

- No. 7. in the probation of the tenor, might not have condescended upon the names of the witnesses who were present at the time of the subscribing of the same, and also upon the name of the writer, because they were dated after the act of Parliament 1593; and it was found, that the want of the writer and witnesses could not be supplied by the parties oaths, who were makers of the assignation, and who were on life, in respect the allegiance was proponed by Lord Salton, who was a third party, and had interest to propone the same.

Kerse MS. p. 187.

1612. *January 22.* MR. DAVID OGILVY *against* NAPIER.

No. 8.

In an action for proving tenor pursued by Mr. David Ogilvy against William Napier, the Lords found no necessity to libel an adminicle in writ.

Kerse MS. p. 187.

* * * This case is reported by Haddington :

In probation of a tenor, *casus amissionis* is not necessarily and precisely to be proved. Neither do all deeds necessarily require adminicles in writ, because acquittances and writs of that nature hardly admit adminicles.

The pursuer may protest for exhibition of a writ to prove a summons, exception, and reply: Albeit it should not be by way of incident, he may call for it *via actionis*, and his action will be sustained.

Fel. Dic. v. 2. p. 443. Haddington MS. No. 2362.

1612. *March 6.* DRUMLANRIG *against* MR. JOHN MURRAY.

No. 9.

In an action of tenor, the Lords found this exception relevant: The cause of omission cannot be proved, because the person alleged destroyer of the evidents is assoilzied by the Lords' decret being pursued for exhibition.

Kerse MS. p. 187.

1616. *March 19.* BRUCE *against* BRUCE.

No. 10.

In an action for proving the tenor pursued by Sir Robert Bruce of Clackmanan against Adam Bruce, the Lords repelled a witness produced by the pursuer, because he could not read nor write.

Kerse MS. p. 187.