No. 21.

CLAUD RUSSELL, Campbell's Trustee, Appellant.—*Pemberton—P. Robertson.*

EARL OF BREADALBANE, Respondent.—*Tinney—D. Mac Niell.*

Assignation — Partnership — Tack.—Circumstances in which held (affirming the judgment of the Court of Session) that an assignation of the share of company stock, consisting of leases, had been effectually transferred.

Right in Security—Retention.—Held, (affirming the judgment of the Court of Session,) that an *ex facie* absolute assignation of the share in a company, qualified by a declaration in a back bond, that it was granted in security of a specific debt, entitled the assignee to retain in security of a general balance arising on other debts subsequently contracted.

April 4, 1831.

2D DIVISION.

Ld. Mackenzie.

THIS was the sequel of the case reported *ante*, I. 621.

On the 13th of March 1745 a co-partnery was formed, for working quarries at Easdale, under the name of the Marble and Slate Company of Nether Lorn, and on the 23d of May 1748 Lord Glenorchy granted two leases to the partners of that company. Eventually Colin Campbell of Carwhin and John Campbell, cashier of the Royal Bank, Edinburgh, became the sole partners. The son of Campbell of Carwhin succeeded to the estates of Lord Glenorchy and the earldom of Breadalbane, and also to his father as a partner in the company. He was thus the landlord of the company, and also one of the two constituent partners. The business of the partnership was carried on by an overseer at the quarries, who superintended the workmen and managed the business generally, while the cash department was confided to the partner, John Campbell, who resided in Edinburgh; he was also agent and manager of the Earl's estates. In March 1813 Campbell obtained, for his accommodation, two bills from the Earl, one for 5,000*l.*, and the other for 1,000*l.*; and in security of the Earl's relief, Campbell, on the 23d of June thereafter, executed an *ex facie* absolute and unqualified conveyance of "his interest or share in the stock and effects of "the Marble and Slate Company of Netherlorn, with all profits "or dividends arising therefrom, from and after the 11th day of "November last, or from whatsoever day may happen to be the "date of the last annual balance of accounts of said company, "and all right, title, and interest which he (John Campbell) "had thereto, or to the said profits or dividends, or to the tacks, "subjects, stock, utensils, instruments, tools, and other imple-

" ments and effects whatsoever, belonging or that may belong " to the said company, with the contracts or article of agreement " of the said company, and tacks, leases, prorogations, and other " writings belonging to them, in so far as he had any right or " title thereto." On the other hand, the respondent granted a back bond, declaring that the deed of assignation had been granted to him " in trust, and for my relief and indemnity of the " said cautionary obligations (the bills already mentioned), come " under by me, on account of the said John Campbell or his fore- " saids, and whenever the said John Campbell or his aforesaids " shall relieve me of payment of the bills above mentioned, if the " same be put into circulation, and of the payment of all other " bills which I may hereafter accept, without value, or on his ac- " count, and for his accommodation merely; and of all damage, " interest, and expence which I may have been put to in regard " to the said bills, as cautionary engagements; or whenever I " shall recover payment of the same from him, and of all charges " and expences incurred in relation to the premises, in any " manner of way; I, the said John Earl of Breadalbane, do " hereby bind and oblige me, my heirs, executors, and suc- " cessors whomsoever, on the expence of the said John Campbell " or his foresaids, to denude of the foresaid trust-conveyance, " and to retrocess the said John Campbell and his foresaids " in their own right and place of the premises; declaring, that I " am not to be liable any farther than for my actual intro- " missions by virtue of the conveyance aforesaid; and that I am " not to be liable in diligence, nor for omissions of any kind. " But declaring, that I shall be obliged, as I hereby bind and " oblige myself and my foresaids to account to the said John " Campbell and his foresaids, for all sums of money which I " actually receive in virtue of this conveyance, beyond the " foresaid principal sums of 5,000*l.* and 1,000*l.*, and interest, " &c."

The bill for 1,000*l.* was retired by Campbell, but the Earl was obliged to pay the one for 5,000*l.*

The deed of assignation was delivered, at the time of its execution, to the Earl, but nothing farther took place till 1818. In that year Campbell was indebted to the Earl, as managing his estates, in upwards of 10,000*l.*, and announced his inability to pay the amount. In consequence of an arrangement made for

April 4, 1831. the purpose (as was alleged) of effectually securing the Earl, Campbell intimated, on the 28th of May, to the overseer, that the bills were in future to be drawn payable to the overseer's order at the Royal Bank, and to be blank indorsed by him. A copy of this letter was transmitted by Campbell's son (John Archibald Campbell, W. S.) who had been employed by the Earl as his law agent, and explaining, that the bills which were formerly payable to his father, after being accepted by the purchasers, were to be made payable to the overseer, and indorsed by him to the Royal Bank, who would draw the proceeds, and retain them till farther orders. The overseer acknowledged receipt of the letter of the 28th of May; but the arrangement not proving satisfactory to the Earl, he wrote, on the 2d of June, to John Archibald Campbell, a letter of which no copy was preserved, but to which the following answer was returned on the 6th: "My Lord,—I have the honour of your Lordship's "letter of the 2d, which I shall have the honour of answering in "a day or two. Meantime beg to intimate, that Mr. Clerk, "advocate, will point out the steps necessary to be adopted "for your Lordship's complete and exclusive interest in the "quarries, to prevent any obstruction from the other creditors; "and if any thing is necessary, these steps shall be immediately "adopted. The disposition in favour of your Lordship was pre- "pared under the advice of the first counsel, and, I should "suppose, was all that was necessary, you being entitled to enter "into possession whenever you please, and the form of doing "this will be pointed out by Mr. Clerk. In the meantime, the "money that may come in will be lodged as your Lordship "directs, in your own name, for the quarry, at the Royal "Bank." The Earl had also directed his factor, Duncan Campbell, to require the overseer to take the bills payable in future to the factor. In consequence of this the overseer wrote to John Campbell, stating, that "Lord Breadalbane's "factor called here this morning, and intimated his Lordship's "wishes, that the bills were to be drawn in future payable to his "Lordship's factor. To this I answered, that I would write "you on the subject. You will please, therefore, send me the "exact form you wish, and the kind of indorsation, to prevent "any inaccuracy hereafter, as I find myself at a loss how to "act till I hear particularly on the subject." On the 18th

John Archibald Campbell wrote, in answer to the overseer, that "My father will himself write you about Easdale; in "the meantime I beg to mention to you, that the bills are all "to be payable and drawn in favour of Mr. Duncan Campbell," who was the respondent's factor. April 4, 1831.

Accordingly all the bills drawn after the 31st of May were taken payable to the factor, and delivered to him, and accounts were opened with banks at Glasgow and Leith (where several of the acceptors resided), in the Earl's name simply, and also one with the Royal Bank, which was entitled "The Earl of "Breadalbane for Easdale Company." Payments were drawn by the factor, and the Earl operated on the accounts by orders in his own name.

On the 26th of June a notarial intimation of the assignation was made to the overseer; and, as this was considered to be defective in form, another intimation was made on the 31st of July.

Campbell was rendered bankrupt on the 21st of August 1818, and having executed a disposition in favour of Claud Russel, accountant, in trust for behoof of his creditors, he brought an action of reduction of the assignation on the acts 1621 and 1696, but relying chiefly upon the latter, in respect that intimation had not been made till within sixty days of the bankruptcy. Lord Pitmilly, upon this latter ground, decerned in terms of the libel, and the Court, on the 3d of December 1822, adhered to this interlocutor: "In so far as it finds, that "in respect the granter of the conveyance, or assignation chal- "lenged, was allowed to continue in possession of the subject "conveyed, and that no intimation of the assignation was made "till within sixty days of his bankruptcy, the assignation was "not completed to the effect of giving a preference to the "assignee, in a question with the creditors of the cedent; but "before answer, remit to his Lordship to hear parties further "on the conclusions of the libel, and do as he shall see cause."

The Earl having appealed, a remit was, on the 28th of June 1825 *, made, "to review generally the interlocutors com- "plained of in the said appeal; and in reviewing the same, the "Court is especially to consider, how and to whom intimation

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* Ante, I. 621.

April 4, 1831. " of the assignation ought to have been given. And it is further " ordered, that the Court, to which this remit is made, do " require the opinion of the Judges of the other Division, in the " matter and question of law in this case, in writing, which the " Judges of the other Division are so to give and communicate " the same; and after so reviewing the interlocutors complained " of, the said Court do and decern in the cause as may be " just."

Under this remit, the following opinion was delivered by the Lords President, Balgray, Craigie, Gillies, Cringletie, Meadowbank, Mackenzie, Corehouse, Medwyn, and Newton, being the consulted Judges: " In consequence of the investiga- " tions which have taken place, and the productions which " have been made in this case since it returned from the " House of Lords, we think that the question as to the mode " of completing an assignation to a lease does not arise in it. " For it appears, that the predecessors of the parties in this " case, along with other persons, entered into a copartnery " (13th March 1745), under the name of 'The Marble and " Slate Company of Nether Lorn.' On the 23d May 1748 " Lord Glenorchy granted two leases of certain subjects to " the partners nominatim, 'who, by contract, bearing date " 13th March 1745, have all entered into copartnery, under " the name and title of 'The Marble and Slate Company of " Nether Lorn.' Two of these partners, Colin Campbell of " Carwhin, and John Campbell cashier of the Royal Bank, " having acquired the shares of the other members of the com- " pany, thus became the only partners; and it appears that the " two leases, which would expire in 1801, were, by a deed, " dated 6th March 1771, prorogated by the landlord to them " equally, their heirs and assignees, for the space of two nineteen- " years. By an agreement, dated 23d March 1771, on the " narrative of the prorogation of the two tacks, and evidently " as a part of the same transaction, the two parties, Carwhin " and John Campbell, prorogated and prolonged the contract " of copartnery for the like term of two nineteen years, 'to " quadrate and agree with the said prorogation.' Lord Breadal- " bane, the son of Carwhin, and Mr. John Campbell, the son of " the other partner, were, in 1813, the only partners of the " company possessing under the prorogated tacks; and the

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" interest of each partner in it was merely the share of the " profits he was entitled to draw as a partner. On 23d June " 1813 Mr. Campbell accordingly granted an assignation of " his ' interest or share in the stock and effects of The Marble " and Slate Company of Nether Lorn,' in favour of Lord " Breadalbane, assigning his interest or share, from and after " Martinmas 1812, in security of certain sums advanced to " Mr. Campbell. Lord Breadalbane did not immediately act " on this assignation; but he states, that on 2d June 1818 he " gave notice, by a letter of that date, to Mr. Campbell's son, " that he was now to avail himself of the assignation; and he " desired the money, received in payment of the bills drawn for " sales at the quarry, to be paid into the Royal Bank in his " name for the quarry, instead of being received by Mr. Camp- " bell as formerly. Mr. Campbell jun. acknowledged the receipt " of this letter on the 6th of June. Lord Breadalbane's letter is " not produced; and the creditors do not admit that the above " was the import of it, though there seems to be strong pre- " sumptive evidence of it, both from the terms of the answer of " the 6th June, and because immediately afterwards Mr. Camp- " bell did give notice to the manager at the quarry, that the " mode of drawing the bills was to be changed; and a new ac- " count was also immediately opened with the Royal Bank, in the " name of the Earl of Breadalbane, for the Easdale Slate Com- " pany; so that, either by the letter of the 2d June, or by some " other communication, verbal or written, it is plain that notice " was given to the above effect, and that a corresponding change " of possession took place, which gave full effect to the assigna- " tion 1813. Therefore we hold this to be all that was neces- " sary to secure to one of the partners the share of the stock " belonging to the other partner which he had previously " assigned to him, being of opinion that the legal form of in- " timation is not necessary to complete an assignation, whereby " one of two partners assigns his share in the company's stock " to the other. The notice here given was necessary, only " because the assignation had not been operated upon at first, " which made it necessary to intimate, that the right under it " was for the future to be made available; and, for this purpose, " such notice was sufficient. But in this case the transfer is still " farther unchallengeable, as the notice was followed up by Lord

April 4, 1831. " Breadalbane obtaining possession of all bills after that date " made payable to the company, as well as the proceeds of such " as were then in the circle, as is established by the letter and " memorandum of 29th June 1818. The notice of 2d June " 1818, and the possession following upon it, were prior to the " sixty days preceding Mr. Campbell's bankruptcy, which took " place only on 21st August 1818; and therefore we consider " Lord Breadalbane's right to Mr. Campbell's interest or share " of the stock of the company, subsequent to the above notice, " unchallengeable at the instance of the other creditors, who " have no title, either by diligence or otherwise, to compete with " this assignation."

On advising this opinion *, the Court, on the 3d of July 1827, altered the interlocutor appealed from; repelled the

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* *Lord Justice Clerk* observed, Judgment must of course be pronounced in conformity to the opinion of the consulted judges; but I am not prepared to assent to all the propositions contained in that opinion. I have the greatest repugnance to the transference of the share of a partner kept concealed from the world, the partner being allowed to go on with the management. Suppose the company had been involved in ruin, could this man have been relieved of his liability by what has taken place? In such a case the Court would be obliged to determine whether something more was not necessary to transfer than a simple assignation. Then as to the supposed change of possession, it rests on a very narrow basis. It may have been a very convenient arrangement, but I can see no change of possession, or such a transference as in my opinion the law requires.

Lord Glenlee.—I acquiesce so far in the opinion as to think that there are here no termini habiles for determining the question, whether intimation is necessary to complete an assignation to a lease. There are two reasons for intimation in transference of this description,—one to put the party in malâ fide, which does not occur here, and the other to the manager, which is an act of possession of the right, and the only one which in many circumstances can be had. Now, I cannot conceive a right that does not require either actual possession or intimation; and the question here is, whether there was such actual possession as to vest the right? There was no doubt a possession, but I have a difficulty in ascribing it to the right. If I bring a quantity of grain into a cellar, and intimate to the keeper of the cellar that he is to hold it for me, that puts him in malâ fide to give it to another, and it is an act of possession; but if he sends me some bolls of it, that is no act of possession, and does not complete the transference. In the same way here, though the bills going into Lord Breadalbane's possession were transferred, that did not necessarily transfer the right. On the whole, I have a certain degree of difficulty in concurring with the opinion.

Lord Pitmilly.—If this case comes to be quoted as a precedent, I can hold it to decide nothing but what is stated in the first sentence of the opinion; and I still think that in a question with creditors a transference of a lease retenta possessione is not good.

Lord Alloway.—I concur with the consulted judges. There is no person to whom the assignation could have been intimated; there were only two proprietors, and there is no instance of an intimation to servants in order to transfer property.

reasons of reduction, "except in so far as it is alleged that the "conveyance brought under challenge was granted in trust and "security only, and to a limited extent; remit to the Lord "Ordinary to hear parties further on that allegation, and do as "he shall see cause; but, quoad ultra, assoilzie the defender "from the rescissory conclusions of the libel; find no expences "due, so far as hitherto incurred." * April 4, 1831.

Under this remit the Earl maintained, that as he had an unqualified assignation to Campbell's share, he was entitled to retain it in liquidation, not only of the 5,000*l.*, but also of all other debts contracted and due to him by Campbell posterior to the date of the assignation. On the other hand, the trustee maintained, that as the assignation was qualified and restricted by the back bond, the assignation could not be extended to any other debt than that in respect of which it had been granted. The Lord Ordinary found, "that the defender (the "Earl) has right to retain possession of the share in the Easdale "concern libelled, until all the debts due to him by Mr. John "Campbell, and contracted after the date of the assignation of "the said share, shall be paid;" and assoilzied the Earl from the declaratory conclusions of the libel, and found him entitled to expences. He also issued the subjoined note of his opinion.† The trustee reclaimed, but the Court‡ on the 18th of June 1829 adhered. §

Russell appealed.

Appellant.—1. The deed of assignation in favour of the respondent being a conveyance of Campbell's right to certain

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* 5 Shaw and Dunlop, 891.

† "The Lord Ordinary conceives that it is not possible to view this as a case "of a right in security, limited by its own nature, and incapable to afford a title of "right to more than is sufficient for the payment of the debt secured. In this case "the assignation is not limited. It warrants entire possession in the share of the "concern, and that simply and absolutely; and accordingly the back bond binds "the defender to reconvey and account for the profits. It does not seem to the "Lord Ordinary possible, without contradicting the principle established by a series "of decisions, to find that the defender is bound to reconvey and account, without "notice of the debt afterwards incurred to him by Mr. Campbell."

§ 7 Shaw & Dunlop, 767.

‡ *Lord Justice Clerk* observed, I expected a greater attempt would have been made by Mr. Russell to draw a distinction between this case and those cited by

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leases, or alternatively a conveyance of Campbell's interest in a society whose property consisted of leases, could not be rendered effectual, except by possession either natural or civil on the part of the respondent. But the facts of the present case show that there have been no possession; and accordingly the respondent was so satisfied of this, that, acting under the advice of counsel, he attempted to make his right real by intimation of the assignation in June and July 1818. This, however, was quite unavailing, both in itself and because it took place within sixty days of the bankruptcy, and consequently fell within the statute 1696.

2. As the assignation was granted expressly in relief of two obligations specially mentioned in the back bond, the respondent cannot make use of that assignation as a security for the general balance due to him by Campbell. It may be true, that in questions with third parties, or in relation to heritable rights, the qualifications of a back bond may be ineffectual; but this is a question with the assignee and granter of the back bond, and relative to a right of a personal nature. The case, therefore, must be judged of as if the qualifications of the back bond appeared on the face of the assignation, and in such a case it is undoubted that the respondent would not enjoy a more extensive benefit than that which appeared from the terms of the deed itself.

Lord Breadalbane; for otherwise, the principle being laid down in those cases that where the conveyance is out and out, though with a back bond, effect must be given to it, even as to subsequent advances, we cannot alter the interlocutor without going in the face of those decisions, which, notwithstanding the ingenious argument on the part of Mr. Russell, I cannot feel myself warranted to do. A case, it is true, occurred this session, where goods deposited by a party in possession of them were held not subject to retention for future contractions (Stuart & Fletcher, May 19, 1829, 7 S. & D. 622.) That arose, however, from the circumstance, that the depositation was for custody alone, and no other purpose; and I think that case steers clear of those quoted by Lord Breadalbane; and although I felt a difficulty in that case, I am for adhering in the present.

Lord Glenlee. — I rather think the interlocutor right.

Lord Pitmilly. — I also think that this case must be ruled by those already decided. and in particular by the case of Admiral Maitland (Nov. 23, 1827, 6 S. & D. 109.), which has so fixed the matter that it is impossible to get over it. Were it not for it, however, I should have had great doubt, considering that this is not a question with third parties, but with Lord Breadalbane himself, competing with other creditors in the face of his own back bond.

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Respondent.—1. The respondent stands in a double position. He is, with reference to the leases, the landlord, and is also a partner in the stock of the company. The leases form part of that stock, and the question relates mainly to the transfer of Campbell's share of the stock. But in either view the right of the respondent was complete prior to the sixty days preceding the bankruptcy. The delivery of the assignation was in either case sufficient. In relation to the transaction as one between landlord and tenant, it was a direct yielding up of the possession by the tenant to the landlord, and it would have been absurd for the respondent to have gone through the ceremony of intimating the assignation to himself. Again, with reference to the share of the stock, the delivery also operated a complete transfer; for as the respondent and Campbell were the only partners, and they could not fail to be aware of the deeds to which they themselves were parties, any farther intimation, either to the one or to the other, would have been idle. Neither was there any necessity for intimation to the overseer, who was merely the servant of the respondent and Campbell; and he could have done nothing more than have made them aware of what they already knew perfectly, that the share had been transferred. But in fact there was actual possession by the respondent, independent of the mere delivery, more than sixty days prior to the bankruptcy.

2. It has been settled by a series of decisions, and especially by the case of Maitland, that an ex facie absolute disposition or assignation, although qualified and restricted by a back bond, entitles the disponee or assignee to hold possession, not only in security of the sums originally advanced, but also of those subsequently contracted. This rests upon the plain principle, that the bankrupt, or any other person in his right, cannot insist on being reinvested till he shall do justice by repaying those advances which have been made in reliance on the security thus created.

Lord Chancellor.—My Lords, this case, if it were to be made the ground of laying down a general rule of law, or any general doctrine touching the right of making assignments, would rise into one of much more importance than now belongs to it. The noble

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and learned Lord *, now no more, who advised your Lordships when the case was last before the House, seemed to take this view of the case. He thought that the learned Judges of the Court below had not sufficiently attended to some of the points which he wished to have brought before them, and which by the judges of the Second Division had not been considered; and he remitted it to that Court for review, and for the opinion of the judges of the other division.† That opinion has been taken, and the consulted judges have entirely agreed with their brethren ‡, not raising the question of disputed law, but avoiding it, and applying the admitted law to the facts. Upon looking into their opinion upon the facts and circumstances of the case, and the opinion of the judges from whom the appeal was first brought, I feel entirely satisfied with the judgment pronounced by them. I do not deal with the general proposition, either that intimation is necessary or unnecessary, or that possession is necessary or unnecessary; and not feeling called upon to deliver my opinion upon those points at all, this judgment of your Lordships will only have authority in cases where the circumstances — where the *species facti* may be the same with the circumstances or *species facti* in the present case. I observe, however, that a very great difference exists in the ground taken on the part of the appellant here from that which he took in the former case. Intimation was clearly referred to in the judgment of the Lord Ordinary in the Court below, and in the judgment pronounced by Lord Gifford — where he intimates a strong opinion against the judgment then appealed from, and he desires the Court to say to whom the intimation should be given, clearly showing that intimation appeared to him to be no immaterial part of the proceeding. I understand that to be abandoned; for when they are asked, if an intimation was necessary, to whom it should be given, they naturally felt the pressure of the consideration that the landlord would be the person—but the assignee here being the landlord, and having intimation, from the relation in which he stood to the other party, they abandon the question of intimation, and say they will not raise it. If they did, here is the intimation, from the accident of Lord Breadalbane being the landlord. Then they say that there must be possession. Now, without going into the details of the case, I hold in this case enough passed, either in the situation of Lord Breadalbane as landlord, who has necessarily intimation, or in the circumstances that took

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* Lord Gifford.

† 1 Wilson and Shaw, 621.

‡ 5 Shaw and Dunlop, 891.

place between the parties after the assignment, and the other circumstances referred to by the unanimous opinion of the ten learned judges, to bring this case within all the requisites laid down by the Court of Session in the first instance, and laid down and recognized by the consulted judges in the second instance, and to complete the title as against the creditors of Campbell the assigner. The case of Brock has been very much pressed upon your Lordships at different parts of this discussion — both at the former and the present stage. If that had been an unanimous decision, or any thing nearly unanimous, and had been acquiesced in as a decision that stood upon contrary principles to former cases, I should have thought it had great weight, provided the facts of this case were such as to require me to decide that point; but as I think they do not require me to decide that point, the case of Brock becomes comparatively unimportant. Nevertheless, beside the circumstance of it being under appeal at this moment, I must say, there is the narrowest possible majority in support of the rule laid down,—the President, Lord Meadowbank, Lord Mackenzie, Lord Corehouse, Lord Moncreiff, and Lord Newton making six for it, and Lord Eldin, who, if I see distinctly, is against that part of the judgment which requires possession; Lords Balgray and Gillies protest against it; Lord Craigie delivers a long and elaborate judgment opposing it; and Lord Fullerton delivers an equally elaborate judgment, coming to a different conclusion from the last; so that here are six to five—a bare majority in favour of the doctrine; and I cannot avoid reminding your Lordships that the learned counsel at the bar, following the way in which the doctrine is treated below, do not maintain that natural possession is required, which the text-writers require, but natural or civil possession only. Now, I understand the natural possession of an assignment, from dealing with it; but I am not so sure that I understand civil possession, unless by civil possession is meant intimation, and then I understood that too; and there is a passage in the report of the case which inclines me to think it may mean that. It looks as if they thought that intimation constituted civil possession; but I do not consider it necessary for me to say that I approve of the case of Brock any more than that I doubt it, or disapprove of it. That case will come to be heard before your Lordships in the course of the paper; and if the question there arises—stripped of the special fact—whether, by the Scotch law, possession is necessary; and if so, what kind of dealing and of intimation constitutes civil possession—what kind of intimation is necessary and sufficient; and if possession should be necessary, whether that kind of inti-

April 4, 1831. mation is sufficient to transfer against other successors the right of assignment—this House will decide that question; but that question of law does not appear to me to arise in the present case. The other ground, as to what this assignation will cover, I hold to be decided by a constant series of adjudged cases; and I can see no reason why we should not adhere to them. I shall therefore move your Lordships that the interlocutor appealed from be affirmed, without costs.

The House of Lords ordered and adjudged, That the interlocutor complained of be affirmed.

Appellant's Authorities.—(1.)—3 Ersk. 5, 5, 6; Syme's Trustee, May 23, 1806 (No. 13, Appendix, Tack); 1 Bell, 67; 2 Ersk. 6, 25; 3 Stair, 2, 6; Kelk. 45; 2 Bell, 11; Douglas, June 6, 1794 (2802); Yeoman, Feb. 2, 1812; Brock, Nov. 29, 1822, (2 S. & D. 52, and 3 W. & S. 75), and March 5, 1830, (8 S. & D. 647; Watson, Nov. 19, 1750 (850.)

Respondent's Authorities.—(1.)—3 Stair, 1, 9; 3 Ersk. 5, 4; 2 Bankton, 193.—(2)—3 Ersk. 4, 20; Brough's Creditors, Nov. 26, 1793 (2585); Dougall, June 11, 1794 (Bell's Cases, 41); Robb's Creditors, June 7, 1808 (No. 5, Appendix, Compensation); Maitland, Nov. 23, 1827 (6 S. & D. 109); 1 Bell, 5.

SPOTTISWOODE and ROBERTSON—J. CHALMER,—Solicitors.