

1685. *March.* ALEXANDER KINNIER *against* ALISON KELLIE.

No. 40.

For proving the tenor of two charters, the Lords sustained two sasines, wherein these charters were ingrossed *ad longum*, and some decrees bearing production of the charters, sufficient adminicles; and found the tenor proved thereby without witnesses, the writs to be made being very old.

Harcarse, No. 818. p. 228.

1686. *January.* JOHN BALLENDEN *against* ARCHIBALD LAW.

No. 41.
Where the
precise date
is of import-
ance.

John Adam, donatar to a bastardy, having granted back-bond in trust to William Brown, who assigned the same to Archibald Law; and one Ballenden having thereafter inhibited Brown, Law destroyed the assignation and back-bond, and took a right to the gift immediately from Adam; and thereafter, Ballenden arrested in Kellie's hands, who was debtor to the bastard, and raised a forth-coming.

Alleged for Archibald Law: That his assignation was prior to the arrestment.

Answered for the pursuer: That he offered to prove, by Law's oath, that the gift had been to the behoof of Brown, whom he had inhibited prior to Law's right from Adam.

Replied for Archibald Law: That he offered to prove he had the assignation above mentioned prior to the inhibition, and the assignation being cancelled, as appeared by the writ itself, which yet had the witnesses' subscriptions uncanceled, he craved to be allowed to prove the tenor.

Duplied: Though the proving of the tenor of writs lost, or destroyed without design, be sustained, the tenor of a cancelled assignation cannot be allowed to be made up.

The Lords sustained a proving of the tenor only *ad hunc effectum* to prove the date, in case there was no fraud in the cancelling.

Thereafter it was alleged for Ballenden: That the destroying of Adam's back-bond to Brown was an evident design to conceal it from Brown's creditors; *2do*, The allowing of such tenors to be proved would be a dangerous preparative, and might be a mean to defeat the security of the lieges by inhibitions, against which prior bonds might be pretended.

The Lords considering that the preparative might be dangerous, and that there appeared some fraud in the conveyance, they refused to sustain the tenor, and preferred Ballenden the arrester.

Harcarse, No. 819. p. 228.