

den parish. *Alleged* for him, I am in possession by virtue of a title from the Bishop of Edinburgh, and you produce no sufficient interest to claim my teinds, in so far as you do not produce the tack set by the Abbot to the Hamiltons of Grange, but only a decret of prorogation of that tack, which being only a relative writ, *non creditur referenti nisi constet de relato*; and as to the transumpt of the tack produced, it is null *quoad* me, and no more than a copy, because my authors are not cited thereto, nor yet the titular of the teinds. *Answered*, *In re tam antiqua* as eighty years ago, the decret of prorogation must be a sufficient probation, seeing it mentions the tack was then produced, which is *probatio probata*; and as for the decret of transumpt, you have homologate it by your predecessor's giving a bond to Grange, the tacksman, to pay the teind; if the same should be liquidate by a decret. *Replied*, If the years of the tack were expired, and the prorogation begun to run, the production of the decret of prorogation would be a sufficient title in this pursuit; but seeing the nineteen years adjected to the liferents in the tack are not yet expired, it can be no title for bygones till the tack itself be produced; and the bond given by Binns' predecessor cannot support the tack, seeing it relates to what shall be constitute by decret. Now, that is not yet done, nor can be, till a valid title to the teinds be produced. **THE LORDS** found the decret of prorogation and transumpt not a sufficient title, unless the tack had been expired, and the years of the prorogation commenced; though these would be good adminicles if the tenor of the tack were to be proven.

Fol. Dic. v. 1. p. 143. Fountainball, v. 2. p. 72.

SECT. XXIX.

Citation in Process of Proving the Tenor.

1628. *March 5.* HAMMERMEN in GLASGOW *against* CRAWFURD.

In an action for proving of the tenor of a bond betwixt the Hammermen in Glasgow and Crawford, who was convened as heir to his father, for proving of the tenor of the bond made by his father to the pursuers, the LORDS found, that no process ought to be granted for proving of such tenors of obligations, after the decease of the debtor, except the executors of the defunct were specially called to these pursuits; because the same tends to make up obligations, whereupon the executors may be distrest, either by the principal creditor, or by the debtor's heir who is convened; which heir thereupon might seek relief against

No 129.

No 130.

Action of proving the tenor cannot proceed against the heir of a defunct, without calling the executor.

No 130. the executors ; and because this defender was convened, both as heir and executor to the defunct, and the defender condescended not that there were other executors, therefore the process was sustained. And, because it was found by the Lords, that this action to prove a tenor was of a dangerous consequence, to make up obligations after the decease of the debtor, the cause of amission not being clearly qualified, which was found necessary to be well-known and qualified, and also proven in these cases to make up obligations ; neither were the articles libelled found sufficient to produce this action, which were only conceived upon probation by witnesses ; therefore the LORDS assoilzied from that action, in so far as it was of the nature of a cause to prove the tenor of a bond ; but because the obligation desired to be proven was only of the sum of 100 pounds, therefore they suffered the pursuer to convert the pursuit, by this same summons, in an action to pay the debt against the defender ; which decret and action, so converted, the LORDS found might be proven by witnesses, who saw the sum lent, and who knew that the defunct paid annualrent therefor ; and found, that albeit the debt acclaimed extended to 100 pounds, yet seeing it exceeded not 100 pounds, that it might be proven by witnesses.

Act. Lawrie.

Alt. Mowat.

Clerk, Gibson.

Fol. Dic. v. 1. p. 143. Durie, p. 354.

1739. *December 5.*

MACLEOD against SINCLAIR.

No 131.

IN a ranking, one of the adjudications being objected to, for that an assignation, which was one of the grounds thereof, was not produced, the adjudger pursued a proving of the tenor thereof ; in which the LORDS ' found no process, in respect the representative of the alleged cedent was not called, and refused to grant diligence for calling him, in respect that, in proving the tenor of an assignation, he was to be considered as the principal defender.'

Fol. Dic. v. 3. p. 123. Kilkerran, (PROCESS) No 1. p. 433.

SECT. XXX.

Citation in Burgh Elections.

1761. *January 29.*

CAPTAIN HALDANE, &c. against ADMIRAL HOLBURN, &c.

No 132.
In a reduction of the Michaelmas election of

IN the burgh of Inverkeithing, the election of magistrates and councillors at Michaelmas 1760 was controverted. Admiral Holburn and his party, having