No 240. the clause so strictly and judicially, because it does not expressly mention a power to alter, then by the same rule, John, the second assignee, may as justly contend, that the clause allowing him to call for th. assignation is not taxative, wanting these exclusive particles (only or allenarly); so the expressing of that single case, does not exclude his power to call for it on other occasions, or to dispose of it to another as he saw cause. The Lords thought the clause very ill drawn; but found as it stood it gave no right to alter, change or revoke; and therefore though they were both gratuitous, yet preferred the first assignation, and found it not revocable.

In this cause the lawyers urged the case in l 3. § 3 & l. 5. § 1. D. De condict. caus. dat. that though nothing was more favourable in the common law than liberty, yet one sold under this express condition, *ut intra certum tempus manumittatur*, yet upon intimation, before existing of the time of his resiling and repenting, the manumission may be stopt and interrupted; but the Lords decided *ut supra.*

Fountainhall, v. 2. *p.* 374.

1738. *November.* Irvine *against* Agnes Irvine, and her Husband.

No 241.

A deed found after the granter's decease in the hands of his ordinary doer was considered as a deed never delivered.

Fol. Dic. v. 4. *p.* 125. *Kilkerran,* (Presumption.) *No* 1. *p.* 425.

1741. *January* 9. Hamilton *against* Hamilton.

No 242.
Right taken in name of children from a third party, if alterable by the father.

Where a father had disponed his estate to his son, and taken from the son an obligation to pay certain sums to his several chidren in full contentation of all former provision or portion natural, without reserving to himself any power to alter or vary the proportions settled by that obligation, it was found that the father could not alter nor vary the said proportions.

For though bonds of provision granted by the father, and still retained by him, may be cancelled, or varied at pleasure, yet, where a father takes a bond from a third party in his child's name, the delivery of that bond to the father is a delivery for the behoof of the creditor, upon the common principle, that a bond out of the hand of the granter is presumed a delivered evident, and may be recovered by the creditor out of the hands of any third party.

Fol. Dic. v. 4. *p.* 125. *Kilkerran,* (Presumption.) *No* 3. *p.* 426.

*** C. Home's report of this case is No 25. p. 4137., *voce* Faculty.