strument of intimation in his own possession, is not denuded till the assignation be delivered to the creditor, or some person for his behoof; but this is not without some scruple; seeing the notary's having the assignation in his hand, and intimating in the creditor's name, may be construed a delivery to the notary for the creditor. No 175.

Fol. Dic. v. 2. *p.* 148. *Harcarse,* (ASSIGNATION.) *No* 113. *p.* 22.

SECT. IX.

Rights taken in name of Children.

1662. *January* 15. GEORGE GRANT *against* GRANT of Kirdels.

No 176.
A debtor purchased an apprising led against his own estate, and took a conveyance to a trustee, who granted back-bond, declaring the right to be for behoof of the debtor's son, who was *in familia*. The apprising was found extinct *confusione*. See No 181. p. 11503.

GEORGE GRANT pursues reduction of a renunciation of a wadset made by Grant of Morinsh to Grant of Kirdels, *ex capite inhibitionis*, because he had inhibited Morinsh the wadsetter, before he granted the renunciation. The defender *alleged*, That he had a reduction of the bond, whereupon the pursuer's inhibition was raised, depending, and declared he held the production satisfied, and repeated his reason by way of defence; that the bond was null, wanting a date either of day, month, or year. The pursuer *answered*, That the bond bore the term of payment to be Whitsunday 1635, and so instructs that the bond was betwixt Whitsunday 1634 and Whitsunday 1635. The defender *answered*, *non relevat*, unless the month and day were also expressed, because otherwise the means of improbation cease by proving *alibi*.

"THE LORDS repelled this defence, seeing the year was expressed *in re antiqua*, but if improbation had been insisted on, less reasons in the indirect manner would be sustained."

The defender *alleged* further absolvitor, because this bond, albeit it be assigned to George Grant the pursuer, yet it is offered to be proved, that the time of the assignation, the said George was pupil within 12 years of age in his father's family; and so in law it is presumed that it was acquired by his father's means, and is all one as if his father had taken assignation in his own name, and granted translation to his son; and it is clear by the testament produced, that Grant of Ballandalloch's father was tutor to the wadsetter, and during his tutory any right taken by him of sums due by the pupil are presumed to be satisfied by the pupil's means, and to accresce to the pupil, against whom, he nor his assignee can have no action for any particular part, but the whole must come in the tutor's accounts; and offers to prove, if need be, that

No 176. the tutor *intus habuit*, being debtor in greater sums to the pupil than this. The pursuer *answered*, 1*mo*, The allegeance is no way relevant upon such presumptions to take away the right standing in the defender's person; 2*do*, The defence is not liquid, and so can make no compensation, albeit his son were expressly assignee as he is not.

"The Lords found the defence relevant, unless the pursuer would condescend and instruct that the assignation was granted to him otherwise than by his father's means."

Fol. Dic. v. 2. *p.* 148. *Stair, v.* 1. *p.* 82.

1667. *November* 20. Trotters *against* Lundy.

No 177.
A person who purchased a right, took the assignation in name of his daughter, which was acted upon. He afterwards discharged the debt, which was found unwarrantable.

The Children of George Trotter in Fogorig being confirmed executors to their sister Isobel Trotter, pursued James Lundy, cautioner in a bond for James Trotter of the east end of Fogo, for the sum therein contained. It was *alleged*, That the said James being heir to his grandfather, Alexander Trotter, in the east end of Fogo, and the said George, son to the said Alexander, and executor to him, they did transact together that the moveables belonging to the said George, as executor, should remain with the heir; and the said James, and the defender as cautioner, did, for the cause foresaid, grant the said bond blank in the creditor's name, wherein the said George filled up the name of John Trotter in Chester, his brother, and procured for him an assignation for the said Isobel his daughter; and that thereafter, upon a submission betwixt the said George and Alexander Trotter, son to the said James, granter and principal debtor in the said bond, the arbiters ordained the said George to give back to the said Alexander the said bond and assignation, with a discharge thereof; and therefore the said Isobel being *in familia paterna*, and the said bond and assignation being taken and procured, as said is, by the said George the father, in favour of the daughter, who hath no visible estate or means to acquire any such right, he was still master of the same; and it being ordained to be discharged, (as said is) the said debt is extinct. It was *answered*, That the bond being filled up, and registered in the name of the said John Trotter, and the same being assigned, and the assignation in favour of the said Isobel intimated, and after her decease, her executors having confirmed the said debt, all before the said submission, her father could not, by the submission, or any other deed of his, evacuate the said right established in the person of the said Isobel and her executors; and as to the practique betwixt Monimusk and Pittarro, * whereupon the defenders allege, it doth not quadrate to the bond in question, it being never delivered, but deposited in the uncle's hand, mother brother to the child; and in the same case it was found, that the father could not retract a real right made in favour of his child and heir; and here there is *eadem ratio*.

* In Division VIII. of this Title.