

- 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 reputed 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 executed inhibition upon the said assignation, before the obtaining of the said discharge, by the which the suspenders are constituted 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 constituted 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 *specificce* executed, and intimate to the suspenders, could not be reputed 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*.

A&amp;C. Oliphant.

Alt. —

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

- No 63. 1626. November 16. LIVINGSTON against LINDSAY:  
 PAYMENT of annualrent to the assignee, is equivalent to an intimation. See The particulars, *voce Bona fide* payment.  
*Nicolson, MS. No 393. p. 271.*

- No 64. 1630. January 22. M'GILL against HUTCHISON.  
 IN a double pointing, 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-

A letter written to the debtor by the assignee, with his answer promising payment, held equivalent to intimation.

five was before the arrestment; and the other *answering*, That that missive was not a legal intimation, and could not be respected against him, who was a co-creditor, and had done lawful diligence to affect the money; for the said missive being a private deed, and which betwixt them might be of any date they pleased. Seeing there is no means to improve the same, wanting witnesses, it may have what effect it can against the writer, but ought not to work against him, who cannot be prejudged thereby.—THE LORDS found, that this missive, dated before the arrestment, was as sufficient as any intimation: Therefore preferred him to the arrester; for if the writer of the missive had at that time given bond to that assignee, to pay him that sum, the arrestment thereafter would not have prejudged the assignee, and the missive was alike, wherein he had promised to pay him; but it appears not alike, for the bond behoved to have witnesses, whereby the manner of improbation was extant, which was not so in the letter. *See PROOF.*

No 64.

Clerk, *Hay*.*Fol. Dic. v. 1. p. 64. Durie, p. 484.*

The same case is thus reported by Kerse:

INTIMATION sustained, given by an letter written by the assignee to the debtor, and by his answer making days of payment, *idq. contra tertium cessionarium.*

*Kerse, MS. fol. 53.*

Also by Spottiswood:

JAMES TURNBULL being addebted to Captain Semple in L. 300, the Captain assigneth it to William M'Gill in Edinburgh, who, upon his assignation, acquainteth James Turnbull, the debtor, of it, and desireth payment of it conform to his assignation, without making any other legal intimation thereof. James writeth back to the assignee, that he hath no money at present, but promised to pay him at Martinmas next. Before payment, Mr John Hutchison, a creditor of Captain Semple's, arrests the same sums in James Turnbull's hands. The question falling out betwixt the assignee and the arrester, which of them should be preferred, the assignee leaned to his assignation for an onerous cause, and the debtor's letter, whereby he acknowledged the debt, and promised payment, which was equivalent to an intimation. The arrester *alleged*, That the assignation, without intimation, gave him no right, and the debtor's letter might prejudice himself, but none else. THE LORDS preferred the assignee, in respect of the assignation and letter foresaid.

*Spottiswood, (ASSIGNATION.) p. 21.*1664. November 18. THOMAS GUTHRIE *against* SORNBEG.

GUTHRIE pursues Sornebeg, *alleging*, That there being a first wadset of the lands of Thriplandhill, and certain tenements in Edinburgh, to Alexander Veitch, or

No 65.  
Infeftment in  
a second wad-  
set conveying