

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.

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

To transmit the right of a bill of exchange to an indorsee, delivery of the bill itself is not indispensably necessary.

No. 272. delivery is required. While writings of this sort continue in the custody of the granter, they must no doubt be subject to revocation; but without some act for this purpose, the reasonable presumption is, that they were meant to be effectual. This reasoning, indeed, is here very strongly confirmed by the peculiar circumstances of the case. It was extremely just, that a bequest of the extent of the one here claimed should be made in favour of the pursuer, as the bill in question, together with another of the same amount, given to his mother, served only to put that part of the family of the deceased on an equal footing with the rest. At the same time, many reasons may be figured for not giving any notice to the indorsee, then a very young man, of his having right to a sum of money, which was to be at his absolute disposal.

The question was reported to the Court; when it was

Observed on the bench: As the property of *ipsa corpora* is not transferred without delivery, so where a right of debt is to be transmitted, the writing used for this purpose, if contained in a separate deed, must, in order to make the transfer complete, be delivered to the grantee, or to some person for his behoof. But where the conveyance, being contained in the same writing, is inseparable from the document of debt itself, the same rule does not hold. This is analogous to the case of a discharge, or declaration of trust, written on the back of a bond for borrowed money, which must create an inherent qualification of the debt.

“The Lords repelled the defences.”

Reporter, *Lord Eskgrove*.  
C.

Act. *A. Campbell*.

Att. *G. Ferguson*:

Clerk, *Home*.

*Fac. Coll. No. 310. p. 478.*

## S E C T. XI.

Writs defective in Solemnities, Whether capable of Support, so as to furnish Action?

### A. against B.

No. 273.

A submission was signed by two notaries, and prorogated by one only. The decree being challenged, because the prorogation was not subscribed by two, the defect was found suppliable by the party's oath.

*Fol. Dic. v. 2. p. 553.*

\* \* Lord Kames gives this case without names or date, as on the authority of Colvil MS. See APPENDIX.