

1680. February 24. M'LURG *contra* BLACKWOOD.

IN a competition betwixt M'Lurg, assignee by Boyd of Pinkell, and Blackwood, his creditor arrefter; it was *alleged* for the assignee, That his assignation and intimation were before the arrestment.—It was *answered* for the arrefter, That the assignation was never the assignee's delivered evident, but was retained in Pinkell, the common debtor, his hand; and that the intimation was null, being made by a person who was no notary, but known to be flagitious.—It was *replied*, That intimation supplies delivery, after which the assignee hath interest to force the cedent to exhibit and deliver; and though he should cancel the assignation, the assignee may prove the tenor of it, using the intimation as an admittance, as was found in the case of Dick of Grange and Sir Laurance Oliphant*; yea in the case of Mr John Bain against Campbell †, it was found, That a debtor taking a bond in name of his creditor, though not delivered, that creditor had right to found upon it, and to force the debtor to deliver. And as to the notary's not being authorised, it was offered to be proven he was holden and repute notary, which is all the leiges can know; and though he were flagitious, the intimation may be redargued by the witnesses insert.

THE LORDS found the assignation being intimate before the arrestment, though not delivered, was preferable, and that the notary's being holden and repute such was sufficient.

Stair, v. 2. p. 762.

* * * An assignation in trust being intimated, a conveyance to the cedent's creditor need not be intimated *de novo*, Stirling against Smith, 5th December 1712, Forbes p. 641. *voce* TRUST.

Formalities of an Instrument of Intimation.

1577. January 24. BRUCE *against* SMITH.

THE Laird of Clackmannan took to prove the tenor of ane reversion against one Sampson Smith, of the land of Rathie; ought not to be heard to prove the same, because the reversion was discharged; he was made assignee to the reversion to his umquhil grand-fire against David Bruce of Clackmannan; the which assignation was made duly intimate to the said Smith; and for that effect produced an instrument with the said assignation, bearing, that sick ane man *et procurator et procuratoris nomine*, made intimation of sick an assignation to the said Smith; but it bore not *de cujus procuratoris mandato mihi liquide constabat*:—Therefore it was *alleged* by Smith, That this instrument was not sufficient to verify the said intimation to the assignee without the procuratory was produced that gave the power to make the said intimation, *aut saltem in clausula illa, de cujus procuratoris mandato mihi liquide constabat*.—To this was *answered*, That always the instrument bore that intimation was made, and it being *facto tam antiquo*,

* Dirleton, p. 215. *voce* IMPLIED OBLIGATION.

† See General List of Names.

No 42.

Assignation intimated, though not delivered, is effectual.

No 43.

An instrument of intimation of an assignation was rejected, because it neither bore the clause, *de cujus procuratoris mandato mihi liquide constabat*; nor, (which would have supplied it,) was there any procuratory extant, tho' at the distance of 25 or 26 years.

No 43.

twenty-five or twenty-six years syne, the noblemen of Scotland use not to keep the procuratories or mandates frae the time the turn be done; for the procuratories are made in paper, and the readier to lose and consume.—THE LORDS found by interlocutor, the intimation made by the instrument not sufficient, because the procuratory was not produced, *licet bona pars dominorum fuit in contraria sententia ratione predicta mota, et fuit factum antiquum*, and procuratories and mandates that are made in paper, use not to be kept so long in paper.

Fol. Dic. v. 1. p. 63. Colvil, MS. p. 42.

1558. July 31.

The QUEEN and the ABBOT of COUPAR, donatour, *against* The LAIRD of DUFFUS.

No 44.

Intimations of rights and titles must be by delivering a copy, and taking instruments in the personal presence. Verbal intimation would not be sufficient.

GIF ony persoun havand be gift of the superiour, the marriage of ony air, he sould lauchfullie intimat the famin to him, *viz.* he, or his procurator, sould come to the personal presence of the air, and ather reid his gift, or give and deliver him ane copie thairof, and tak instrument in the handis of ane notar thairupon; for, gif he or his procurator pass to the personall presence of the heritour, and expone to him be word, that he hes the gift of the marriage disponit to him be the superiour, or that he is cessioner and assignay lauchfullie constitute be the donatour thairof, and makis intimatioun to him of the famin; the famin verbal intimatioun maid *nuda voce*, is not sufficient; and thairfoir, albeit the air marie without consent of the said donatour, or his assignay, he sould not be compellit to pay to him the doubill avail of the marriage, bot the single avail allendarlie. And the like to be observit in all intimatiouns of ony uther rights, evidentis, or titillis.

Balfour, p. 169.

1623. July 3.

SCOT *against* L. DRUMLANRIG.

No 45.

In a competition betwixt an arrester and an assignee, the assignee's intimation was found null, because the same person who was procurator also acted as notary.

IN a double pointing, Scot *contra* L. Drumlanrig, wherein the two parties contending for the preference of a sum, acclaimed by both the parties, from a debtor of their common debtors: The L. Drumlanrig seeking the same as arrested, for satisfaction of some debt owing to him by their common debtor, and the other seeking the same as assignee made thereto; which assignation was both made and intimate before the L. Drumlanrig's arrestment: Likeas both the parties had obtained sentences upon both their rights foresaid, against the complainer:—THE LORDS preferred Drumlanrig, notwithstanding of the other parties prior assignation and intimation, because the intimation was found null, seeing it was made by a procurator for the assignee; which procurator was notary to the same intimation, made by himself as procurator; and the Lords found, he could not be both