

1712. *December 16.* MONRO *against* MONRO.

No. 266.

An assignation was sustained as valid, made by a father to his son foris-familiated, though never delivered.

*Forbes.*

\* \* \* This case is No. 32. p. 5052. *voce* GENERAL DISCHARGE.

1715. *February 18.* LORD LINDORES *against* STEWART.

No. 267.

A postnuptial bond for a life-rent provision, executed by a husband in favour of his wife, found in his repositories at his death, was sustained, although altered and recalled by a writ under his hand, because the first did not admit of delivery, the husband being in law custodier of his wife's writings.

*Bruce.*

\* \* \* This case is No. 342. p. 6126. *voce* HUSBAND AND WIFE.

1725. *January 20.*

MARY ADAIR, *against* JOHN ADAIR of Maryport her Brother.

No. 268.

Bonds of provision to children *in familia* are good without delivery.

The said Margaret pursued her brother John, as representing their father, for £100. Sterling, contained in a bond of provision granted by the father to her two years before his death.

The defences offered were, *1mo*, That the bond, though granted *in liege poustie*, was not delivered till the father was on death-bed, and contained no clause dispensing with the not-delivery; *2do*, The defunct's estate was by his contract provided to the defender, as heir of the marriage, so that he enjoyed it as heir of provision, which did indeed subject him to the onerous, or even rational debts or deeds of his father; but in so far as children's provisions were exorbitant, they were reducible, and the provisions to this daughter was unsuitable and exorbitant, considering the small estate the defunct left.

It was answered for the pursuer, *1mo*, That bonds of provision to children *in familia* were good, though not delivered in the granter's lifetime, and though they did not contain a dispensing clause; Lord Stair, B. 1. T. 7. § 14.; 11th November 1624, the Bairns of Elderslie, No. 14. p. 6344.; *2do*, That as the bond of provision was by no means exorbitant, so the allegiance was not relevant, the father being absolute fiar, and having thereby a power to burden the estate with provisions to younger children, especially of the same marriage.