No. 269. Answered for the defender: Where publication is introduced by statute as in the cases of interdictions and inhibitions, such deeds are not perfect until they are published; but no law makes it necessary towards the completion of a private deed or contract. Indeed, delivery of a writ is sometimes requisite in order to make it effectual; but, if it is out of the granter's hands, the person, in whose favours it is conceived, has a right to sue for exhibition and delivery, without necessity of proving it was delivered, as that is presumed; but, where the deed is obligatory on both sides, as in mutual contracts, such writ is effectual without delivery; the application of all which to the present case is obvious; seeing this decreet is, in virtue of the submission, a deed of mutual consent, and to all legal effects, the same as if the parties had covenanted what the arbiter decreed; hence it follows, that it was a complete deed from the moment it was executed, without the necessity of delivery, and, after that period, while it was in the arbiter's keeping, he must, from the nature of the thing, be considered only as custodier for the parties. In the *next* place with regard to what the pursuer prays, That the Lords would declare the arbiter has still power to review or destroy the decreet, it is sufficient to observe, That, as such power is solely lodged with the arbiter, the Court cannot communicate, or give to another, a right which they have not; and, if he scruples his own power, that is what cannot be helped; there being no clause in the submission whereby he can be compelled to proceed in any one step of the arbitration. At the same time, the decreet is so well founded, that, if it were not the hazard of being involved in a law-suit, the defender would have no scruple in consenting to open it.

The Lords repelled the reasons of reduction.

C. Home, No. 41. p. 73.

1754. *December* 10. ALEXANDER FRASER *against* His MAJESTY'S ADVOCATE.

No. 270.
Bonds of provision when set up as claims on estates forfeited to the Crown, found not to be good unless delivery is proved

Alexander Fraser, second of the late Lord Lovat, entered a claim upon the forfeited estate of Lovat, in terms of 20th Geo. II. Cap. 41. for £4000, contained in a bond of provision, granted by Lord Lovat in favour of the claimant.

Objected for the Crown: That this bond was never a delivered evident.

Answered for the claimant: That delivery of bonds of provision is presumed by law, though found in the father's custody, whom law presumes to be the proper keeper of such bonds; and that, in the case of the children of Bowhill, after the rebellion 1715, bonds of provision to the children, with a clause empowering the father to revoke, were sustained by the Court of Inquiry; and that non-delivery, and a power of revocation, are equivalent.

Replied for the Crown: That, though the law presumes delivery of bonds of provision, when the question is among the children, yet the case is entirely different, when such bonds come to be set up as claims against the Crown: Were these

to be allowed, a way would be found out to defeat every forfeiture whatever. The case of Bowhill was erroneously judged, and no precedent to this Court. No. 270.

"The Lords dismissed the claim."

Act. *Ferguson, Lockhart, J. Dalrymple.* Alt. *Advocatus A. Pringle.* Clerk, *Kirkpatrick.*

S. *Fac. Coll. No.* 119. *p.* 177.

1783. *June* 20. GEORGE ROBERTSON *against* ALEXANDER RAMSAY.

No. 271.

The award of arbiters, though signed by them and delivered to their clerk, may be altered by them, while undelivered to the parties.

Fac. Coll.

*** This case is No. 51. p. 653. *voce* ARBITRATION.

1787. *February* 6. THOMAS CARRICK *against* ROBERT KEY.

No. 272.
To transmit the right of a bill of exchange to an indorsee, delivery of the bill itself is not indispensably necessary.

Thomas Carrick sued for delivery of a bill of exchange for 1000 merks, drawn by the father of the defender, Robert Key, and afterwards by him indorsed to the pursuer, who was his grandson by a daughter, and at that time under age.

The drawer had about the same time indorsed a bill for 2000 merks to another of his daughters. He had also indorsed a bill for 1000 merks to the pursuer's mother. Both these bills he had delivered to the indorsees; but the bill in question had remained in his custody till a short time before his death, when he delivered it, with several other writings, to Robert Key, his only son, and general disponee, without giving particular directions as to the disposal of any of them.

Pleaded for the defender: In order to prove the transmission of a right of debt from one person to another, the deed executed for this purpose must be delivered, or some other act performed, which in the contemplation of law is held equivalent to delivery. The mere indorsation of a bill of exchange, without giving over the voucher itself to the indorsee, or to some person for his behoof, cannot be thought sufficient. Though this may lead to a belief, that the creditor had at one time some design of bestowing a part of his effects in this way, it must be presumed, from his subsequent conduct, that he had afterwards altered his purpose; Kames's Elucid. p. 26. The circumstance, of the deceased having, in the present instance, put the document itself, a short while only before his death, into the hands of the defender, who was to be his general representative, seems to strengthen this supposition.

Answered: In the case of deeds executed in favour of near relations, when framed in such a manner as to import an immediate transference of the right, no