FROM SCOTLAND.

REDFEARN, Esquire—*Appellant.*
FERRIER, SOMERVAIL, and others—*Respondents.*

WHETHER a latent equity can prevail against an intimated assignation.

May 26, 1813.

TRUST AND ASSIGNATION.

LORD ELDON. This is a most important case, especially as it concerns the interests of the commercial part of the community in both kingdoms.

David Steuart, merchant in Leith, was ostensible owner of a share in the Edingburgh Glass-house Company, which is not a corporate, but a private society. By the regulations of this company, their shares could be held by individuals only, and therefore the share in question stood in the company's books in the name of Steuart individually, though purchased by him for the house of "Allan, Steuart, and Company," in which he was a partner. That partnership was dissolved, and another formed under the firm of "David Steuart and Company," of which Steuart and Somervail were the only partners. The share in question remained with this new company, who purchased an additional portion of glass-house stock; thereby raising the amount of the share to 2000*l.* This last partnership was dissolved in 1796, David Steuart having become bankrupt.

The share had always remained in the name of David Steuart, without any intimation having ever been given to the Glass-house Company that Somer-

vail or any other person had any concern with it. In August, 1797, Steuart borrowed 1400*l.* from the Appellant, and to secure the re-payment, assigned to him this share; "*surrogating and substituting* "*Redfearn in security as aforesaid, in his full right* "*and place in the premises, with power to sell the* "*share at any time after the term of payment, upon* "*giving two months notice to Steuart, the cedent.*

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Share in the Edinburgh Glass-house Company assigned to the Appellant.

Somervail had heard of the intention of Steuart to assign the stock, and wrote to him on the subject, but without effect. The assignation was intimated in the proper manner to the Glass-house Company the day after it was made, but it did not appear that any entry was, in consequence, made in their books. It was admitted, that in this transaction Redfearn acted *optima fide*; that he actually advanced the money, and had no notice that any other person than Steuart had any concern with the share in question.

Assignation duly intimated.

After this transaction had been completed, Mr. Somervail insisted upon his alleged preferable claim to the whole of the share, as being the property of the partnership, and subject to its debts. In the year 1800, Mr. Archibald Geddes, the manager of the Glass-house Company, raised an action of multiple poinding (corresponding to the English Bill of Interpleader) to have the right ascertained, when the bond and assignation, and instrument evidencing the intimation, were produced. On the 29th June, 1801, the Lord Ordinary (Craig) pronounced an interlocutor in favour of the Appellant. Against this interlocutor, a representation was made on the part of Mr. Somervail, on which parties were ap-

Somervail claims in preference to the assignee, upon the ground of the secret trust.

The Lord Ordinary pronounced in favour of the assignee.

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pointed to be heard; but Somervail did not appear, and suffered decree to go in absence. Somervail however kept the matter open by two or three short representations, and at length brought an action of reduction for setting aside the assignation; and after his death, the process was carried on by his representatives. The two actions were conjoined and heard together before the Lord Ordinary (Craig), who on the 11th January, 1803, again pronounced in favour of the Appellant. This interlocutor having been repeatedly adhered to by the Lord Ordinary, the pursuers preferred their petition to the Court, who having advised the same with answers, pronounced against the Appellant; and upon a petition by the Appellant to alter this interlocutor, they adhered to it, and remitted to the Lord Ordinary to proceed accordingly. The Lord Ordinary then pronounced in favour of the representatives of Somervail. From these last interlocutors, Redfearn appealed to the Lords.

The Court of Session decides against the assignee.

Jan. 20, 1807.

Sir S. Romilly and *Mr. Thomson* (for the Appellant). The question was a most important one, especially to the commercial part of the community. Their Lordships must of course decide according to law; but if this decision of the Court below should be allowed to stand, the greatest possible opening would be afforded to fraud and deception. A person appearing to all the world as the only owner of a transferrable subject, after having disposed of it for valuable consideration to a purchaser who could not by any diligence discover the fraud, had only to allege a secret trust to defeat the whole transaction.

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By the law of Scotland, the assignation, though valid in the hands of the assignee as against the cedent (assignor), from the moment it took place, was not valid as against third persons until intimation had been given to the Company. When this intimation was given, the share became the complete legal property of the purchaser, and was valid not only against creditors, but also against any prior Assignee, who had given no intimation.

Their Lordships would find from the proceedings, that Somervail himself had no doubt whatever but Steuart had full power to dispose of the share; for he knew of the intention a considerable time before it was executed, and might have prevented it by applying to the Glass-house Company if he thought he had any right to do so. He had written to Mr. Steuart, stating that he intended so to apply, but did not do it, because he was sensible that Steuart had the full power of disposition. It was argued on the other side, that no assignment could be made of a personal right (*chose* in action), except subject to every equitable demand on the property; and that the Appellant could only take the share in question subject to the preferable claim of Somervail, and they cited several text writers and cases in support of this doctrine. But they had made a total mistake in two points: First, this was not a personal right or mere *chose* in action, but was assignable like the shares of any great joint stock company, such as the Bank. Bank stock was indeed in some sense a *chose* in action; but it was as transferrable as any moveable by delivery. Secondly, if it were a *chose* in action, it would be subject only to the demands

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of the debtor in respect of it, but not to those of a third person. A bond assigned by the obligee is subject to the demands of the obligor upon it, but not to those of a third person. This rule was perfectly rational; the assignee might go to the debtor and ascertain what claims he might have upon the matter assigned; but it was impossible he could use the same precaution in regard to all mankind. The passages from the text writers, and the cases cited by them, referred entirely to the demands of a debtor in respect of a security so assigned by his creditor. By the common law of Scotland, the creditor was bound to give notice to the debtor of such an assignment. It was a solemnity necessary to complete the validity of the transaction.

They had argued on the other side in the Court below, that this share was a trust for the partnership; but if any trust at all, it was a secret trust, and the question was, whether their secret trust could prevail against the Appellant's open claim. They ought to have intimated the trust to the Glass-house Company, which in this case was the debtor, in order to give it validity. This they had not done. The partnership was dissolved too at the time of the assignation, and even if Redfearn had had notice of the alleged secret trust before, he would have been justified in considering the share as belonging to David Steuart alone, after the dissolution of the partnership. But suppose the partnership had not been dissolved, and Redfearn had notice of the trust (which he had not in fact), still the assignation of this share would have been good against the partners, as it was made by one of themselves for valuable consideration, and there was no

pretence for saying that the transaction was vitiated by fraud. By the Law of England one partner might no doubt bind the firm under the above circumstances; and he cited Erskine, B. 3. T. 3. sect. 20., where it was stated as the Law of Scotland, that a partner so disposing of the partnership property was answerable to the other partners, but that the purchaser was secure.

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It was admitted that David Steuart appeared to be the sole owner of this share, and that he assigned over the security absolutely, for, by the Law of Scotland, after intimation the property was as completely transferred as a moveable by delivery. By the formal notice to the Company following the assignation, the cedent (assignor) was entirely denuded of the property. It was a remarkable feature in the Law of Scotland respecting matters of this kind, that though the cedent devested himself by assignation, yet, if the subsequent intimation was delayed, he might make another assignation, and if this was regularly intimated, it would prevail against the prior assignation where that solemnity had been neglected.

The right of a creditor might be qualified by a counter-claim, entering into the nature and essence of the obligation, as in the case of a bond creditor giving a back-bond. The obligation on the debtor was *minus* the counter-claim on the creditor. There was another class of obligations of a different description. Of that kind was the claim of a prior assignee without intimation, which was good against the cedent, but not against a subsequent assignee who had completed his right. Of this description

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too, were the various claims of creditors, who had not used the proper diligence, and such, in the present case, was the claim of the partnership of Steuart and Company, a claim which had not been intimated, and was of no validity against an assignation which had been intimated.

Mr. Leach (for the Respondents). It was admitted that the share in question was the property of David Steuart and Company; and though the partnership had been dissolved, it was the property of the partnership until the whole of its debts were paid. Suppose it were a case of English law.—The equitable right of the Company stood in the name of Steuart alone, and he attempted to assign it for his own purposes. What would be the effect, if Bank, South Sea, or any other stock were assigned in this way? If it rested in mere assignment, without transfer in the books, what would be the right of the assignee? The assignor would be a trustee for the assignee, to execute for him all the beneficial interests that he could part with. But suppose the assignor had no beneficial interest, the assignee in that case would be merely a second *cestui que trust*, with an interest subject to the prior equitable claim.—Here then was a prior equity in the Respondent, Somervail; and the Appellant could only demand what should remain to Steuart after winding up the partnership concern.

The law of Scotland was originally the same with that of England, with respect to the assignee of a bond. The assignee was *procurator in rem suam*, and could only sue upon the bond in the name of

the assignor, or principal. Now, however, by the law of Scotland, the assignee might sue in his own name; still, however, nothing was transferred but a right of action, and the liberty to sue in his own name instead of that of the principal. But they contended on the other side that the absolute property was transferred by their assignment, as much as that of moveables by the delivery, or land by the conveyance: and that they held it in the same way against all secret trusts. This was the question to be examined.

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Chancellor. By what suit could Somervail have enforced his claim against his partner Steuart?

Mr. Leach. In England it must have been by bill in equity, as one partner could not bring an action against another. The Court of Session being a compound court of both law and equity must have some mode of settling the rights of partners, as against each other. What that form was he could not then state.

Chancellor. The Court of Session had completely reduced the deed, considering it as an absolute legal transfer. At any rate it ought not to have been entirely reduced, for even if the view taken of it by the Respondent should be correct, Mr. Redfearn had, in respect of it, a claim upon what might remain to Steuart after closing the partnership accounts.

Mr. Leach. They had no objection, on the part of the Respondent, to a declaration that it should only be reduced *pro tanto*. All they contended for was, that the share in question ought to be subject to their prior claim as far as that claim went.

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Lord Redesdale. The question was, whether the intimated assignation did not extend to a complete tranfer; and whether the security was not therefore the same as if a complete sale for valuable consideration had taken place. The action went to the total reduction of the bond. Could they have succeeded in the multiple-poinding without the reduction.

Mr. Leach. The Scotch Court thought not: and, here the bill of interpleader did not decide the right of the parties; but only put the right in a train of being decided by some other process.

Chancellor. It appeared by the articles of partnership of the Glass-house Company, that the partnership of Steuart and Company could not be owners on the books. If, then, the Glass-house Company made it a part of their contract that their shares should be held only by ostensible individuals, and that none of these secret trusts should be set up, would not the Glass-house Company lose the effect of that provision if the individual could not absolutely assign?

Mr. Leach. No doubt but a company might make a provision that their shares should be held by individuals not only in name but in interest, as in the case of some of the Fire Companies here. But as he understood the articles of the Glass-house Company, the provision was merely that each share should stand in the name of an individual, without reference to the interest, any farther than that it should be represented on their books by an individual. It was not likely that trusts should be excluded, since, by such a regulation, the Company would deprive themselves of one obvious mode of

increasing their capital. It was alleged on the part of the Respondents, and not denied, that Steuart never pretended that he purchased for himself alone; and that the Glass-house Company were aware of the trust. But he submitted, that as the articles were not introduced into the pleadings, they ought not to be noticed at all.

Reverting to the course of his argument, he insisted that neither by the Law of England, nor that of Scotland, could a trustee assign a greater interest than he himself had; and he put this case: suppose he (Leach) gave a bond to A. an executor, for the repayment of money lent: that the money advanced by A. was not his own, but taken from the assets of his testator: that A. on the same day executed a back-bond, declaring the original bond to be held in trust for those claiming under the will: that A. then assigned for valuable consideration to B. delivered the bond, and intimated the fact to him (Leach), and that the *cestui que trusts* intimated to him not to pay; the claim of the *cestui que trusts* would be preferred, as they had a prior equity; and yet here the competition was not between B. and the debtor; it was nothing to the debtor to whom he paid; the competition was between B. and the *cestui que trusts*, and they might successfully contend that A. could assign no higher interest than he himself possessed.

The counsel for the Appellant cited neither text writers nor cases in support of their doctrine, that a prior equity could be defeated by a subsequent assignment. What they said was, that the passages from text writers, and the cases cited on the part of

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the Respondents, did not apply to the present case, but all related to questions between the debtor and creditor in the obligation. They admitted that, as to the Glass-house Company, the assignee here could only be in the same situation as the cedent (assignor), but said that his claim was complete as against the *cestui que trusts*. But in the case which he had put above, the competition was not between the original debtor and the assignee, but between the assignee and third persons, the *cestui que trusts*; and yet the claim of the *cestui que trusts* would be preferred by the Law of England, and also, as he contended, by the Law of Scotland. The Law of Scotland was, in this respect, the same as the Law of England, with the exception that by the Law of Scotland the assignee of a bond might sue in his own name. Redfearn was not a vendee; he only took the assignment as a security, and he was bound to give two months notice before he could sell the subject of the assignment. It was objected that this was a secret trust; but why should not a trust be constituted as well by writing in the partnership books as by deed?

In answer to a question from the Chancellor, Whether the partnership of Steuart and Company could have interfered in the sale of this share? he said that they could not, provided, by the articles of the Glass-house Company, all trusts of their shares had been excluded. But such trusts were not in fact excluded.

In regard to the effect of the intimation, they took it for granted on the other side, in arguing that point, that the share had at first belonged to Steuart individually, whereas the very reverse was the fact,

for Steuart was only a trustee for the partnership of Steuart and Company. Then they said that a partner might assign the partnership property, and that therefore the assignment was good; but he denied this. A partner could only assign in things assignable under the authority which he had to use the partnership name; and he must sign as for the Company. Steuart, however, signed merely as an individual, and could not bind the partnership.

Mr. Horner (for the Respondent). One fact had not yet been noticed, which was, that a balance due upon the price of the share stood in the Glass-house Company's books as the debt of Steuart and Company; which proved that the share was understood by the Glass-house Company to be in the firm of Steuart and Company. This fact had been stated in the Respondents' condescendance and had not been denied.

Sir S. Romilly. We had put them on the proof of that allegation, and it was never proved.

Mr. Horner. The Lord Ordinary, by his last interlocutor, had approved of the accomptant's report, and this was one of the facts stated in it. This proved what view the Glass-house Company had of the ownership of the property. The very form of the action, indeed, shewed that they conceived the share might be held by an individual in trust; for why have recourse to the action of multiple-poinding, if they had conceived that by their articles the share belonged solely to Steuart, and therefore to his assignee?

With respect to the reduction it was necessarily absolute. A partial reduction was unknown in the

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Law of Scotland. The ground of the reduction was, that Steuart had no right to assign. The reasons of reduction were sustained because David Steuart, the cedent, not being sole owner of the share in question, had been guilty of a breach of trust, in assigning that to which he had no proper title. A decree in multiple-poinding would not be sufficient; for although the Glass-house Company might safely pay under it to the partnership of David Steuart and Company, yet, as long as the assignation remained unreduced, they needed not have done so unless they chose. Steuart might be intitled to a balance out of the partnership fund, but no specific part of it could be his, till the concern was wound up; and consequently his assignee was not intitled to hold this assignation against the partnership.

The facts were agreed upon in the Court below, though they might be questioned here again, from the nature of the appeal. Some difference had now arisen concerning them. This was one of the many instances which proved of how much importance it was to the lieges in Scotland that they should have some institution similar to the trial by jury in civil cases, in order to find the facts, that their Lordships might not be under the necessity of sending causes back again on this ground.

As to the law of the case, that had been decided in their favour by eleven judges against two; by the Law of Scotland no heritable rights that required infeofment could pass without registration. As to moveable rights, a distinction was taken: where the *ipsum corpus* could be delivered, things passed by delivery; where the *corpus* could not be delivered, they passed by assignation; and intima-

tion was necessary to complete the transfer. An assignation was now therefore different in Scotland, from an assignment of a chose in action in England. In Scotland it was a direct transfer of the whole right, title, and interest of the cedent; and an assignation, indeed, had words of direct transfer, which were not to be found in an English assignment; for instance, the words "(surrogating and substituting) *in my full right and place in the premises.*" But the cedent could not substitute his assignee in more than his full right; nor pass to his assignee any greater interest than he himself possessed. Steuart, in the present case, was a mere trustee: and where a cedent appeared to be a mere trustee, either by a subsequent declaration, or from the result of facts and circumstances, (for the judges admitted that it made no difference whether the trust was constituted by deed or in any other way,) his assignee could take nothing except whatever beneficial interest belonged to the cedent.

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To prove this to be the law, the following authorities were cited for the Respondent: *Macartney v. Creditors of Macredie,* 26th Nov. 1799.—*Gray v. Ferguson,* 31st Jan. 1792: (these two cases were cited in illustration, from the state of the law respecting landed property, of the common law principle respecting the transmission of personal property.) Stair, b. 1. t. 10. sect. 16; and b. 4. t. 40. sect. 21.—Bankton, b. 4. t. 45. sect. 34—102. —Erskine, b. 3. t. 5. sect. 10.—*Keith v. Irvine,* Durie, 23d Dec. 1635.—*Scott v. Montgomerie,* Stair, 14th Jan. 1663, Dict. vol. 2. p. 64. *voce* Personal and Real.—*Street v. Hume and Bruntfield,*

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Stair, 9th June, 1669.—*Gordon v. Skeen and Crawford*, 6th July, 1676. Dict. vol. 2. p. 64.—*Mackenzie v. Watson and Stuart*, Stair, 5th Feb. 1678: *Monteith v. Douglas and Leckie*, Forbes and Fountainhall, 8th Nov. 1710, Erskine, b. 3. t. 6. sect. 19.—*Sir S. Baird v. Creditors of Hugh Murray*, Kaims, 4th Jan. 1744.—*Alison v. Fairholm and Malcolm*, Nov. 1765.—*Henderson v. Gibson*, 17th June, 1806.

Sir S. Romilly in reply. He had not before heard of the fact that the Glass-house Company considered Steuart as a trustee; but at any rate it was no where stated that the trust had been intimated to them, and therefore the fact was immaterial.—He still said that the authorities cited on the other side were entirely inapplicable. The Appellant was called upon to produce authorities in his favour, but he had no occasion to produce them; he had got a legal conveyance. When he heard them, on the other side, insisting upon the effect of an intimated assignation, he could hardly help thinking that they had forgot on which side they were counsel. That was exactly the Appellant's case. The Appellant had got a complete legal conveyance, by an intimated assignation. Their trust was not intimated; and their equitable claim could not prevail against a legal conveyance. The Glass-house Company might have the strongest reasons not to allow their shares to be held by partnerships. He remembered that the house of Sir Charles Raymond had lost several 100,000*l.*'s by some of their shares being held by a banking-house partnership which had failed, and the

house of Sir Charles Raymond was answerable for the debts of that partnership. As to the case being decided against the Appellant by eleven judges against two; he did not think that fact very material. Those who did not vote were to be taken as being on the side of the Appellant; having only refrained by a sort of judicial politeness, when they found that the majority was decidedly against them. But he had himself been so often concerned in cases where the unanimous decisions of the Court of Session had been reversed, that he was not apprehensive of suffering from any particular bias towards the opinion of the majority.

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Lord Redesdale. If this share had been the unqualified property of Steuart, no doubt it would have vested in Redfearn, against all other persons, according to the law of Scotland, in regard to this species of security. The extent of the reduction did not appear, whether it was partial or absolute; if absolute, it could not be supported, as Redfearn had a claim upon it, at least, as far as Steuart's interest extended. But however the reduction might be qualified, the interlocutors appealed from were not founded on any principles or decisions applicable to the case.

Tuesday, June 1, 1813. Judgment.

The decision of the Court below not founded on principles or reasons applicable to the case.

It was clear that, by the law of Scotland, an intimated assignation denuded the cedent of all right, in the subject of which the assignation was made; and as far as he could learn from what had been said at the bar, and from his own researches, there was no *dictum* nor authority of any description, to show that an intimated assignation for onerous cause

No *dictum* nor authority of any kind to shew that la-

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could be defeated by a latent equity. This case was therefore a new one, and had produced in the Court below a new decision, establishing a new principle, which their Lordships would probably not be very anxious to recognize, viz. that a latent equity, however unjust in its application, should defeat a *bonâ fide* assignee. No notice was here given of the secret trust, and the assignee might not be able by any diligence to ascertain the fact; it was totally different from an assignment by an executor of his testator's property, as that carried with it notice of his fiduciary character.

A latent equity could defeat an intimated assignation.

The authorities by which the Judges below thought themselves bound, had no application to the present case.

But the Judges below, however objectionable the decision in point of principle, appeared to have conceived, that they were bound by the authorities. The first text writer cited was Lord Stair, b. 1. Tit. 10. sect. 16. "The common rule of law is more rational, that the assignee *utitur jure auctoris*, and is no better case than the *cedent*, unless it be in the matter of probation, that the cedent's oath will not prove against him *nisi in jure litigioso*, and therefore *in personalibus* all exceptions against the cedent are competent against the assignee, *even compensation itself*." These last words of themselves showed, that Lord Stair was speaking of the defence that might be made against an assignee by the original debtor, and not by a third person. Then, after stating that personal exceptions, such as the *exceptio doli* in the Roman Law, are not effectual against singular successors in feudal rights, Lord Stair added, "But in personal rights, the fraud of authors is relevant against singular successors, though not partakers, nor conscious of the fraud when they purchased,

because assignees are but procurators, albeit *in rem suam*, and therefore they are in the same case with their cedents, except that their cedents' oaths after they were denuded cannot prejudge their assignees." This still related to the defence that might be made by the original debtor against the assignee, and not to the claim that might be set up against him by a third person. The passage from Bankton was of the same description:—"One who buys from another who is not the proprietor, must restore it to the owner, without recovering the price from him; and has only his recourse against the seller, whose condition he ought to have known. Our law secures persons by the records, as to lands and heritable rights constituted by infeofment, so that they may purchase the same safely; and one who purchases the species of moveables from the proprietor, is safe against all his personal contracts touching the same; the modern rule being that *mobilia non habent sequelem*, the commerce of moveables must by such means be obstructed: but as to personal rights one must follow the direction of this rule, and *inquire into the circumstances* of the person with whom he transacts about them. In those he comes only into his author's place, and can have no better right than he. *Utitur jure auctoris*, according to another of our rules, and even an onerous purchaser of such right is subject to all the objections and exceptions that lay against the right in his author's person, otherwise vouched than by his oath, which however is good against a lucrative acquirer of the same." And in an after paragraph of the same title, Lord Bankton said, "All ex-

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ceptions or objections, even such as are called merely personal in the civil law, that lie against the author in personal rights, as personal bonds, &c. are good against his assignees, whether for a valuable consideration or not." It was manifest that all this applied to the exceptions or counter claims which the original debtor might have against his creditor, and not to another title set up by a third party in competition with the claim of the assignee, which was the case here.

The whole of the cases cited in favour of the Respondent were answerable in the same way. One attempt had been made to draw an inference favourable to the Respondent from the law in regard to stolen goods, sold in market overt; but the vendor of stolen goods sold that which was not his, and to which he could make no title whatever; and the general principle was, that the original owner should have his property back again, subject to the protection which the law afforded to sales in market overt. But in the present case Steuart had a complete legal title, so that the argument had no application.

But the law was in principle against Somervail; the right of Somervail, even upon the Respondent's own statement of his case, amounted to this, that he might have compelled an assignment for the partnership use to a trustee. By the rules of the Glasshouse Company, he could not have compelled an assignment to the partnership directly, and therefore it must have been made to a common trustee. But by the law of Scotland, an actual assignation not intimated could not stand against a second assignation if duly intimated; and even an arrest-

ment excluded the assignee, unless his assignation had been intimated. So in a competition of assignees, the question turned upon the priority of intimation, and in competition of assignees and arresters, upon the priority of dates as between the arrestment and the intimation. Suppose two assignees,—the prior assignation is not intimated, the second is intimated; if the first had been intimated, the second would have been defeated; but for want of that intimation the second clearly had the preference, for his author could not controul his own assignation, and the debtor was bound by the intimation.

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This case had been compared to that of an executor assigning the debt of his testator; but the resemblance was not complete. From the face of such a transaction, every one must know the fiduciary character of the executor, and that the assignment was made in that character, unless he was a creditor and had a right to retain.

Somervail carrying his right to the utmost possible extent, could not be in a better condition than an assignee without intimation; and Redfearn, whose assignation was intimated, had clearly the preferable right. It was absurd then to say, that a person having the qualified right of a latent trust should be preferred to Redfearn, who had an intimated assignment. On these grounds it appeared to him that the interlocutors appealed from, must be reversed.

A person claiming under a latent equity cannot be in a better condition than an assignee without intimation.

Lord Eldon (Chancellor). The question arose respecting the right to a share in the Edinburgh

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Glass-house Company, purchased for a partnership, but in the name of an individual only, legally standing in the name of that individual, who, in consideration of a sum of money assigned the share in question to a third person; which assignation was in the usual manner duly intimated to the Glass-house Company, from whom the value of the share was due and owing. *Mr. Leach* had objected to any reference to the articles of the Glass-house Company; but when they had to consider the law in regard to the transferrence of rights to real and personal property, it was fit that they should ascertain from the articles how far this share was assimilated to any other personal property. It appeared from these articles that this Company had been formed in 1726, for twenty-one years, and after the expiration of that term, had been continued for such indefinite period as might be agreed upon; the termination to be notified by eight members, who should have it in their power to put an end to the society. Their property consisted of real estates, such as land, warehouses, and other premises; and of personal or moveable property, such as bottles, debts due to them, &c. It was proper then before deciding upon the title to this share, to consider how far the interest was a personal debt: it could only be considered as a personal debt in this way, that in as much as no single partner could put an end to the Company, but might withdraw and demand the value of his share, the Company must be considered as his debtors to the amount of his interest. If then the Glass Company was the debtor, the question here was not between the assignee and

The question here not between the as-

the debtor, but between the assignee and a person setting up a collateral claim in the nature of that of a *cestui que trust*. No intimation was given of this claim, and it appeared to him that the Glass-house Company was not bound to accept of it if it had been given. The Glass-house Company, if told that this was claimed as partnership property, might say that they were not bound to take notice of any intimation on a partnership or trust account, as their articles and their policy admitted only of their shares being held by individuals absolutely. They might say that, if an assignment were made of a share to an individual, they would take notice of it, and receive him as one of the Company; and even then they were not bound to receive him, for they might refuse to accept of him, only paying him the value of his share.

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signee and the debtor, but between the assignee and one claiming under a collateral title.

The question here was—not between a debtor of Steuart and his assignee, but between the assignee and one possessing a secret equity; this disposed at once of the argument respecting an assignment by an executor.

It had been said that the Glass-house Company debited the partnership of Steuart and Company in their books with a part of the price of the share in question. That circumstance, however, did not render them debtors to the partnership of Steuart and Company, for others were to be governed in their proceedings of this kind by the known rules and policy of the Glass-house Company, and had nothing to do with the manner in which any transaction was entered in their books by themselves. But it did not appear that this secret trust had ever

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been intimated to the Glass-house Company at all, even if they had been bound to accept of that intimation, which they were not.

He would ask then how the authorities cited for the Respondent could possibly apply? A. assigns a bond to B. and B. to C.—C. knew that he was taking that of which no part, or of which some part or the whole might have been discharged. *Utitur jure auctoris.* He took what interest B. had in the bond and no more, and this was no hardship, for it was his fault if he did not apply to the known debtor to ascertain how that matter really stood. So with respect to back-bonds the same answer applied. There were cases of back-bonds upon assignments of back bonds; but he had looked very anxiously and carefully to see whether there were any cases where latent equities had prevailed against intimated assignations, and he had found none. An assignation would even defeat an arrestment, if intimated before the arrestment, as the arrestment was only a prohibitory diligence. If latent equities were suffered to prevail against assignations, the effect would be that nothing could ever be assigned; for as long as their Scotch neighbours retained any part of their characteristic shrewdness, they would never take an assignment if they were aware that by means of latent equities such assignments might give them nothing. He admitted that if the doctrine contended for on the part of the Respondent had been borne out by the authorities, the inconvenience must have been in the mean time submitted to, and the remedy derived from the Legislature. He had found how-

No case found where latent equities prevailed against intimated assignations.

The effect of the preference of latent equities to intimated assignments would be, that no assignments would ever be made.

ever no case nor authority of any kind to support this position—that an intimated assignation might be defeated by a latent equity, which as being latent *ex necessitate* could not be intimated. June 1, 1813. TRUST AND ASSIGNATION.

Judgment of the Court below reversed.

Agents for the Appellant, SYKES and KNOWLES.
Agents for the Respondents, SPOTTISWOODE and ROBERTSON, Sackville-Street.

ENGLAND.

APPEAL FROM THE COURT OF CHANCERY.

STUART, Esq. and others—*Appellants.*
MARQUIS OF BUTE and others—*Respondents.*

TESTATOR, having devised certain freehold manors, lands, collieries, &c. bequeathes waggon-ways, rails, staiths, and all implements, utensils, *and things*, which, at the time of his death should be used, or employed, for the working and management of the collieries, and might be deemed of the nature of personal estate, to be enjoyed by the persons respectively entitled under the will, to the said manors, lands, collieries, &c. Question, Whether coals resting at the pits and staiths, debts due to the collieries, money (the price of coals sold) lying in the Tyne Bank, and other particulars enumerated, passed by this bequest under the general word THINGS? May 28, 1813. GENERAL WORD THINGS, FOLLOWING PARTICULARS ENUMERATED, CONFINED TO THINGS EJUSDEM GENERIS.

LORD BUTE, by will, dated the 27th May, 1789, devised and bequeathed his freehold and leasehold collieries, lands, tenements, and heredita- Will of Lord Bute.