1755. *July* 2.

GEORGE HILL, Baker in London, *against* ALEXANDER HILL, Tenant in Inchmichael.

No 244.
Although a father took a bond for money lent, payable to his son, retaining it in his custody; found, that it continued the father's property.

ALEXANDER HILL, tenant in Inchmichael, Martinmas 1748, lent 1400 merks to five merchants in Dundee, upon their joint bond, in which 'they grant 'them to have borrowed and received from the said Alexander for himself, and 'in name and behalf of David Hill mariner, his eldest lawful son, the said 'sum of 1400 merks, which with the interest from the term of Martinmas '1748, they oblige themselves and their heirs, &c. to pay and again deliver to 'the said David Hill; and failing of him by decease without heirs of his own 'body, to the said Alexander Hill, his heirs, executors, or assignees.' David Hill made his will in favour of his brother George, bequeathing him his whole effects, and appointing him his sole executor. George brought an action against Alexander Hill his father, insisting in particular for payment of the sum in the said bond. It was *urged* for him, That the bond having been delivered to the father for behoof of his son David, by delivery it became the son's evident; and the money being made payable to him as the only creditor, the father retained no more power over it, than if he had delivered the bond to his son. It was *answered* for the father, That as the money lent was admitted to be his, the loan which he made of the same in the name of his son David as a provision to him, gave no *jus quæsitum* to the son while the bond remained in the father's custody. And it was argued in general with respect to provisions made by parents in favour of their children, that such a provision being intended for the subsistance of the child after the father's death, the presumption is, that the father means to retain it under his power during his life. It is upon this principle, that a bond of provision granted by a father to his child, though found in possession of a third party, is not presumed to have been delivered from its date. Upon the same principle, where a father executes an assignment to a child, of a debt or other subject belonging to him, the assignment retained by the father vests no right in the child. And even supposing the assignation, without intimation, to be in the custody of a third party, the father may however recal it during his life. And in the same manner, if a father purchase a subject in name of his child, whether a disposition of land or an assignment to a bond, the right will be understood to be in the father, and the subject disposable by him at his pleasure. Infeftment indeed or intimation completes the child's right, because infeftment or intimation is legal delivery to the child for his own behoof.

"THE LORDS accordingly sustained the defence and assoilzied."

Delivery is in one case only a material circumstance to vouch the establishment or transference of a right, namely, when the person who delivers has the disposal of the subject; for, in that case solely, the delivery must import

his will to vest his right in another. Hence it is, that when a man lends a sum and takes the bond in name of a child *in familia*, delivery of the bond to the father, has not naturally any other signification than that the bond, which comes in place of the money, is to be under his power as the money formerly was. It cannot import a delivery for behoof of the child; because the debtor who delivers the bond has no vote in the matter; but must deliver the bond to the father from whom he got the money. A donation to a child by a stranger, and the bond delivered to the father, is a different case. For there the granter of the bond having all under his own power, makes the delivery in order to fix the debt against himself; and as the donation is to the child, the presumption lies that the delivery to the father is as custodier, and not to give him a power of alteration; which in effect would make him creditor, and not his child. No 244.

It would be inconvenient if the law were otherways. It is very commodious, that parents should have access to appoint certain subjects to go to certain of their children, reserving still their own power of alteration. This could not be done, at least in the present shape, if the pursuer were well founded in his claim.

This case falls under the noted maxim in the Roman law, *quod alii per alium non acquiritur obligatio.* Alexander the father, who lent his own money, remained master of the bond, though he bound the debtors to pay to his son. He could cancel it or deliver it to the debtors, if they were willing to pay. At the same time, they were not bound to pay to him, but to his son. As the bond, however, continued under his power, the son had no claim during his life. See Principles of Equity, v. 2. p. 59. edit. 3d.

Fol. Dic. v. 4. *p.* 127. *Sel. Dec. No* 91. *p.* 121.

1776. *November* 22. LECKIE *against* LECKIES.

No 245.

LECKIE executed a deed, disponing an heritable subject to his youngest daughter Elisabeth and her husband, and their son, reserving his own liferent. By the same deed, he assigned to the same persons all his moveables at his death; and, of the same date, he granted them a bond for L. 400, which he delivered to them. This disposition contained a clause dispensing with the delivery, but it was registered by the granter. Some years afterward, Leckie, by another deed, disponed the heritable subject, and all his moveables, among his three daughters equally. After the father's death, the youngest daughter brought a reduction of the latter settlement, on the ground that the former being put upon record, was thence to be held a delivered deed, and was consequently irrevocable. THE LORDS found, that the first deed, in so far as regarded the moveables, could operate no transference of these till the granter's death, and therefore, to that extent it was revoked by the posterior settlement; but with regard to the heritage, they found that the registation of the deed was equi-