No 174. tual where a debtor took it in his creditor's name, it being reputed as in security to that creditor.

John Bayne, but that he granted these two bonds to Sir James M'Donald and his son, for cattle bought from them, and gave the bonds blank in the creditor's name, which thereafter were filled up with Mr John Bayne's name, and he charged thereupon; but before the charge, the creditors of Sir James MacDonald, and his son, arrested in his hand, and obtained decreet for making forthcoming, whereupon he made payment, and referred to Mr John's oath that he received the bonds from Sir James M'Donald and his son, and that they were blank the time of the arrestment. Mr John depones, that one of the bonds was sent to him blank after the arrestment, but depones, the other was filled up before it was sent to him; and that by letters sent with it, it was signified, that in respect he was a creditor, the bond was taken in his name. At advising of the oath, it was *alleged*, That though the bond was taken in Mr John's name, and had never been blank, yet M'Donald, who got the bond for his cattle, was the true creditor, and not Mr John Bayne, whose name was only made use of under trust, for M'Donald's behoof; and therefore whoever takes a bond in another man's name, is not presumed to gift to him the sum, but to make use of his name under trust, and with confidence that he would denude in his favour when desired; and, therefore, the Lords did lately sustain process upon that account, though the creditors of the persons entrusted did vigorously oppose it. It was *answered*, That suppose the filling up of a third party's name who had no interest, might be presumed only a trust, yet that presumption is excluded by a stronger presumption, viz. when a creditor's name is made use of by his debtor, it is presumed to be in security to that creditor; and here Mr John Bayne was creditor to M'Donald before he made use of his name in this bond; and it is most frequent for debtors when they sell lands, to take bonds for the price in name of the creditors, who might by exhibition recover the bonds; and if the debtor did pursue them to denude, they would exclude him upon that presumption, that the bond was granted to them in security. It was *replied*, That so long as the bond was undelivered to the creditor in whose name it was taken, the receiver of the bond was still master of it, and so was a true creditor, and it was to be affected for his debt.

The Lords found, that a bond taken in the name of a creditor was not presumed to be in trust for the behoof of the procurer of the bond, but in security to that creditor, and could not be warrantably given up by the procurer of the bond, or affected with his debt, although it was not delivered to the creditor in whose name it was taken.

Fol. Dic. v. 2. *p.* 148. *Stair, v.* 2. *p.* 537.

1685. *January.* Lady Hissleside *against* Littlegill.

No 175.

Found that a debtor granting assignation to his creditor, and causing intimate the same in the creditor's absence, but retaining the assignation and in-

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