

in this case the circumstances contained in the reply were sustained, as sufficient to be proved by the parties' oath, as said is.

No. 14.

Act. *Advocatus & Mowat.**Durie, p. 817.*

1662. July 26. LADY MILNTOUN against LAIRD MILNTOUN.

Lady Milntoun pursues probation of the tenor of a bond of interdiction granted by her husband, young Calderwood, interdicting himself to her. It was alleged, No process, because there was no sufficient adminicle in writ produced, there being no writ relative to the interdiction subscribed by the party, but only the extract of letters of inhibition.

The Lords sustained this as a sufficient adminicle, in respect the question was not about a writ that used to be retired, such as bonds. In this case, also, the Lords examined some witnesses, *ex officio*, before litiscontestation, being old and valetudinary.

No. 15.

The tenor of an interdiction being pursued, the production of the letters of publication was found a sufficient adminicle.

*Stair, v. 1. p. 371.*

1663. January 21. MEIN against NIDDRIE.

Elizabeth Anderson, daughter and executrix to Mr. David, her father, makes an assignation to Robert Mein, merchant, of certain debts; whereupon the said Robert raised process before the Commissaries; and the assignation was thereafter lost. This assignation was made by Elizabeth, with consent of Allan Keith, her husband; and the tenor thereof is, by a summons, craved to be proved and made up; the pursuer having produced divers adminicles. It was alleged for the Laird of Niddrie, who had right from John Anderson, brother to Elizabeth, and who had right from her, That *casus amissionis* must not only be libelled, but specially condescended on, and made probable; because it is offered to be proved, that there was a factory granted by the said Elizabeth to this pursuer, and upon which factory he did pursue, and obtain payment from some of the debtors, to the said Elizabeth's behoof, and upon trust; and if any such assignation was thereafter granted, it was upon trust, it being ordinary to entrust friends with such assignations, and to the granters to keep them beside them, or in their own proper power, though intimated; and this pursuer cannot say, nor can he make it appear, that ever he gave money for this assignation, nor that ever it was in his custody as his own evident: And therefore, unless *casus* of his *amissio* thereof, be condescended upon, there can be no process. It was answered, That *casus amissionis* can in very few cases be condescended upon, far less proved; men oftentimes tining their writings, not knowing how or where.

No. 16.

In a proving the tenor of writs, the *casus amissionis* need not, in some cases, be condescended on.

No. 16. The Lords found, That, in the case of a such a personal writ, whereupon nothing followed but intimation, and the intending of an action, and upon consideration of many other circumstances, *casus amissionis* should not be condescended upon.

Gilmour, No. 17. p. 51.

No. 17.

1663. January 28. BALNAGOWN against M'KENZIE.

The probation of a tenor, before an inferior Judge, was found null.

Stair.

\* \* This case is No. 85. p. 545. *voce* ANNUAL-RENT.

No. 18.

Tenor of a registered bond not sufficiently in structed by an extract under the hand of the keeper of the register at London.

1665. July 27. CAPTAIN MUIR against FRASER.

Captain Muir having obtained decree against the heir of Colonel Hugh Fraser for 100 merks, before the Commissioners, *in anno* 1658, charges thereupon. They suspend, and raise reduction, on this reason, that the decree was null without probation, proceeding only upon a copy of an obligation alleged taken out of the register, by one William Bailie, who kept the same, at London, which could not prove, not being under the hand of the clerk-register, or his deputes; which being proponed in the decree, was unjustly repelled. The pursuer answered, *first*, There was no review raised within a year, conform to the act of Parliament, and so the decree was not quarrelable upon iniquity; *2dly*, Bailie's oath was taken by the Commission, that the extract was subscribed by him; *3dly*, The defender proponed a defence of payment, and so acknowledged the debt. It was answered, That the suspenders were, and are, minors; and in the act of Parliament there is an exception of minors, that they may reduce those decrees within a year after majority; *2dly*, They ought to be reponed against their proponing payment, being minors; and as to Bailie's oath, neither his subscription nor oath can make a probative extract, unless the new extract were now produced; seeing the registers are returned. The chargers answered, That if the suspender would allege, that any book of the register, containing writs registered about the time of this extract, were extant and returned, *releuat*; but it is known that several of the books are lost, and this among the rest.

The Lords would not sustain the decree upon Bailie's extract simply, neither did they put the charger to the proving of a tenor, but allowed the charger to condescend upon the way of his instruction, that such a bond was truly subscribed by the witnesses inserted, or otherwise, and ordained the witnesses to be examined.

Stair, v. 1. p. 303.