

No. 16. The Lords found, That, in the case of a such a personal writ, whereupon nothing followed but intimation, and the intending of an action, and upon consideration of many other circumstances, *casus amissionis* should not be condescended upon.

Gilmour, No. 17. p. 51.

No. 17.

1663. January 28. BALNAGOWN against M'KENZIE.

The probation of a tenor, before an inferior Judge, was found null.

Stair.

\* \* This case is No. 85. p. 545. *voce* ANNUAL-RENT.

No. 18.

Tenor of a registered bond not sufficiently in structed by an extract under the hand of the keeper of the register at London.

1665. July 27. CAPTAIN MUIR against FRASER.

Captain Muir having obtained decree against the heir of Colonel Hugh Fraser for 100 merks, before the Commissioners, *in anno* 1658, charges thereupon. They suspend, and raise reduction, on this reason, that the decree was null without probation, proceeding only upon a copy of an obligation alleged taken out of the register, by one William Bailie, who kept the same, at London, which could not prove, not being under the hand of the clerk-register, or his deputes; which being proponed in the decree, was unjustly repelled. The pursuer answered, *first*, There was no review raised within a year, conform to the act of Parliament, and so the decree was not quarrelable upon iniquity; *2dly*, Bailie's oath was taken by the Commission, that the extract was subscribed by him; *3dly*, The defender proponed a defence of payment, and so acknowledged the debt. It was answered, That the suspenders were, and are, minors; and in the act of Parliament there is an exception of minors, that they may reduce those decrees within a year after majority; *2dly*, They ought to be reponed against their proponing payment, being minors; and as to Bailie's oath, neither his subscription nor oath can make a probative extract, unless the new extract were now produced; seeing the registers are returned. The chargers answered, That if the suspender would allege, that any book of the register, containing writs registered about the time of this extract, were extant and returned, *relevat*; but it is known that several of the books are lost, and this among the rest.

The Lords would not sustain the decree upon Bailie's extract simply, neither did they put the charger to the proving of a tenor, but allowed the charger to condescend upon the way of his instruction, that such a bond was truly subscribed by the witnesses inserted, or otherwise, and ordained the witnesses to be examined.

Stair, v. 1. p. 303.