

1703. February 16. LEITH against GARDEN.

THE Laird of Troup being addebted to Anachy in 197 merks by ticket, this is assigned to Leith of Leith-hall, who writes a letter to Troup, signifying his right, and afterwards shows him the assignation, but does not legally intimate it by a notary and instrument. Troup being pursued by the assignee, produces a discharge from Anachy, the cedent: Against which it was *objected*, That he was *in mala fide* to pay the cedent, and rely on his discharge, after he had shewed him his right by assignation.—*Answered*, Private knowledge *non relevat*, law having fixed on the solemnity of an intimation by way of instrument, and intimations not made in that manner are not to be regarded; as was decided 30th November 1622, Durham against the Lady Winton, No 56. p. 855.; 15th June 1624, Adamson *contra* Macmitchel, No 61. p. 859.; and 14th March 1626, Nisbet and Williamson, No 62. p. 859.—*Replied*, That holds in a competition betwixt co-creditors, as where two assignees, or an arrester and assignee are competing, there no intimation is sustained, but what is made by form of instrument; but here there is no competition, but the question singly stated betwixt the assignee and the debtor, who, by collusion, goes and agrees with the cedent, after the assignation was shewed to him; and, on getting an ease, pays and recovers his discharge.—THE LORDS found the payment unwarrantable, and that it could not defend him against the assignee, though it was not legally intimated, there being no co-creditor *in campo*.

*Fol. Dic. v. 1. p. 64. Fountainball, v. 2. p. 180.*

1707. March 28.

Competition of the CREDITORS of the deceased LORD BALLENDEN, and the COUNTESS of DALHOUSIE, his relict.

IN a competition of the creditors of the Lord Ballenden and the Countess of Dalhousie, his relict, Sir Robert Sinclair of Stevenson craved preference upon a bond granted by the said Lord Ballenden and the Earl of Dalhousie, for the principal sum of three thousand merks, containing an assignation by the Countess of Dalhousie, with consent of the Lord Ballenden her husband, to her jointure-rents subjoined to the bond; which bond and assignation are subscribed by the Earl of Dalhousie, the Lord Ballenden, and the Countess.

THE LORDS found, That the Earl of Dalhousie's subscribing the bond and assignation did supply the necessity of an intimation, to prefer Stevenson to the other creditors whose rights were of a posterior date.—Albeit it was *alleged* for them, That the Earl's subscribing the writ containing the assignation, can only be considered in so far as it concerns the assignation, as if he had been witness to the

No 70.

An assignee wrote to the debtor, and shewed him his assignation. The debtor, nevertheless, paid to the cedent. The payment found unwarrantable, there being no third parties in the field.

No 71.

A bond contained an assignation to an annuity, and was subscribed by the party by whom the annuity was payable: This found equivalent to intimation, in competition with assignations formally intimated.