

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.