

No 130. the executors; and because this defender was convened, both as heir and executor to the defunct, and the defender condescended not that there were other executors, therefore the process was sustained. And, because it was found by the Lords, that this action to prove a tenor was of a dangerous consequence, to make up obligations after the decease of the debtor, the cause of amission not being clearly qualified, which was found necessary to be well-known and qualified, and also proven in these cases to make up obligations; neither were the articles libelled found sufficient to produce this action, which were only conceived upon probation by witnesses; therefore the LORDS assoilzied from that action, in so far as it was of the nature of a cause to prove the tenor of a bond; but because the obligation desired to be proven was only of the sum of 100 pounds, therefore they suffered the pursuer to convert the pursuit, by this same summons, in an action to pay the debt against the defender; which decret and action, so converted, the LORDS found might be proven by witnesses, who saw the sum lent, and who knew that the defunct paid annualrent therefor; and found, that albeit the debt acclaimed extended to 100 pounds, yet seeing it exceeded not 100 pounds, that it might be proven by witnesses.

Act. Lawrie.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 143. Durie, p. 354.

1739. December 5.

MACLEOD against SINCLAIR.

No 131.

In a ranking, one of the adjudications being objected to, for that an assignation, which was one of the grounds thereof, was not produced, the adjudger pursued a proving of the tenor thereof; in which the LORDS 'found no process, in respect the representative of the alleged cedent was not called, and refused to grant diligence for calling him, in respect that, in proving the tenor of an assignation, he was to be considered as the principal defender.'

Fol. Dic. v. 3. p. 123. Kilkerran, (PROCESS) No 1. p. 433.

SECT. XXX.

Citation in Burgh Elections.

1761. January 29.

CAPTAIN HALDANE, &c. against ADMIRAL HOLBURN, &c.

No 132.
In a reduction of the Michaelmas election of

In the burgh of Inverkeithing, the election of magistrates and councillors at Michaelmas 1760 was controverted. Admiral Holburn and his party, having