 could be no
 more effectual
 than if the
 bond itself
 were pro-
 duced blank
 in the writers'
 name and
 witnesses.

therein libelled, blank as to writer's name and witnesses ; and it was not proved, in the process of tenor, that the bond had writer's name and witnesses subscribing.

The Lords found the tenor as proved null, and reduced the adjudication following thereon ; nor would they presume, that the bond was formal, and that the solemnities were adhibited. For the Lords considered, That the decret proving the tenor could be no more effectual, than if the bond itself were produced blank in the writer's name and witnesses ; as a decret proving the tenor of a bond dated since the act of Parliament 1696, libelled blank in the creditor's name, could not be sustained to support such a bond labouring under the intrinsic nullity of being blank ; albeit Mr. Blackwood pretended to be in a more favourable case against the heir of his debtor, than if he were competing with another creditor ; for it would be relevant for the debtor himself who granted the bond, to object the present nullity.

Farbes, p. 704.

1742. *November 9.*

MAXWELL and RIDDEL *against* MAXWEL.

No. 56.
 Proving of
 the tenor, in
 what cases
 dispensed
 with ?

It comes sometimes to be a question, Whether a lost writ can be supplied by adminicles, without a proving of the tenor, or if a formal proving of the tenor be necessary. As to which, it was laid down as a rule, That if the writ is such, upon which a permanent right is to be set up, or on which execution is to follow, such writ cannot be supplied without a proving of the tenor : But if the writ be only such as imports the extinction or restriction of a debt, it may be supplied by adminicles without a proving of the tenor.

Accordingly, in the present case, where the question was concerning a contract said to have been entered into between Hay of Aberlady and Maxwell of Friercase in the year 1644, for restricting to securities certain rights, *ex facie* irredeemable in the person of Aberlady, to certain parts of the estate of Friercase, the Lords found, that it was competent to Glenriddel the pursuer, to found upon the documents produced to instruct the restriction of the rights in Aberlady's person by the contract 1644, without a formal proving of the tenor of that contract, and found the documents produced sufficient for that purpose.

Kilkerran, No. 1. p. 562.

1743. *July 19.* EARL OF MARCH *against* MONTGOMERY.

No. 57.
 Tenor proved
 without ad-
 minicles in
 writing.

In the proving of the tenor of a personal bond, granted by Montgomery of Magbiehill to the Earl of March, the *casus amissionis* being distinctly instructed, the proving of the tenor was allowed to proceed, though there was no adminicle of the bond in writ.

Kilkerran, No. 2. p. 563.