

1632. July 21.

HUME against HUME.

No 47.

Intimation at the market-crofs of the head burgh, or even at the dwelling-houfe, if not personally, does not put the party in *mala fide* to
 235.

THE deceased Samuel Hume being decerned by a decreet-arbitral, to pay to his mother yearly, a yearly duty of victual, whereto she having made one her assignee; which assignation being intimate at the market-crofs of the head burgh of the sheriffdom, where the party dwelt, and within the which the lands lay, for which the victual should be paid: The assignee desiring this decreet-arbitral, the same being registrate, to be transferred in him *active*, and in the heir of Samuel Hume, party obliged to pay the said victual, *passive*, who compeared, and *alleged*, That the mother to whom the said victual was payable, had discharged to the said Samuel that decreet, and granted her satisfied of that clause concerning the payment of the victual, and had exonerated him thereof; and which, albeit it was confessed to be done after the assignation and intimation thereof, yet the said Samuel might lawfully do it, notwithstanding thereof, seeing the said intimation was never lawfully made to him; and the assignation and intimation preceding, made at the market-crofs, could not put him *in mala fide*, to pay his own just creditrix, and to take exoneration from her. This allegiance was found relevant, notwithstanding of the preceding assignation and intimation, which the debtor was not holden to know, not being made to himself: For, if the intimation had been made at the debtor's dwelling-houfe, it might have remained as obscure to him and unknown, as the intimation made at the market-crofs; therefore it would be considered, if such intimations at parties dwelling houfes, be sufficient against them, or else they must be made personally to them. (See *Bona Fide* payment.)

Act. Mowat & Hepburn.

Alt. Craig.

Clerk, Gibson.

Durie, p. 649.

1681. January 5.

CHEISLY against CHEISLY.

No 48.

Intimations were not in use to be inserted in protocols.

JOHN CHEISLY pursues Mr William Cheisly to deliver him an extract of instruments of intimation of several assignations, made by his father to the pursuer, and for that effect to produce his protocol, that by inspection thereof it might appear, whether these instruments of intimation were therein.—The defender *alleged*, That instruments of intimation are never insert in protocols *de consuetudine*, and that notaries were not obliged, upon such pretences, to bring in their protocols to Edinburgh for inspection, which would breed them an intolerable trouble.—The pursuer *answered*, That all the notaries at their admission gave bonds to keep protocols of all instruments of sale, reversions, and other instruments of importance; and intimations were of importance; and that protocols were books for public interest, and no man should be refused inspection