

1739. *January 10.* KEIR *against* CREDITORS of MENZIES.

No 50.

ASSIGNATION of a debt due to an incorporation, is properly intimated to the treasurer of the incorporation. *See* No 69. p. 738.

*Kilkerran, No 3. p. 36.*

1755. *November 19.* WATSON *against* MURDOCH.

No 51.

AN intimation to two clerks who were also managers of a trading company, a minute whereof was entered in their books, was found fully to divest the cedent.

*Fol. Dic. v. 3. p. 46. Tinwald, MS.*

1785. *November 23.*

MESSRS NEWTON and COMPANY *against* MESSRS COLLOGAN and COMPANY, and OTHERS.

No 52.

Holograph acknowledgment of intimation, by the debtor, though unattested, supplies the want of a notarial instrument.

SAMUEL BEAN assigned to Messrs Collogan and Company, and to other persons, a bond which had been granted to him. Instead of a notarial instrument, certifying intimation of these assignments, there appeared on the back of them a holograph writing to that effect, subscribed by the debtor. In a competition of Bean's creditors, Newton and Company objected to this evidence of intimation, and

*Pleaded,* This writing, though holograph, not being attested by witnesses, cannot prove its own date; and therefore is to be understood as if it really bore no date. As such, then, it must be ineffectual. Otherwise, indeed, debtors might easily antedate intimations, for the purpose of unduly preferring favourite creditors. Equipollents, if admitted, ought to be such as to guard against such frauds.

*Answered,* To receive such proof of intimation, is the universal usage; and, in particular, it is daily exemplified by the transactions of the public banks. The decisions of the Court seem likewise to give countenance to it. *See* No 64. p. 860.; Fountainhall, vol. 2. p. 397.; Charteris against Sinclair, *voce* COMPETITION, Turnbull *contra* Stewart, No 74. p. 868.

The cause was reported by the Lord Ordinary, when a great majority of the Court were influenced by the consideration of the common usage; though some of the Judges observed, That such a practice was so erroneous that it ought not to be regarded.

THE LORDS found, that the intimation was sufficiently ascertained.

Reporter, *Lord Monboddo.* For Newton and Company, *Rolland.* Alt. *Elphinston, G. Fergusson.* Clerk, *Home.*

*Fol. Dic. v. 3. p. 46. Fac. Col. No 238. p. 368.*

*Stewart.*