

and spuilzied and distressed by the said Fedderat's father to be proved, with certification, if he insisted not, he should be debarred from any pursuit of the same. It was answered by Fedderat, that he would pass from his summons, because there were other parties that had interest in the matter which he had not summoned, et de jure nemo invitus agere vel accusare cogitur. To the which it was answered, that in this case the pursuer could not pass from his first pursuit, because the Lords had ordained him to pursue, and that he might not maliciously delay the party in taking to prove infestments, the which were never in rerum natura, in prejudicium tertii, which was the Laird of Drum, and certain others that had coft sundry lands from him. The Lords, after long reasoning, assigned a term *de novo* to the parties to pursue, and answer, with certification they would decern the parties to have no action to prove the tenor of the said infestments, if he insist not at the term assigned.

Fol. Dic. v. 2. p. 444. Colvill MS. p. 423.

No. 5.
adminicles in writ were produced, although the tenor of the writ was shown, and the faith of it offered to be proved, as also the *casus amissionis*.

1588. June.

FALCON *against* TOURS.

There was a poor woman called Falcon pursued one Tours, burgess of Edinburgh, to hear and see the tenor of ane liferent sasine of a land of houses, to be proved per testes insertos in the sasine, and libelled no other causam amissionis præductæ sasinæ, than that the notary of the instrument, who was called, became poor into his latter age, and for poverty was put into the hospital, and his protocol books thereafter came into the hands of the party defender; and so it was to be suspected, that he had given furth of the protocol the said minute of the instrument. It was answered, That there was no relevant cause expressed in the libel to admit the tenor of the instrument to probation; and therefore, except it was clearly understood to the Lords, et clare constaret de fortuito amissionis casu, they would in no manner of ways admit to prove the tenor; and as to the poverty of the notary, it was no cause, quia paupertas non reddebat illum suspectum qui aliquando rebus potitus fuit: And as, where they offered them to prove by witnesses inserted, quomodo constabat that they were inserted witnesses. The Lords refused to admit the reason of the summons, and thought it was a weighty matter, et res magni præjudicii et periculi plena.

Fol. Dic. v. 2. p. 356, 443. Colvill MS. p. 425.

No. 6.
The Lords refused to admit the tenor of an evident to be proved by witnesses, unless the *casus amissionis* were clearly proved.

1611. February.

LORD ELPHINSTON *against* LORD SALTON, &c.

In an action of proving the tenor of certain assignations pursued by Alexander Lord Elphinston against Lord Salton and others, it was found that the pursuer,

No. 7.