1712. *December* 16. MONRO *against* MONRO.

No. 266.

An assignation was sustained as valid, made by a father to his son foris-familiated, though never delivered.

Forbes.

*** This case is No. 32. p. 5052. *voce* GENERAL DISCHARGE.

1715. *February* 18. LORD LINDORES *against* STEWART.

No. 267.

A postnuptial bond for a life-rent provision, executed by a husband in favour of his wife, found in his repositories at his death, was sustained, although altered and recalled by a writ under his hand, because the first did not admit of delivery, the husband being in law custodier of his wife's writings.

Bruce.

*** This case is No. 342. p. 6126. *voce* HUSBAND AND WIFE.

1725. *January* 20.

MARY ADAIR, *against* JOHN ADAIR of Maryport her Brother.

No. 268.

Bonds of provision to children *in familia* are good without delivery.

The said Margaret pursued her brother John, as representing their father, for £100. Sterling, contained in a bond of provision granted by the father to her two years before his death.

The defences offered were, 1*mo*, That the bond, though granted *in liege poustie*, was not delivered till the father was on death-bed, and contained no clause dispensing with the not-delivery; 2*do*, The defunct's estate was by his contract provided to the defender, as heir of the marriage, so that he enjoyed it as heir of provision, which did indeed subject him to the onerous, or even rational debts or deeds of his father; but in so far as children's provisions were exorbitant, they were reducible, and the provisions to this daughter was unsuitable and exorbitant, considering the small estate the defunct left.

It was answered for the pursuer, 1*mo*, That bonds of provision to children *in familia* were good, though not delivered in the granter's lifetime, and though they did not contain a dispensing clause; Lord Stair, B. 1. T. 7. § 14.; 11th November 1624, the Bairns of Elderslie, No. 14. p. 6344.; 2*do*, That as the bond of provision was by no means exorbitant, so the allegeance was not relevant, the father being absolute fiar, and having thereby a power to burden the estate with provisions to younger children, especially of the same marriage.

The Lords repelled the defences, the daughter being a child of the same marriage. No. 268.

Act. *Sir Tho. Wallace.* Alt. *And. Macdoual.* Clerk, *Dalrymple.*

Edgar, p. 149.

1736. *December* 10. ROBERT SIMPSON *against* PETER STRACHAN.

No. 269.
Whether decree-arbitral, signed, but remaining with the arbiter or his clerk, be effectual before it is delivered to the parties or put into the register?

These parties having referred certain differences betwixt them to an arbiter, he pronounced his decreet-arbitral therein a short time before the submission expired; after which, Simpson, having got notice what the terms of it were, alleged, That the arbiter had forgot a material article, whereby he was greatly lesed by the decreet; therefore he begged, That the arbiter would either review the same, as it was still in his clerk's hands, or not give it out, unless the other party would agree again to submit the affair to him; but the arbiter, judging he was *functus*, refused to alter; whereupon Simpson insisted in an exhibition and reduction thereof, as being an undelivered evident, or that the Lords would find and declare the arbiter had still a power to make effectual or destroy the decreet.

The arguments urged for the pursuer were: That, until an arbiter publish his decreet, it is in his power to make it effectual or not as he pleases; seeing it is the due publication thereof, by delivery to the parties, or putting it in the register, that can render it a decree; and, of consequence, unquarrellable by the regulations 1695. If indeed it had proceeded on a submission, obliging the arbiter by his acceptance to determine, the question might have been different; for then what he did would not have been a discretionary, but a necessary act; as the parties, in such a case, would have had a right to exact a decreet, which the arbiter could not have with-held from them, whether he was satisfied with it or not. But the submission whereon this decreet proceeded bears no such clause. It was in the power of the arbiter either to pronounce his decree or not; and, as this was optional to him before giving judgment, it follows, that he might legally refuse to publish it after it was signed; more especially, considering that, before a decreet is given out or published, it does not belong to the parties, but to the arbiter, who may do with it as his own judgment directs, just as in the case of a bond or other deed, that one could not have been compelled to subscribe; which, however, when subscribed, may still be rendered ineffectual by not delivery. Nor does it make any difference betwixt the two cases, that the arbiter may be thought, by accepting the submission, to be under a natural obligation to give forth his decreet; seeing such obligations do not produce any action in law, whereby he can be compelled to do it; and consequently he may refuse to make it effectual when signed; a doctrine which likewise holds in judicial deeds, as every Judge may cancel an interlocutor signed by himself before it is published.