

1674. December 11. HOME and ELPHINSTON *against* MURRAY of Stenhope.

IN a competition betwixt an assignee and an arrester, it was *alleged*, That the assignee should be preferred, because the assignation was anterior to the arrestment; and, though it was not intimate, yet the equivalent was done, in so far as, the debtor being desired to make payment to the assignee, and shewing his assignation, did promise to pay the same; which, upon the matter, was like a bond of corroboration, which certainly would prefer the assignee, notwithstanding he had not intimate his assignation.

THE LORDS found, That if the said promise were verified by writ, it should exclude the arrester; but that it could not be proven by the debtor's oath, in prejudice of the arrester: And even as to the debtor, the said promise could not bind him, being made in contemplation of a right supposed to be in the person of the assignee; which being found not to be a valid right, there were no reason that the debtor should pay twice.

And whereas it was pretended, That if the debtor had not accepted the debt, and promised payment, the assignee would have done diligence, so that he would have been preferable to the arrester:—THE LORDS thought, that *sibi imputet* that he had not perfected his right, as was found before in the case of Pitfoddell's *contra* Donaldson.

Reporter, *Forret*.

Clerk, *Gibson*.

*Fol. Dic. v. 1. p. 64. Dirleton, No 201. p. 89.*

No 66.  
It was alleged that the debtor had promised payment to the assignee. Found that this promise, if proven *scripto*, but not otherwise, would be equivalent to intimation.

1679. November 29.

MR JOHN BAIN of Pitcairley *against* CUNNINGHAM McMILLAN, &c.

FOUND the writing a letter to the debtor not a sufficient intimation of an assignation.

*Fol. Dic. v. 1. p. 64. Fountainball, MS.*

No 67.

1681. December. OGILVIE *against* OGILVIE.

THE Lady Airly having disposed her liferent to Sir David Ogilvie her son, and he thereupon having taken out an decret against the tenants in an Baron Court; which being suspended upon double pouding, there was compearance made for Thomas Ogilvie of Logie, who craved to be preferred upon the ground, That he having pursued the Lady for a sum due by her, he did arrest the rents in the tenants hands upon the dependence; which having taken effect by a sentence, he had raised a summons to make arrested goods forthcoming. *Answered* for Sir

No 68.  
A disposition to a Lady's jointure, found sufficiently intimated, so as to exclude an arrester, that either the tenants were cited at the