

No. 63. ciently proved." To which, upon advising a petition and answers, the Court adhered.

Lord Ordinary, *Pitfour*.
Clerk, *Gibson*.

For Nimmos, *Sol. H. Dundas*.
For Sinclair, *Ilay Campbell*.

R. H.

Fac. Coll. No. 98. p. 292.

1780. February 22.

WALTER CAMPBELL *against* The CREDITORS of The YORK-BUILDINGS COMPANY.

No. 64.

Special *casus amissionis* requisite in proving the tenor of bills of exchange.

Mr. Campbell insisted in an action for proving the tenor of a bill of exchange for £.200, drawn by Bishop, one of the York-Buildings Company's overseers in Scotland, upon Mildmay, cashier to the Company. That such a bill once existed, did not admit of doubt, nor was there any evidence of its having been retired; but the pursuer not being able to condescend on any circumstance accounting for its disappearance, it was

Pleaded for the Creditors of the Company: In all actions of this kind, a special *casus amissionis* must be established by the pursuer; otherwise, documents might be reared up of a nature and appearance totally different from those which are said to be lost; Bankton, B. 1. Tit. 24. § 12. & B. 4. Tit. 29. § 2.; Erskine, B. 4. Tit. 1. § 54.; February 19, 1679, Swinton *contra* The Laird of Tofts, *voce* WRIT. This is especially requisite in the case of bills, where partial payments are generally marked on the back of the voucher of debt, and where the debtor, relying for his acquittance on the delivery or cancellation of the bill itself, does not think it necessary to demand a formal discharge.

The Lords found, "That the pursuer must condescend farther before he is allowed a proof of the tenor and *casus amissionis* of the bill libelled."

Act. *Ilay Campbell, Maclaurin*. Alt. *Elphinston*. Clerk, *Campbell*.

C.

Fac. Coll. No. 106. p. 200.

1781. June 29. DUKE of ARGYLE, *against* SIR ALLAN M'LEAN.

No. 65.

Proving the tenor of a decree of Court.

The family of Argyle had, for more than a century, been in possession of considerable estates formerly belonging to the M'Leans of Dowart, when, in 1717, Sir Allan M'Lean made an attempt to recover the antient patrimony of his house, by a process of reduction and improbation, raised in the name of M'Lean of Drimnin, as his trustee.

In this process, the Duke of Argyle produced writs, and proved possession sufficient to exclude the pursuer's title, as to most of the estates in question; but was found obliged to satisfy the production, as to certain parts of the lands of Broloss, then possessed by Sir Allan, under lease from his Grace.