

1624. *March 31.*L. DUNIPACE *against* SANDIS.

IN a suspension betwixt L. Dunipace and Mr Patrick Sandis, as assignee to an obligation constitute by one Erikine, the charges being desired to be suspended, because they were given at the assignee's instance, after the cedent's decease, the assignation not being intimate in the cedent's lifetime: The charges were sustained for this *allegeance*, viz. because the L. of Dunipace, who was debtor by the said obligation, had treated sundry times with the assignee anent the payment to him as assignee, of the said sums, and had offered to him some satisfaction therefor, which was referred to the L. of Dunipace's own oath, and which the LORDS sustained as a sufficient intimation, he knowing the same, as said is, in the cedent's lifetime, and which the LORDS found as sufficient, as if intimation had been legally and formally made; for, by his treating with him as assignee, he acknowledged the assignation, as if it had been intimate.

A&. *Aiton.*Alt. *Mowat.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 64. Duric, p. 127.*

No 60.

A debtor holding communications with the assignee, relative to payment to him as assignee, held to be equivalent to intimation.

1624. *June 15.*ADAMSON *against* M' MITCHELL.

IN a suspension the LORDS found, the parties knowledge not equivalent to an intimation; for an intimation ought to be legally and solemnly made, to put a party in *mala fide*, to do any thing against the same; and albeit any party knew that which formally required intimation, yet that knowledge, albeit it were confessed by the party, could not put him in *mala fide*, where there was not a legal intimation, seeing he could not be prejudged by that knowledge, which was not made known to him by the law, and so which was not necessary to him to know, and thereby was not bound nor obliged by that knowledge.

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Alt. *Cunningham.**Fol. Dic. v. 1. p. 64. Duric, p. 128.*

No 61.

Intimation ought to be legally and solemnly made to put the debtor in *mala fide*.

1626. *March 14.*L. WESTRAW *against* WILLIAMSON & CARMICHAEL.

ALISON NISBET having recovered decret against Marion Williamson and James Carmichael, her spouse, for payment of certain sums of money, she constitute James Johnston of Westraw, assignee thereto, with power to him, either to charge for the sums in her name, or in his own name as assignee. Whereupon charges being execute in the cedent's name, the LORDS found the reason of suspension relevant against the assignee, bearing, that the said persons, suspenders, who were charged, had made payment of the sums, wherein they were decerned, to the

No 62.

The debtor found not in *mala fide* to pay, although he had private knowledge of the assignation, there being no formal intima-