

before the Lord Ordinary ; *Stio*, That it was necessary to call all the heirs of entail existing ; this they rejected, because the tailyie was not recorded nor executed by infestment, but a latent deed, so that the creditors could not know whom to call as heirs of entail.

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1749. November 22. GORDON against GRAY of Balgarny.

[Kilk. No. 3, *Tenor*.]

This was a process of proving the tenor of a tailyie, in which the Lords found the tenor proved, (*dissent. tantum Easdale* ; ) though the *casus amissionis* libelled was the defender's destroying or abstracting the tailyie, which was not proved, but all that was proved was, that the paper was taken out of a charter-chest where it was kept, and was amissing, with pretty strong presumptions that it was the defender had taken it out. In this case Lord Elchies laid down the doctrine of proving tenors at pretty great length ; the sum of what he said is comprehended in the following propositions : *1mo*, That adminicles in writ, by our law, are not scrolls or copies deposed to by witnesses, but authenticated writings which make faith of themselves without the assistance of parole evidence, *e. g.* sasines upon charters, precepts of *clare constat*, bonds or contracts properly executed, and, as in this case, a retour of a general service as heir of the entail, mentioning the maker of the entail and the series of heirs, but none of the provisions and limitations, which Lord Elchies said he did not think necessary, because it was not necessary that an adminicle should contain the whole paper, but only so much as to show that it was the same paper as that the tenor of which was to be proved, and the rest of it might be proved *aliunde*, as in this case, by scrolls and copies. *2do*, That in some cases there may be no need for adminicles, scrolls, copies, or any written document whatsoever ; but then there must be a very strong and circumstantial proof of the *casus amissionis* ; as in the case of a bond, of which there is rarely any adminicle or other document in writing, yet if there is a clear proof that it is burnt or otherwise destroyed, the tenor may be made up by parole evidence only. *Stio*, But if there is no special *casus amissionis* proved, there must be adminicles in writ, and scrolls or copies will not be sufficient, that all may not rest upon the faith and memory of witnesses ; whereas, if there are adminicles in writ, it will not be necessary to libel or prove a special *casus amissionis*, but only in general that the writ is lost, and sometimes, as Stair observes, that is only proved by the pursuer's oath. *4to*, There is a difference with respect to the proof of the *casus amissionis* betwixt writs which by their nature are intended to be retired, such as bonds of borrowed money, and deeds which by their nature are intended to be permanent and to remain in the possession of the grantees, such as dispositions of lands, &c. ; in these so strict a proof of a special *casus amissionis* is not required as in the first, and the reason is obvious.