

S E C T. VII.

Whether Bills require Intimation.

1698. July 13. EWING *against* GEILLS and JOHNSTON.

No 56.
In a competition betwixt an indorsee and an arrefter, the prior indorsation was preferred, because bills require no intimation.

THERE was a competition betwixt John Ewing, as he who had a bill of exchange indorsed to him by Howison; and John Geills and Alexander Johnston, as arresters for the drawer's debt; for whom it was *alleged*, That though their arrestments were posterior, yet they ought to be preferred; because the indorsation being of the nature of an assignation, the same not being intimated, was an incomplete right, and could never compete with them.—*Answered*, 1^{mo}, Bills of exchange are not regulated by the common formalities of law; but, for the dispatch of trade and commerce, are not clogged with intimations till they fall due; as is clear from Stair, B. 3. tit. 1. § 12. where the first order is always preferred to arresters or assignees; these rights being regulated *jure gentium*, conform to the custom of merchants. 2^{do}, Geills, one of the arresters, is the indorser of the bill, and so can never compete.—*Replied*, Though favour of commerce requires the speedier transmission of bills than other rights; yet this does not dispense with such formalities as open a door to all frauds; which the want of intimation may do; and the drawer of the bill is never fully denuded till it be either accepted or intimated; and, before that, it may be still arrested as his money; yet the Lords preferred Ewing, to whom it was indorsed, before the arresters.

Fol. Dic. v. 1. p. 96. Fountainhall, v. 2. p. 11.

1706. July 19. ANDERSON *against* TURNBULL.

No 57.
A precept to account for fungibles, drawn in favour of a third party, requires intimation.

ARBUTHNOT, merchant in Stonehive, draws a precept on Herriot in Dirleton, in favour of David Anderson, merchant in Montrose, that he may count with him for 190 bolls of meal, and 51 stones of iron; and take his receipt for what he should pay him; and Arbuthnot obliges himself to allow it to Herriot. Anderson pursuing, compearance is made for George Turnbull, writer to the signet; who craved to be preferred, as having arrested this debt in Herriot's hands, as creditor to Arbuthnot, long before any intimation made by Anderson of his precept; which being only of the nature of an assignation, could take no effect till intimated; and so he, by his arrestment, did first affect the subject.—*Alleged* for Anderson, 1^{mo}, His order and precept being of the nature of an inland bill of exchange, it needed no intimation, being between merchants, and *in re mercatoria*: And Stair, lib. 3. tit. 1. § 12, says, intimation being only a municipal custom, holds not in orders among merchants; and, therefore, the first order to pay, is preferred to arresters, though neither intimation nor acceptance follow.