

1669. July 24.

JAMES JOHNSTON of Sheins *against* MARY ARNOT.

In a summons for proving the tenor of an assignation to a comprising made by Mr. Samuel Johnston to Sir Alexander Fowlis of Colingtoun, of the lands of Haprig and others, against John Arnot, there being produced sufficient adminicles, viz. a back-bond granted by Colingtoun, with the disposition made in favours of Mr. Samuel, conform to the back-bond, wherein the assignation, with the date thereof, were particularly set down, it was debated amongst the Lords, if there was a necessity of the probation of the tenor, by witnesses who had seen the same; and, notwithstanding thereof, they did discern, and found the tenor proved, conform to the back-bond and disposition, in respect it was *in re antiqua*, and that the assignation was lost through the troubles of the time, and that Colingtoun's son and his brother, did declare, upon oath, that they knew certainly that Collingtoun had right by assignation; and, in respect that his name was but borrowed, did grant the back-bond and disposition whereupon Mr. Samuel was infeft under the Great Seal.

Gasford MS. p. 76.

No. 21.

The tenor of an assignation found sufficiently proved by the following adminicles; a back-bond granted by the assigner to the cedent, in which it was fully narrated; and a comprising following upon it.

1672. December 12. BRODIE of Lethem *against* DOUGLAS of Muldarg.

To prove the tenor of a bond granted for the price of victual, which was alleged to be lost among the pursuer's other writs when his house was burnt, the following adminicles being produced, *1mo*, An instrument of requisition of the victual referring to the bond; *2do*, Letters of horning upon the bond; *3tio*, A suspension of the charge upon the horning; which the pursuer insisted were *per se* sufficient adminicles to found a decree of tenor, without necessity of further proof;—it was objected, That the adminicles libelled might be sufficient to infer a relevancy of the libel, but by no means to be a full proof of the tenor; for this, among many other reasons, that a tenor cannot be proved, unless it be instructed who were the writer and witnesses. The Lords sustained the libel relevant upon these adminicles, but found they were not sufficient instruction of the tenor; and therefore admitted the same to be proved by the witnesses instrumentary, or others.

Fal. Dic. v. 2. p. 447.

* * This case is No. 8. p. 2172. *voce* CHARGE TO ENTER HEIR.