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-

No 245. valent to delivery, and therefore reduced the latter settlement *quoad* the heritage. *See* Appendix.

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

1783. *January* 23. Creditors of David Turner *against* His Children.

No 246.
A person debtor for the balance of the price of lands, granted bond obliging him to pay interest of the 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.

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 counducted 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-