1730.

EARL OF ABERDEEN *v.* EARL OF MARCH AND OTHERS.

WILLIAM EARL of Aberdeen, *Appellant*;
WILLIAM EARL of March; ALISON CALLENDER, Widow; JAMES HALYBURTON, and ANDREW DUNNET, - - - - - *Respondents.*

9th April, 1730.

ASSIGNATION—What sufficient intimation.

No. 10. Sir James Hamilton and others purchased the forfeited estate of Keir, and held it in trust for behoof of John Stirling, the son of the attainted person. These trustees appointed Mr. Hamilton of Dachmount to the general charge of the property; in consequence of which, he carried on the whole management, and kept a record of his transactions, which was patent both to the trustees and to Mr. Stirling.

In 1721, they granted a bond for L.1000 sterling to James Lowis of Merchiestoun, and upon his death, John Lowis, his executor, having called up the money, it was advanced by the appellant, who thereupon received an assignation to the bond. Of this transaction Mr. Hamilton was made aware, and a note of it was entered by him in his book of accounts.

In 1727, Lowis failed, upon which the respondents, having claims against him, arrested this sum

of L.1000 in the hands of the trustees, who thereafter raised a multiplepoinding, in which both the appellant and the respondents were called as defenders. The respondents insisted that the assignation was of no effect, sufficient intimation of it not having been given to the debtors. It was found "that the notification made to Mr. Hamil- July 11, 1728.
"ton and entered in his book, is not equivalent to
"an intimation to the debtors, and therefore pre-
"fer the arresters." This judgment was adhered July 26.
to.

An offer was then made to prove other circumstances tantamount to a formal intimation; and the proof being allowed, the following facts were established. It appeared that the appellant's purpose of purchasing the bond had been signified by Lowis's agent to Mr. Hamilton; that Mr. Hamilton had assented on the part of the trustees; that when the assignment was completed, Mr. Hamilton was in like manner informed by Lowis's agent, and requested to pay to Mr. Lowis the arrears of interest up to the date of the assignment, which he did, and entered the payment in his cash book, with a memorandum, that the debt was from thenceforward conveyed to the appellant; that he afterwards gave notice of what was contained in this memorandum to Mr. Stirling; but that the assignation was not shown or read to Mr. Stirling.

Upon advising these depositions and a hearing in presence, the Lords "found the qualifications July 2, 1729.
"of the notifications made to Dachmount, and
"marked in his book, relevant and proven, to be
"equivalent to an intimation to the debtors; and

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" therefore preferred the Earl of Aberdeen, the " assignee."

The respondents petitioned against this interlocutor, arguing, that by the law of Scotland, intimation in presence of a notary is required for perfecting the right of an assignee, and that private notice is never equivalent to an intimation. The Lords, by the narrowest majority, " found the qua- " lifications of the notification made to Mr. Ha- " milton, and marked in his book, and other " qualifications pleaded upon by the assignee, " were not equivalent to an intimation to the " debtors, and therefore preferred the creditors ar- " resters."

The appeal was brought from the interlocutor of the 30th July, 1729, and prays that the same " may be reversed, and that the decree of the 2d " of the said July may be affirmed."

Pleaded for the Appellant:—There is no law which requires the assignment of a bond to be published by a notorial instrument. It has been always held that intimation by such overt acts, as must remove all suspicion of fraud or collusion, is sufficient to complete the assignee's right.

Pleaded for the Respondents:—The want of a notorial intimation cannot be supplied by the private knowledge of the debtor, far less of the debtor's agent. [Sir G. Mackenzie, Tit. *Assignations*. Stair, B. III. t. 1. § 7.] The cases in which other acts have been held equivalent to such an intimation are quite different from the present, in which the appellant pleads no more than a private notice to an agent.

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GORDON
v.
CRAUFORD.
Judgment
April 9, 1730.

After hearing counsel, "it is ordered and adjudged, that the said sentence or decree of the 30th "July, 1729, be and is hereby reversed, and that "the said decree of the 2d of the same month be, "and is hereby revived and affirmed; and it is "hereby further ordered, that the L.1000 secured "by the bond in the appeal mentioned, and interest "for the same from Martinmas 1725, be paid to "the appellant."

For the Appellant, *C. Talbot*, and *Ro. Dundas.*
For the Respondents, *P. Yorke*, *D. Forbes*, *C. Areskine.*

JAMES GORDON of Craigland, *Appellant;*
PATRICK CRAUFORD, the Father, and PATRICK CRAUFORD, the Son, *Respondents.*

28th April, 1730.

FRAUD.—Fraud and circumvention inferred from the distressed state of the granter of a disposition, the deceitful terms of the writings, and the great inequality of the bargain.

No. 11.

PATRICK CRAUFORD was, in virtue of certain decreets of adjudication, in possession of the estate of Craigland, (worth L.220 per annum,) the property of James Gordon (Appellant) who was in very distressed circumstances, and had been for several years a prisoner for debt. Taking advantage of