

No 245.

valent to delivery, and therefore reduced the latter settlement *quoad* the heritage. See APPENDIX.

*Fol. Dic. v. 4. p. 126.*

No 246.

A person debtor for the balance of the price of lands, granted bond obliging him to pay interest of the sum to the person from whom he purchased during his life, and at his death the principal to his children *nominatim*. The bond was delivered to a third party, where it remained till the seller's insolvency. Found that the fee was in the children, and could not be attached for the debts of the father.

1783. *January 23.* CREDITORS of DAVID TURNER *against* HIS CHILDREN.

THE Duke of Buccleuch being debtor to David Turner in the balance of the price of some heritable subjects, granted bond obliging himself to pay the legal interest of the debt to David Turner during his lifetime, and after his death to pay the principal sum to his children *nominatim*, and to their respective heirs. In the event of the death of the children, the bond farther provided, that the sums due to them should be exigible by two of their relations, for behoof of their issue.

This bond was delivered by the Duke's doer, not to David Turner, but to the person who had conducted the sale for him; and it remained there till some years after, when David Turner became insolvent.

A question then arose between his creditors and his children concerning the fee of this bond; when the former

*Pleaded;* Destinations in favour of children in bonds of borrowed money, though conceived in terms appearing to denote a divestiture of the father, as they occur in contracts to which the children are no parties, and in which they have no title to interfere, convey to them only a *spes successionis*. Like bonds of provision, they remain subject to revocation, and consequently to the father's debts, unless the deeds in which they are contained, have been either delivered for the children's express behoof, or put upon record, or followed with some other act equivalent to delivery. Without this, persons, after having acted while in affluence as unlimited proprietors of their funds, would have it in their power, upon their insolvency, to withdraw these from their creditors.

*Answered;* A bond remaining in the custody of the granter, or, which is the same thing, in the custody of those who act for him, is an incomplete deed, over which he has unlimited power; and the only difference between bonds of provision and others, is, that the former may be validated by the death of the granter, and without any delivery.

But where, in a bond of borrowed money, the right of the original creditor stands limited by the conception of the deed, in favour of a third party, no farther solemnity is requisite. The moment such a bond is delivered by the debtor, no matter to whom, it becomes an effectual and irrevocable voucher to every one favoured by it. Nor can creditors be prejudged by transactions of this sort. It cannot be imagined, that in order to defraud his own creditors, a person in affluent circumstances will be induced to divest himself of his estate.

One of the Judges seemed to be of opinion, that if the bond in question had been delivered to the father, and had remained till the bankruptcy in his cus-

tody, the fee vested in the children might have been considered to be of a revocable nature. Another, however, whose opinion was followed by the Court, observed, that although in bonds granted directly by a father to his children, the delivery in a question with the granter's creditors, must be proved by the children, the law was different in cases like the present. Without enquiring, therefore, in what manner the possessor of this bond had received it, the

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LORDS

“ Found, that the fee was in the children, and could not be attached for the debts of the father.”

Lord Ordinary, *Gardenston.*For the Creditors, *Baillie, M'Cormick,*For the Children, *Geo. Wallace, Ilay Campbell.*Clerk, *Hume.*

C.

*Fol. Dic. v. 4. p. 126. Fac. Col. No 81. p. 128.*1796. *May 31.*JOHN ZEPHANIAH HOLWELL, and his Attorney, *against* LADY CUMING.

CAPTAIN WEDDERBURN, after having been many years abroad in the service of the East India Company, returned to Scotland; and in 1768 he granted a bond for L. 4000, payable after his death, to his then only child, now Lady Cuming.

The bond bore to be granted for ‘love, favour, and paternal affection,’ and ‘in order to secure her in a suitable provision.’ It contained no power of revocation, nor dispensation with delivery.

Soon after granting the bond, Captain Wedderburn returned to India, where he died in 1776. After the date of the bond he was twice married. He named his third wife his executrix, who intromitted with his whole effects in India.

His property in this country was sold by judicial sale; and after paying a preferable creditor, Lady Cuming received the reversion, which was about L. 1000, in part payment of her bond.

In 1789, John Zephaniah Holwell, a creditor to Captain Wedderburn, by a bond for L. 1704 : 19 : 4, granted in India in 1769, and upon which no interest had been paid since 1774, brought an action against Lady Cuming, as representing her father, and in 1790, raised a reduction of the bond, on the act 1621.

These actions were conjoined.

In the course of procedure evidence was led by the pursuer, to establish that his bond in 1769 was a renewal of one granted in 1766; and he contended, that Captain Wedderburn was even then insolvent.

The defender controverted the evidence of the priority of the debt, and denied that her father was ever insolvent.

No 247.

A bond of provision by a father to his daughter, found in the repositories of her grand-uncle by the father's side, presumed to have been held for behoof of the father.