

No 53. bond, the production of the assignation in the multiplepounding, which was equivalent to intimation, gave Mr Gordon a preferable right to either of these parties. They consequently had no occasion to determine as to the legality of the intimation to Mr Dundas.

Neither had they occasion to decide how far the renewal of the bills operated as a *novatio debiti*; a great majority of the Judges being clear, that admitting the renewed bills to be a debt contracted subsequent to the assignation, yet as the assignation was *ex facie* absolute, and as the bond had not been attached by any of Dr Dougal's creditors, before the renewal of these bills, Mr Gordon was not bound to reconvey it till they were paid.

The Court, (11th June 1794.) 'in respect the assignation founded on by the petitioner (Mr Gordon) is absolute in favour of Mr Gordon, preferred him for the payment of his debt upon the fund *in medio*.'

And, on advising a reclaiming petition for Mrs Dougal, with answers, &c. the LORDS adhered. See COMPENSATION, RETENTION. See INNOVATION. See PROOF.

Lord Ordinary, *Craig*.

Act. Dean of Faculty Erskine, Tait.

Alt. Solicitor-General Blair, Mat. Ross, John Clerk.

Clerk, Gordon.

R. Davidson.

Fac. Col. No 134. p. 439.

Intimation by what equivalents suppliable.

1586. *June.* MACKALZEAN *against* MACKALZEAN.

No 54. WHERE intimation is necessary as a solemnity, the party concerned, though inserted as a witness, in an instrument of intimation, was found thereby not to be put in *mala fide*, but only by a formal intimation. (See The conclusion of Haddington's report of No 56. p. 855.)

*Colvill, MS.**

See Haddington, No 2075. Graham against Livingston, *vocce* PUBLIC OFFICER, where the party was made witness to an assignation.

1622. *March 22.* ANTOYNE WHYTE *against* NEISH.

No 55. IN an action betwixt Antoyne Whyte writer, *contra* Neish, for registration of a bond; the defender *alleging*, That he had paid the cedent before intimation of the assignation:—THE LORDS found, That the summons of registration being lawfully execute against the defender, by an officer of arms, before the payment made to the assignee, was a lawful intimation.

Haddington, No 2621.

* See note under page 840.