

of the Lord Ordinary who heard the cause, and perused the bonds, and by the oaths of the advocates, who produced their informations, bearing no ground of suspicion, and therefore this was not competent to recal the decree of tenor lawfully extracted; nor was it proper for Courtie to object against his own bond; but if the debtor did object against the execution, the Lords might then consider the same.

The Lords refused the desire of the bill, and would not recal the decree of proving the tenor.

*Stair, v. 2. p. 832.*

No. 31.

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1681. December. LORD CRANSTON *against* ANNE TURNBULL.

My Lord Cranston, for making up the tenor of the verdict of an assize, by which one Turnbull was forfeited, produced several writs relative thereto, though not narrating it *ad longum*, viz. the King's presentation of the lands, with consent of the Treasurer, &c. and the infetment thereon by the Lord Angus, superior, whereby the Lords of Cranston had been in possession since the year 1610.

It was alleged against the forfeiture: That the same being pronounced by the Justice-court holden by the Earl of Dunbar, for the alleged crimes of treasonable theft in landed men, and especially treasonable fire-raising, that are *placite coronæ*, these ought to have been expressly mentioned in the commission; whereas, it mentions no treasonable crime, but only thefts, depredations, reiffs, and routs.

Answered: The commission of Justiciary, of its own nature, includes a capacity for all crimes; and the act of Parliament 1610 insinuates as much; *2do*, The King's presentation, then recent, expresseth these crimes to have been the cause of forfeiture.

The defender, the rebel's daughter, being a poor woman, the Lords recommended to one of their number to get my Lord Cranston to give her some consideration; and so the matter ended friendly, and the tenor was decerned for his security.

*Harcarse, No. 810. p. 226.*

No. 32.  
Tenor of the  
verdict of an  
assize.

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1682. February 2. EARL OF SOUTHESK *against* DUKE OF HAMILTON.

Mr. John Ellies and the Earl of Southesk having raised a proving of the tenor of a bond of £.1000 Sterling, granted by the Lord Lanerk to James Livingstoun, in anno 1645, and the libelled *casus amissionis* being, that the bond was produced in the year 1656, before Commissioners of the Chancery of England, and miscarried,

No. 33.  
What to be  
considered  
adequate as  
*casus amissionis*?

No. 33. It was alleged: That the *casus amissionis* was not circumstantiate, and the bond might have been paid and retired; and this were of a dangerous-preparative, seeing persons after payment destroy their bonds; and here debtor and creditor are both dead.

The Lords sustained the *casus amissionis*, and documents in writ as adminicles; and found the tenor proved by the depositions; though the witnesses inserted deponed, that they did not remember of the bond. But here were great presumptions of the not-payment; for my Lord Lanerk died at Worcester in the year 1651, and the bond was pursued against the executors of Lord Dirleton, the cautioner, *in anno* 1653, and assigned by them to Mr. John Ellies. The bond was also registered in the year 1654, after the debtor's death; and a year's annual-rent was paid after the act of "debtor and creditor."

*Harcarse, No. 811. p. 227.*

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1682. February 2. LESMORE against MARQUIS of HUNTLEY.

No. 34. The tenor of a bond of 13,000 merks, and an assignation, found proved by writs and decrees before the Lords, narrating the substantial of them, viz. debtor, creditor, sum, annual-rent, penalty, and term of payment of the bond, and the substantial of the assignation, so much as uses to be recited in writs and productions in a decree before the Lords. Here there were no witnesses deponing on the tenor, the writs being dated in the year 1636, and the witnesses inserted being dead since intending of the tenor, which was delayed through the defender's litigiousness. And the *casus amissionis* was, that the writs were delivered to my Lord Argyle, as appeared by his receipt produced.

*Harcarse, No. 812. p. 227.*

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1682. February.

A. against B.

No. 35.

In a proving of the tenor of two bonds, the *casus amissionis* being libelled, that they were given in to the register of the shire in the year 1656, as appeared by extracts produced,

The Lords ordained the pursuer to adminiculate that *casus amissionis*, in respect, in the year 1656, the principals of registered writs were allowed to be given back.

*Harcarse, No. 813. p. 227.*