1632. *July* 21. HUME *against* HUME.

No 47.
Intimation at the market-croſs of the head burgh, or even at the dwelling-houſe, if not perſonally, does not put the party in *male fide* to pay.

THE deceaſed Samuel Hume being decerned by a decreet-arbitral, to pay to his mother yearly, a yearly duty of victual, whereto ſhe having made one her aſſignee; which aſſignation being intimate at the market-croſs of the head burgh of the ſheriffdom, where the party dwelt, and within the which the lands lay, for which the victual ſhould be paid: The aſſignee deſiring this decreet-arbitral, the ſame being regiſtrate, to be transferred in him *active*, and in the heir of Samuel Hume, party obliged to pay the ſaid victual, *passive*, who compeared, and *alleged*, That the mother to whom the ſaid victual was payable, had diſcharged to the ſaid Samuel that decreet, and granted her ſatisfied of that clauſe concerning the payment of the victual, and had exonered him thereof; and which, albeit it was confeſt to be done after the aſſignation and intimation thereof, yet the ſaid Samuel might lawfully do it, notwithſtanding thereof, ſeeing the ſaid intimation was never lawfully made to him; and the aſſignation and intimation preceding, made at the market-croſs, could not put him *in mala fide*, to pay his own juſt creditrix, and to take exoneration from her. This allegeance was found relevant, notwithſtanding of the preceding aſſignation and intimation, which the debtor was not holden to know, not being made to himſelf: For, if the intimation had been made at the debtor's dwelling-houſe, it might have remained as obſcure to him and unknown, as the intimation made at the market-croſs; therefore it would be conſidered, if ſuch intimations at parties dwelling houſes, be ſufficient againſt them, or elſe they muſt be made perſonally to them. (See *Bona Fide* payment.)

Act. *Mowat* & *Hepburn*. Alt. *Craig*. Clerk, *Gibson*.

Durie, *p.* 649.

1681. *January* 5. CHEISLY *against* CHEISLY.

No 48.
Intimations were not in uſe to be inſerted in protocals.

JOHN CHEISLY purſues Mr William Cheiſly to deliver him an extract of inſtruments of intimation of ſeveral aſſignations, made by his father to the purſuer, and for that effect to produce his protocal, that by inſpection thereof it might appear, whether theſe inſtruments of intimation were therein.—The defender *alleged*, That inſtruments of intimation are never inſert in protocals *de consuetudine*, and that notaries were not obliged, upon ſuch pretences, to bring in their protocals to Edinburgh for inſpection, which would breed them an intolerable trouble.—The purſuer *answered*, That all the notaries at their admiſſion gave bonds to keep protocals of all inſtruments of ſaſine, reverſions, and other inſtruments of importance; and intimations were of importance; and that protocals were books for public intereſt, and no man ſhould be refuſed inſpection

thereof, more than the regiſters, or the protocals brought into the clerk-regiſter. —It was *replied*, That other inſtruments of importance were never extended further than to real rights of land or annualrent. No 48.

THE LORDS found, That inſtruments of intimations of aſſignations were not accuſtomed to be inſert in protocals; and therefore found notaries not obliged to bring in their protocals to give private parties inſpection; but ordained the defender to depone, whether theſe inſtruments were inſert in his protocal, and to produce what he acknowledged upon oath. *See* PUBLIC OFFICER.

Stair, v. 2. p. 826.

1696. *June* 17. LAWRIE *againſt* HAY.

No 49.
In a competition, an intimation on a paper apart, not being ſo ſpecific, as neceſſarily to have reference to a certain aſſignation and no other, was poſtponed to one more particular.

THE LORDS decided the competition between Thomas Lawrie and Doctor Hay, two aſſignees, to one ſum. Sir David Hay had perfected his by his firſt intimation. Thomas objected ſeveral nullities and informalities againſt it; ſuch as, that it differed from the aſſignation in the ſum, the one making it L. 2082, and the other L. 2090. 2*do*, That it made no mention of the cedent, nor of the date of the aſſignation, nor of the *cauſa debendi*, whether by decreet or bond, and only related to the letters of ſupplement in general; ſo it might be applicable to any other right as well as this; not being wrote on the back of the aſſignation, but on a paper apart. *Anſwered*, Law had introduced no eſſential requiſite ſolemnities to an intimation, (as it had done to inſtruments of ſaſine) but any certification, putting the debtor *in mala fide*, is ſufficient; and though the act of Parliament 1672, required the execution of all ſummonſes to expreſs the names both of purſuer and defender, and not generally to refer to the ſummons, under the pain of nullity; yet that being a correctory law, could not be extended beyond its own caſe; and there was neither law nor practice, obliging them to write the intimation on the back of the aſſignation or letters of ſupplement, or declaring any ſuch intimations, contained in a ſeparate paper, null; and here copies were affixed at the market-croſs, and intimation perſonally made to the Lord Napier, debtor, his curators and factors, which were more than ſufficient to ſupply the defects of this intimation, if any were.——THE LORDS found, whatever this intimation might operate againſt the common debtor, yet now in a competition with a co-creditor, co-aſſignee for onerous cauſes, it was too general and uncertain, ſeeing it might ſerve for intimation of another debt of the like ſum, as well as this. They preferred Thomas Lawrie to the ſum in queſtion.

Fol. Dic. v. 1. p. 63. Fountainhall, v. 1. p. 721.