

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.