

being lost, it is reasonable that some of them that are extant, either preceding or flowing from it that is lost, be libelled and produced, for an adminicle to sustain the proving of the tenor of the other. But, in simple bonds, which cannot be sustained by any adminicle of another writ, this cannot be required: Yet, albeit the pursuer can have no adminicle in writ to sustain his back-bond, he will offer to prove, by the defender's oath, (which is in a manner equivalent to writ,) *Imo*. That the defender was bound as cautioner for Tolquhon, younger, to Alexander Forbes in this sum; *2do*. That Frendraught became obliged, for the defender's relief, in the second bond to the said Alexander; *3tio*. That the defender gave a back-bond to Frendraught, acknowledging that the debt was his own, and not Frendraught's; *4to*. That Frendraught, having got an assignation of the first bond from Alexander Forbes, transferred the same in the person of John Sutor, servant to Banf, at the defender's own desire; which John Sutor had recovered payment of 2000 merks of the said sum, from Cromarty, for his part of the said principal sum, with the bygone annual-rents, and that to the behoof of the defender; *5to*. That the back-bond was never delivered by Frendraught to the defender, after the subscribing thereof. In respect of which circumstances concurring with the notoriety of the *casus amissionis* libelled, the summons ought to be sustained. The Lords found the circumstances contained in the reply sufficient; adminicles being proven, by the defender's oath, to sustain the summons for proving the tenor of the back-bond libelled.

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1636. *July 20.* The EARL of QUEENSBERRY *against* LORD TORTHORWOLD.

THE Lord Torthorwold having raised reduction against the Earl of Queensberry, the defender got a protestation against the pursuer for not insisting in his reduction, and, after, raised a summons against the said Torthorwold, to insist; with certification if he did not, he should never be heard thereafter. Torthorwold being twice summoned, and a day assigned to him to insist, and when the day came, he refusing to insist, the certification was given against him compearing, though he desired he might pass from his compearance. Which the Lords would not grant, in respect of the day assigned to him before compearing.

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1636. *July 21.* GEORGE HERIOT *against* WALTER HERIOT and JEAN LAW.

MR George Heriot, as heir to his brother Walter Heriot, fiar of Romorny, pursued his father Walter Heriot elder of Romorny, and Jean Law his brother's relict, liferenters of the whole lands to which he was to succeed, for a modification whereupon to live. The Lords would not sustain the summons against his brother's relict; because his father, who was liferenter of the one half, was alive, who was bound by the law of nature to entertain him, and not his sister-in-law, who had her liferent of the other half for an onerous cause, in recompense of her debt. As for the father, the pursuer insisted not much against him.

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