

once existed, and that the pregnant circumstances of the case avoided all suspicions of its being kept out of the way, in order to hide defects; and therefore that the defender ought never to be allowed to object the want of it.

The Lords refused and adhered.

Act. *H. Home.*

Alt. *T. Hay.*

Clerk, *Gibson.*

*D. Falconer, No. 189. p. 254.*

No. 58.

1749. *November 21.*

*A. against B.*

Where a writ is of that nature, as not to be extinguishable by simple retiring, no *casus amissionis* is necessary in a proving of the tenor; and where a *casus amissionis* is proved, no adminicles in writing are necessary.

So the Lords thought in the proving of the tenor of the tailzie of Balledgarno of this date.

*Kilkerran, No. 3. p. 563.*

No. 59.

Writs not extinguishable by simple retiring.

1752. *February 23.* CHARLES GORDON, Petitioner.

Though tenors regularly require two ordinaries to take the depositions, yet the Lords have on some occasions given a commission to take the oaths of witnesses in a tenor; particularly in the year 1737, in the proving of the tenor of a testament made by Mr. Alexander Burnet, Minister of the Gospel at Dantzick; and more lately in the proving of the tenor of a bill at the instance of Robert Gray, factor to the Earl of Sutherland, against Coll. M'Donald of Barrisdale, a commission was granted to the Sheriff of Inverness for taking the proof in the country.

In the present case, in respect of these precedents, a commission was asked, for bringing a proof of the adminicles before the Sheriff of Aberdeen. The Lords demurred; but at last got over the difficulty by the two Lords who go this spring upon the Circuit to Aberdeen, agreeing to take the proof there; and the same was recommended to them accordingly.

*Kilkerran, No. 4. p. 563.*

No. 60.

If the proof can be taken on commission?

1753. *November 21.*

MODERATORS of the SYNOD of MERSE and TEVIOTDALE, and PRESBYTERY of SELKIRK, *against* SIR WILLIAM SCOT of Ancrum, and Others.

There appears to have been a decret of the Commissioners for plantation of kirks, &c. suppressing the kirk of Long Newton, and annexing the parish to the

No. 61.

In what cases an action for proving the tenor is necessary?