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

No 60.
A debtor holding communings with the aſſignee, relative to payment to him as aſſignee, held to be equivalent to intimation.

IN a ſuſpenſion betwixt L. Dunipace and Mr Patrick Sandis, as aſſignee to an obligation conſtitute by one Erſkine, 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.

Act. *Aiton.* Alt. *Mowat.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 64. *Durie, p.* 127.

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

No 61.
Intimation ought to be legally and ſolemnly made to put the debtor in *mala fide*.

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.

Act. —— Alt. *Cunningham.*

Fol. Dic. v. 1. *p.* 64. *Durie, p.* 128.

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

No 62.
The debtor found not in *mala fide* to pay, although he had private knowledge of the aſſignation, there being no formal intima-

ALISON NISBET having recovered decreet 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 ſaids perſons, ſuſpenders, who were charged, had made payment of the ſums, wherein they were decerned, to the

No 62. cedent, before any intimation of the aſſignation: Which payment made to the cedent before any intimation, the LORDS found ſufficient to liberate them at the hands of the aſſignee, notwithſtanding that the aſſignee alleged, that the ſuſpenders knew that the Laird of Weſtraw was made aſſignee before their payment, and that they offered to tranſact with him thereanent, ſo that they could never be repute to be in *bona fide* in reporting of that diſcharge, as done before intimation of the aſſignation, the ſame being known to them, as ſaid is: Likeas, the aſſignee *alleged*, That he had lawfully execute inhibition upon the ſaid aſſignation, before the obtaining of the ſaid diſcharge, by the which the ſuſpenders are conſtitute in *mala fide* to have made payment to the cedent, ſince the time of the executing of the ſaid inhibition, which was raiſed upon the ſaid aſſignation, whereby all the lieges were conſtitute in *mala fide* to do any deed, which might make the ſaid aſſignation ineffectual; notwithſtanding whereof, the payment made, and diſcharge reported, before any lawful intimation of the aſſignation was ſuſtained, ſeeing the Lords found, that the knowledge of the aſſignation, put not the defenders *in mala fide* to pay the cedent, which ought to have been intimate to them, after a legal manner, and ſo made known to them legally; and the inhibition not being *specifice* execute, and intimate to the ſuſpenders, could not be repute an intimation, eſpecially ſeeing alſo that inhibitions properly had force againſt immoveables, and did not ſtrike upon this ſubject controverted. And therefore the letters were ſuſpended *simpliciter*.

Act. *Oliphant*. Alt. ——

Fol. Dic. v. 1. *p.* 64. *Durie, p.* 192.

1626. *November* 16. LIVINGSTON *againſt* LINDSAY.

No 63.

PAYMENT of annualrent to the aſſignee, is equivalent to an intimation. *See* The particulars, *voce Bona fide* payment.

Nicolson, MS. No 393. *p.* 271.

1630. *January* 22. M'GILL *againſt* HUTCHISON.

No 64.
A letter written to the debtor by the aſſignee, with his anſwer promiſing payment, held equivalent to intimation.

IN a double poinding, betwixt two creditors, for a ſum owing to their common debtor, by his debtor; and whereto the ſaid debtor had made the one aſſignee, and which was arreſted thereafter by the other creditor, who craved to be preferred to the ſaid aſſignee, ſeeing he had affected the ſum by his arreſtment, and the aſſignation to the other party, albeit before the arreſtment, yet it was not intimate; and the aſſignee *anſwering*, that he had done equivalent to an intimation, in ſo far as he had written to the common debtor's debtor, acquainting him with his aſſignation, and deſiring him to make payment to him, who had written back to him his miſſive, wherein he promiſed to make him payment, and which miſ-