

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.