

No. 2.  
 ply a lost  
 charter, with-  
 out a process  
 for proving  
 the tenor.

the said James' father had resigned certain of the said lands in the said Lord's father's hands as superior thereof, *ad perpetuam remanentiam*. It was alleged by the said Sir James, that the said Lord's father after that resignation, had infeft heritably the said Sir James' father in the said lands; and to prove the same, produced an extract of the register authenticated by the clerk thereof, containing at length ane confirmation of the King's G. of the said inserest, and the said Lord's charter made to the said Sir James' father interted at length in the said confirmation. It was alleged by the said Lord Sommerville, that the said extract of the register was not enough to verify the said Sir James' allegiance, without he show the principal charter made by the said Lord's father; which allegiance of the said Lord Sommerville was repelled; and found, that ane charter inserted at length in the King's confirmation is sufficient, howbeit that the principal charter be not produced, and shall have as great faith as if it were produced.

*Fol. Dic. v. 2. p. 449. Maitland MS. p. 152.*

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1564. December 18. JAMES BROWN *against* ELIZABETH WILLIAMSON.

No. 3.  
 Found as  
 above.

Ane evident, or chartour of confirmatioun, maid and gevin be ane havand powar to mak and give the samin, and contenannd in it all and hail the chartour and evident whilk is confirmit, as the common use and consuetude is in sic caisis, is authentique, and makis als greit faith in preiving of ony thing contenit in the evident quhilk is confirmit, as the samin itself may do in ony wayis.

*Balfour, (PROBATION OF WRITS,) p. 368.*

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1567. LORD CLOVA *against* RAMSAY.

No. 4.

Both parties having taken instruments upon pronouncing a decreet-arbitral, the Lords found that the said extended instruments, containing the tenor of the decreet, were sufficient without production of the principal decreet.—See APPENDIX.

*Fol. Dic. v. 2. p. 449. Maitland MS.*

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1587. February. LAIRD OF DRUM *against* FEDDERAT.

No. 5.  
 A probation  
 of the tenor  
 was rejected,  
 because no

The Laird of Drum pursued the Laird of Fedderat to cause the said Fedderat insist in an action wherein he had summoned the Laird of Drum to hear and see the tenor of certain infeftments made by Fedderat, grandson to the said Drum,

and spuilzied and distressed by the said Fedderat's father to be proved, with certification, if he insisted not, he should be debarred from any pursuit of the same. It was answered by Fedderat, that he would pass from his summons, because there were other parties that had interest in the matter which he had not summoned, et de jure nemo invitus agere vel accusare cogitur. To the which it was answered, that in this case the pursuer could not pass from his first pursuit, because the Lords had ordained him to pursue, and that he might not maliciously delay the party in taking to prove infestments, the which were never in rerum natura, in prejudicium tertii, which was the Laird of Drum, and certain others that had coft sundry lands from him. The Lords, after long reasoning, assigned a term *de novo* to the parties to pursue, and answer, with certification they would decern the parties to have no action to prove the tenor of the said infestments, if he insist not at the term assigned.

*Fol. Dic. v. 2. p. 444. Colvill MS. p. 423.*

No. 5.  
adminicles in writ were produced, although the tenor of the writ was shown, and the faith of it offered to be proved, as also the *casus amissionis*.

1588. June.

FALCON *against* TOURS.

There was a poor woman called Falcon pursued one Tours, burgess of Edinburgh, to hear and see the tenor of ane liferent sasine of a land of houses, to be proved per testes insertos in the sasine, and libelled no other causam amissionis præductæ sasinæ, than that the notary of the instrument, who was called, became poor into his latter age, and for poverty was put into the hospital, and his protocol books thereafter came into the hands of the party defender; and so it was to be suspected, that he had given furth of the protocol the said minute of the instrument. It was answered, That there was no relevant cause expressed in the libel to admit the tenor of the instrument to probation; and therefore, except it was clearly understood to the Lords, et clare constaret de fortuito amissionis casu, they would in no manner of ways admit to prove the tenor; and as to the poverty of the notary, it was no cause, quia paupertas non reddebat illum suspectum qui aliquando rebus potitus fuit: And as, where they offered them to prove by witnesses inserted, quomodo constabat that they were inserted witnesses. The Lords refused to admit the reason of the summons, and thought it was a weighty matter, et res magni præjudicii et periculi plena.

*Fol. Dic. v. 2. p. 356, 443. Colvill MS. p. 425.*

No. 6.  
The Lords refused to admit the tenor of an evident to be proved by witnesses, unless the *casus amissionis* were clearly proved.

1611. February.

LORD ELPHINSTON *against* LORD SALTON, &c.

In an action of proving the tenor of certain assignations pursued by Alexander Lord Elphinston against Lord Salton and others, it was found that the pursuer,

No. 7.