

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. *Belsbes.*Clerk, *Gibson.**Fol. Dic. v. 2. p. 155. Durie, p. 348.*

1630. June 11.

FAIRLIE against FAIRLIE.

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 allegiance 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.

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

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.

No 236.