of the terms of the doquet of the signature 1678 and act of Parliament, which comprehend these teinds themselves.

No. 38. 1753, Nov. 21. LORD ADVOCATE, &c. *against* PRESBYTERY OF SELKIRK.

THE Presbytery pursued a declarator that Long-Newton was a parish by itself having 1000 merks stipend, kirk, and glebe, and that therefore it ought to have a Minister to serve the cure, or at least be annexed to . Sir William Scott defender produced many strong documents to prove that it had in 1684 been annexed to Ancrum by the Court of Commission, and 500 merks of stipend allocated to the Bishop of Brechin, and the rest continued till the Commissioner should give orders touching it, which they never did; and produced a copy of the decreet, but could not produce any extract, the records being burnt; but produced three discharges of the 500 merks by two different Bishops of Brechin, and since 1688 it has been constantly paid to the Crown. The pursuer replied that the copy was no evidence; that any decreet that had been pronounced was afterwards stopped, and no decreet extracted, and that the defender behoved to prove the tenor of his decreet, for which all his adminicles were insufficient. The Lords found sufficient evidence that the kirk was in 1684 annexed to Ancrum, and therefore assoilzied from that conclusion of the libel, and found no necessity of proving the tenor.

TENOR.

No. 2. 1735, Dec. 2. CHANCELLOR *against* GRAY.

THE tenor was fully proved of the heritable bond, and the adminicles were the sasine and scroll of the bond which were both sworn to; but the difficulty was the *casus amissionis*, as to which the notary said; he after the sasine returned the bond to Mr Bogle his employer, at least sent it to his wife; and Mr Bogle swore he did not remember that he had ever seen it after he gave it to the notary. There was another circumstance, that they went to the West Indies, and so could not retire it, but this was not proven.

No. 3. 1736, July 10. ANDREW MANN *against* ISOBEL MANN.

IN a proving of a tenor of a postnuptial contract, the only adminicle produced being a copy taken of the alleged contract by a stranger, and the said tenor offered to be proven by the writer of the contract, and by the person who took that copy; but no special *casus amissionis*, but that either the wife gave it to her husband, and he lost or destroyed it, or that it was *casu fortuito* lost by herself;—the Lords gave an act for proving, though the contract contained extraordinary clauses, viz, the fee of the husband's whole present

stock, and of the half of the conquest, besides the whole liferent failing children,—*renit.* Royston, Justice-Clerk, Kilkerran, Monzie, *et me.*

No. 4. 1743, Jan. 11. MAXWELL *against* DALSWINTON, &c.

(IN the note relative to this case, *voc* RECOGNITION, Lord Elchies refers to the Session papers, which are in the volume marked No. 18. The question chiefly at issue was, Whether it was necessary to prove the tenor of a particular contract founded on, which was not extant? The opinion in general upon the subject which his Lordship held was, "That where nothing was to follow but the extinction of a right or debt, proving the tenor was not necessary; but where the right was not to be extinguished, but to subsist and be transmitted, then a proving of the tenor seemed to be necessary." There was another question, Whether there could be recognition to the Crown, *ob non solutum canonem*, where the feu-duties belonged to a Lord of erection? The Court held the gift of recognition by the Crown in this case good, although the lands were Church lands, and belonged to a Lord of erection. Lord Elchies doubted of the soundness of this judgment, and it would seem had written his reasons for doubting upon one of the Session papers, but that paper does not appear.) ED.

No. 5. 1743, Nov. 16. TOWN OF EDINBURGH *against* TRUSTEES OF MERCHIESTON.

THE question was, Whether we should sustain the book (which we all were satisfied was an original record of Court) as a sufficient adminicle *per se*, for proving the tenor of a valuation. It carried to sustain. But I thought we should find it a book of record, because otherwise it was not sufficient; and if it was a record, then there might be extracts taken from it.

No. 6. 1747, June 11, 24. CAMPBELL of Otter *against* M'ALLISTER of Loup.

THERE was a long argument whether a tenor of an old assignation in 1664, whereupon diligences by horning, arrestment, and apprising, and sundry payments, had followed, whether I say it was necessary to prove a *casus amissionis*, or writer's name and witnesses? Arniston argued long for both, and that the documents and adminicles produced were indeed a proof of the existence of the deed once, but not of the tenor, and insisted that in all cases the writer's name and witnesses ought to be proved. Tinwald and I, and even the President, seemed to differ as to the general point; but we pretty unanimously found in this case the tenor as libelled not proven, because the tenor as libelled was really contrary to all the adminicles; and by some other particulars that were alleged, there was reason to suspect that the pursuer had, if not the assignation, at least some writs relative to it, which he did not produce.