No 232.

Observed on the other side; That, in the assignation, the word BREWER, making part of the designation of the assignee, was in the same hand with the rest of the deed; from which it was plain, that it was originally intended either for old Thomas Smith, or a person who was to be designed by his relation to him. But, on inspection, the LORDS did not agree in this, some of them thinking it to be rather in the same hand with the filling up; and it was observable, that they generally voted for Adhering or Altering, according to their apprehensions in this respect.

THE LORDS adhered.

Reporter, *Justice Clerk.* Act. *A. Macdouall.* Alt. *C. Binning & Haldane.* Clerk, *Gibson.*
Fol. Dic. v. 4. *p.* 125. *D. Falconer, v.* 1. *No* 137. *p.* 170.

DIVISION VIII.

Delivery when presumed made, and for whose Behoof.

1626. *December* 16. BYRES *against* JOHNSTON.

No 233.

A DISPOSITION having been delivered by the seller to a writer, in order to draw a charter in favour of the purchaser; this was not understood equivalent as if delivery had been made to the purchaser himself; and so there was still found *locus pœnitentiæ.*

Fol. Dic. v. 2. *p.* 156. *Durie.*

*** This case is No 15. p. 8405. *voce* LOCUS POENITENTIÆ.

1628. *February* 21, L. MONIMUSK *against* L. PITTARO.

No 234.
A bond of provision in favour of children delivered to the mother's brother, was held to be a *depositum*, and not for behoof of the children.

IN an action of exhibition by the Laird of Monimusk against the Laird of Pittaro, for exhibition of certain bonds, and re-delivery of them to the pursuer, which were made by the pursuer in favour of his bairns for their provisions, and which were put by the father in the defender's hands, who was mother-brother to the bairns, to be kept by him to their uses; in respect of the which, the defender *alleged*, That the pursuer having so deposited them, they became the bairns' proper evidents, as effectual as if they had been delivered to themselves, being made for their provisions, which their father did; and their mother now being dead, the pursuer could not seek them back again to be altered in their prejudice, or destroyed at the father's pleasure. Which allegeance the LORDS repelled; and found, that notwithstanding thereof, the

father might seek back again the said bonds, and alter or cancel them at his pleasure; but real securities or lands being expeded by the father to his bairns, are not retreatable by him. No 234.

Act. *Learmont & Hay.* Alt. *Belshes.* Clerk, *Gibson.*

Fol. Dic. v. 2. p. 155. Durie, p. 348.

1630. *June* 11. FAIRLIE *against* FAIRLIE.

No 235.
An assignation executed by a mother in favour of her son, and put into the hands of his wife's father, was presumed to be for the son's behoof, and consequently became his evident upon delivery.

ONE Fairlie being heir to her brother Fairlie, and Richard Maxwell, her spouse, pursue Mr Patrick Forrest, as haver, and Eupham King, as maker of an assignation to some obligations made by her in favour of the said umquhile Fairlie, her son, to whom the pursuer was heir, for delivery of the assignation; wherein the defender haver producing the assignation, the mother, who was maker, alleged the summons was not relevant, never proporting that the same was delivered to the defunct in his own time, before his decease, or that it was delivered to this haver to the assignee's behoof, nor noways qualifying, that the same ever became the said defunct's evident. This allegeance was repelled, and the summons and action was sustained and found relevant, bearing, That the assignation produced called for was made in the defunct's favour, and that the same was out of the cedent's own hands, and was in the hands of this defender, who produced the same, who was father-in-law to the assignee, (the assignee having married his daughter,) and whose having the same, without any qualification how he received the same, and from whom, was found to be a presumption that the same was become the assignee's evident; in respect whereof, the LORDS found it not necessary to libel or reply that the writ was in the assignee's hand at any time before his decease, or that the haver had received it to the assignee's use, or to make any other qualification or probation, that the writ had become his evident in his lifetime; but without any such qualification or probation, except only upon production of the said assignation by the haver thereof, they found, that the same should be delivered to the assignee's heir, as an evident proper to the defunct, and so now to the heir.

Act. *Stuart & Cunningham.* Alt. *Nicolson & Aiton.* Clerk, *Gibson.*

Fol. Dic. v. 2. p. 156. Durie, p. 516.

1676. *November* 14. INGLIS *against* BOSWELL.

No 236.

A FATHER having granted bonds of provision, infavour of his children being *in familia*, and having thereafter contracted debt, it was found, That the creditors, though posterior, are preferable to the children; and though, in other cases, it