

**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.*