

No 68.
 assignee's instance, to pay to him, or the disposition was produced in the Baron Court, and intimated to the tenants, although the decree given on it, was afterwards turned into a libel.

David, That he ought to be preferred, because his mother had granted a disposition to him of her liferent, for onerous causes, long prior to Logie's arrestment, which was produced and intimate to the tenants when the decret was obtained before the Baron Court; and accordingly they had actually made payment to him of their rents. *Replied*, That the decret being turned in a libel upon several informalities, it was null *quoad omnes effectus*; and so could not be sustained to have the effect of an intimation of Sir David's disposition; and the tenants were *in mala fide* to make payment to Sir David, after Logie's arrestment. *Duplicated*, That albeit the decret was turned in a libel, yet the disposition being produced in Court, it was a sufficient intimation to the tenants; and, therefore, they did warrantably make payment of their rents to Sir David.—THE LORDS preferred Sir David Ogilvie upon his disposition, as being sufficiently intimate, he proving either the tenants were cited at his instance, to make payment to him of their rents, or that the disposition was produced in the Baron Court, and intimate to the tenants.

Fol. Dic. v. 1. p. 65. Sir P. Home, MS. v. 1. No 23.

1682. *March.*

ALEXANDER JOHNSTONE *against* JOHN SPEVIN.

No 69.
 A discharge which contained a narrative, mentioning an assignation, was found, in a competition, not equivalent to intimation.

ONE having assigned a bond with the bygone annualrents, and afterwards granted a discharge, by two notaries, of some of these annualrents that had been truly paid before the assignation, though not discharged before intimation of the assignation, which was subscribed by one notary, at the date, and by another, some months after the discharge;

It was *alleged* for the assignee, in a competition, That, though his assignation be not formally intimated, the narration of the assignation in the discharge is equivalent to an intimation. *2do*, The discharge acknowledging the assignation, though it had but one notary, as it had two, is equivalent to the cedent's oath, that he gave command to the notary, which supplies the want of the other notary; and, being *in gremio* of the discharge, is as good as if it had been acknowledged in writ before the granting of the discharge.

Answered: Intimation in a competition of creditors must be formal by instrument, which the narrative of the discharge is not equivalent to; nor does the narration of the assignation supply the legal solemnities. *2do*, The debtor, who received the discharge, being truly creditor for an onerous cause, upon the warrantice thereof, would have got the cedent's oath, the assignation being for love and favour; and the assignation is reducible on the act of Parliament 1621, as *in fraudem creditoris*.

THE LORDS found the assignation was not validly intimate, and preferred the debtor on that head, without giving answer to the other points.

Harcarse, No 103. p. 20.