

minicles produced be pregnant enough to sustain the probation of the tenor, they cannot be instructions thereof; because horning, passing in course, without the special notice of the Lords, cannot instruct what a bond was in being of this tenor; much less can it show what qualifications might have been therein, which useth not to be repeated in the horning; and therefore the tenor of the writ must either be proven by the writ and witnesses insert there, or by other witnesses above exception, who saw, read, and remembered the tenor of the bond; and the *casus omissionis* is only of the loss of the extract out of the register, and nothing is shown to clear that the principal that was in the register is miscarried, except that the registers were carried away, which is too general a ground, and would serve to prove the tenor of all writs registered.

THE LORDS sustained the tenor, but found it not instructed by the writs produced, but that it might be instructed by witnesses. See TENOR.

Fol. Dic. v. 1. p. 130. Stair, v. 2. p. 132.

No 8.

1737. July 10. MONRO against CREDITORS of EASTERFEARN.

IN a competition respecting a right of reversion, betwixt a creditor who had adjudged the same, from the apparent heir of the reverser, and a posterior heir passing by the apparent heir, and connecting his title by a general service to the reverser, it was *objected* against the adjudication, That it was null, the apparent heir not having been charged in special to enter heir to the subject in question.—*Answered*, The apparent heir was charged in general to enter, which being suppletory of a general service, was a sufficient foundation of the adjudication, as to all rights that can be carried by a general service.—*Replied*, A general charge is intended to supply a passive title only; for such is the very stile of the charge; but does not supply either a general or special service. A special charge is necessary, to that end to enter heir to lands and others, where the debtor died infert, which is a special charge properly so called, and which supplies the want of a special service; or to enter heir to heritable rights, where the debtor died not infert, which is termed a general-special charge, and which last kind of charge, and that alone, supplies the want of a general service.—THE LORDS found the adjudication null.

No 9.
Nature and effect of general-special charge.

Fol. Dic. v. 1. p. 131.

1738. December 1. CREDITORS of CATRINE against BAIRD of Cowdam.

AN objection to an adjudication repelled, that the special charge upon which it proceeded was raised and executed before extracting of the decree of constitution, being after decerniture.

Fol. Dic. v. 1. p. 131. Kilkerran, (CHARGE TO ENTER HEIR.) No 1. p. 119.

No 10.