

1663. *February 25.* JAMES AIKENHEAD *against* MARJORY AIKENHEAD.

No. 253.

Assignation by a father to his natural son, in his repositories at his death, found good without delivery.

The said James insists for the delivery of a bond granted to his umquhile father, and assignation thereto, by his father to him, against the said Marjory, producer thereof. It was alleged, no delivery, because the assignation, in favours of the pursuer, was never delivered, but kept in his father's possession, which cannot be accounted his possession, seeing the pursuer is a bastard; *2dly*, The conception of the assignation is to the pursuer and his heirs; which failing, to the said Marjory, and her heirs, and he being now minor, ought not to dispose of the sum in her prejudice.

The Lords repelled the defences against the delivery, and found that the pursuer, during his minority, should not uplift the sum, till the defender was called, and had access to plead her interest.

Stair, v. 1. p. 186.

1666. *January 20.* CHRISTIAN BRAIDIE *against* The LAIRD of FAIRNEY.

No. 254.

Evidence of delivery.

Christian Braidie, having pursued a reduction of a disposition, *ex capite exhibitionis*, against the Laird of Fairney, of all dispositions made by John Glassford to him, after her inhibition, he produced a disposition, holograph, wanting witnesses, of a date anterior. It was alleged, that the holograph writ could not prove its own date, *contra tertium*.

The Lords, before answer, ordained Fairney to adduce witnesses, and adminicles for astructing the date. He adduced four, the town-clerk, who deponed he dyted the disposition, and a town-officer, who saw it subscribed of the date it bears, and a third, who deponed he saw it subscribed on a market day at Cupar, which, as he remembered, was in March or April 1652, whereas the date bears the first of August 1652; but that Glassford, when he wrote it, laid it down upon the table beside himself, and saw it not delivered; and it being alleged, that the first of August, 1652, fell upon a Sunday;

The Lords considering, that infetment was not taken upon the disposition for three years, and that there were no witnesses deponed upon the delivery, found the witnesses adduced, not to astruct the date of the disposition, and therefore reduced the same.

Stair, v. 1. p. 340.