No 72.

compleated, without a formal intimation, No 63. p. 860. where an affignee having writ a letter to the cedent, and having got his anfwer, was preferred to an arrefter; and 11th December 1674, Home and Elphingfton *contra* Murray, No 66. p. 863. a promife of payment was found fufficient.

It was *quadruplied:* An intimation cannot be fupplied without a document in writ, or at leaft a promife of payment upon a communing.

'THE LORDS found a communing did not fupply the want of intimation, and no promife of payment being alleged, the fufpender was *in bona fide* to render the matter litigious.'

Fol. Dic. v. 1. *p.* 64. *Dalrymple*, *No* 179. *p.* 246.

1729. *July* 30.

EARL of ABERDEEN and CREDITORS of MERCHISTON, Competing.

No 73.
Found, that private notification made to a factor, which he entered in his books, was not equivalent to intimation to the debtor. But this reverfed on appeal.

IN a competition betwixt a prior affignee and pofterior arrefters of the fame fum, the affignee *pleaded* preference upon a private notification given to the debtor's factor, who had accordingly, by a memorandum in his compt-book, mentioned the faid affignation; which memorandum was urged equivalent to a formal intimation, as inferring the debtors knowledge of the conveyance.—It was *contended* on the other hand by the arrefters, 1*mo*, That in point of relevancy nothing which is extrajudicial can fupply an intimation, but what implies the debtor's undertaking an obligation to the affignee. 2*do*, In point of proof, That in competition the debtor's undertaking fuch obligation can only be proved by a formal writ, or by the competing arrefter's oath of knowledge. 3*tio*, An intimation made to a factor was never reckoned equivalent as if made to the debtor himfelf.——THE LORDS found, That the private notification made to the factor, and entered in his book, is not equivalent to an intimation to the debtor; and therefore preferred the arrefters.

Fol. Dic. v. 1. *p.* 64.

*** In this cafe the LORDS had found, on 2d June 1729, 'The qualifications of the notification, made to Dackmont, (the factor) and marked in his book, relevant, and proven to be equivalent to an intimation to the debtors; and therefore preferred the Earl of Aberdeen, the affignee.'

By a fubfequent interlocutor, of 30th July 1729, they 'found the qualifications of the notification made to Mr Hamilton, (the factor) and marked in his book, and other qualifications pleaded upon by the affignee, were not equivalent to an intimation to the debtors; and therefore preferred the creditors-arrefters.'

The cafe was appealed; and the following is an extract from the Journals of the Houfe of Lords, of their decifion.

No 73. 1730. *April* 9.

AFTER hearing counsel upon the petition and appeal of William, Earl of Aberdeen, complaining of a sentence or decree of the Court of Session in Scotland, of the 30th of July 1729, made on the behalf of Alison Callender, widow of Mr John Buchanan, James Haliburton, Henry Guild, Andrew Dunnet, and William, Earl of March, and praying, 'That the same may be reversed, and that the decree of the said Court of the 2d of the said July may be affirmed.' As also upon the joint answer of the several persons above-mentioned, put into the said appeal; and due consideration had of what was offered on either side in this cause,

It is ordered and adjudged by the Lords Spiritual and Temporal in Parliament assembled, That the said sentence or decree of the 30th of July 1729, be, and is hereby reversed; and that the said decree of the 2d of the same month be, and is hereby revived and affirmed: And it is hereby further ordered, That the L. 1000 secured by the bond, in the appeal mentioned, and interest for the same from Martinmas 1725, be paid to the appellant.

For Earl of Aberdeen, Appellant, *C. Talbot*, *R. Dundas*. For Earl of March, Alison Callender, &c. Respondents, *P. Yorke*, *D. Forbes*, *C. Areskine*.

Journals of the House of Lords, *p.* 530.

1751. *June* 12.

GEORGE TURNBULL of Houndwood, *against* SIR JOHN STEWART of Allanbank, and MR ARCHIBALD INGLIS, Advocate.

No 74.
An assignation was found sufficiently intimated to the debtor; the assignation being contained in a deed, in which the debtor was a party.

SIR ARCHIBALD COCKBURN of Langton having become bankrupt upward of 50 years ago, his estate was put under sequestration, and a ranking ensued of his creditors, which was carried on in a slovenly manner, and the lands were never brought to sale. His son, the late Sir Alexander, while a young man, acquired considerable funds of his own, entered heir *cum beneficio*, and made it his business to pick up as many preferable debts as he could purchase at easy rates, and to take the conveyances in his son Archibald's name; for, in those days, it was reckoned hazardous to take them in his own name, as he was heir *cum beneficio*. Among other debts, there was one of L. 1000 Sterling due to John Wardlaw, by heritable bond and infeftment, which Sir Alexander acquired, and took the conveyance as usual in the name of his son Archibald.

In the latter end of his life, Sir Alexander came to decline in his circumstances; and as he had laid out his whole stock upon purchasing preferable debts, he had no fund for satisfying his proper creditors, but by assigning to them debts, or parcels of debts purchased by him. Being pressed about the year 1723, by the Society for Propagating Christian Knowledge, he assigned to that Society several preferable debts upon the estate of Langton, settled as aforesaid in his