No 230.

most considerable estates in Scotland might be called in question upon that ground, it being ordinary for parties to fill up names in blank writs and settlements of their estates privately, without calling or acquainting any witness; and there is no disposition produced granted by the defunct in favour of Mr Robert, and it was denied the defender did abstract or cancel the same; and if there had been such a disposition, it would certainly bear a power to alter or innovate the same at his pleasure, and if it did not bear that provision, yet, being an undelivered evident, lying by the defunct, he might have altered or cancelled the same at his pleasure; and albeit that disposition were extant, yet the disposition made to the defender being posterior, it did derogate from the former, and alter the same; and the letter written by the defunct to the pursuer cannot be understood of that disposition, but of other assignations of certain particular debts in favour of the pursuer, which were filled up by John Cunningham and are now produced; and it was calumnious to allege that the defender did unwarrantably and clandestinely intromit with the defunct's papers, seeing he recovered the same by a decreet of exhibition. THE LORDS sustained the disposition in favour of the defender, unless the pursuer would prove that the designation in the said disposition was filled up by the defunct when he was *in lecto*.

Sir P. Home, MS. v. 1. No 501.

1746. *June* 13. Mr FRANCIS SINCLAIR *against* SINCLAIR of Ulbster.

No 231.
A deed extended blank in the disponees name, when blank writs were valid, granted to a minor, was presumed to have been filled up of its date.

Mr FRANCIS SINCLAIR, adjudger in trust of the estate of Murkle from the Earl of Caithness his brother, convened George Sinclair of Ulbster in a reduction and improbation of his rights to part of the said estate, who produced for his title a charter under the Great Seal, dated *anno* 1673, in favour of John Campbell of Glenorchy, with sasine thereon, in the same year, proceeding on the resignation of the Earl of Caithness, to which he connected right, and *alleged*, This, with the possession had thereon, gave him a complete title, and excluded the pursuer.

Mr Francis, to get access to his objections to the conveyance, *pleaded*, That the prescription was interrupted, for that the lands had been apprised by Murray of Pennyland *anno* 1655, who was thereupon infeft *anno* 1658, and had brought several processes against the possessors under Glenorchy's charter, which were continued to the year 1685; and this right being conveyed to the present Earl of Caithness *anno* 1692, his minority from that time behoved to be deducted, by which means the prescription was not run.

The case of this conveyance was, that the apprising having come by progress into the person of Dame Jean Stewart, the Earl's grandmother, she made two dispositions thereof to him, one 18th May 1692, and the other 15th October

No 231. 1701; and both these bore, that she had delivered up the grounds, warrants, and conveyances thereof.

" The Lords, 12th July 1743, found, That the minority of the present Earl of Caithness was to be deducted from the year 1692, at which period of time the disposition to Murray's apprising bore to be delivered to the Earl till April 1706, when the Earl attained the age of majority."

Ulbster reclaimed against this interlocutor, and *pleaded*, That though the presumption was, that a writ was delivered of its date, yet this did not hold with regard to writs granted to infant children, to whom delivery could not be made, and if it were alleged that delivery was made to another for the child's behoof, this not being what the writ bore, behoved to be proved; and hence it was that bonds by parents to children were never presumed delivered till they appeared so, and posterior debts of the parent were held to be revocations of such bonds: It was sufficiently hard that purchasers should be affected by latent conveyances to minors, who were not fully vested in the real right so as to be discoverable, and this hardship ought not to be increased by presumed deliveries in their favour.

In this case there was no ground to believe that the disposition was delivered, for though it bore that the Countess ' had instantly delivered up to the said ' Alexander Sinclair the foresaid hail apprisings and grounds thereof, rights ' and conveyances of the same, &c. to be kept and used by ——— as ——— ' own proper writs and evidents at ——— pleasure in time coming; yet this had been evidently a clause of style, the writs being intended to be delivered with the disposition, for the Earl was then only a child of seven years old, incapable to keep and use writs.

This further appeared from the second disposition 1701, whereby the lady, without the disponee's consent, changed the order of succession established by the former, which would not have been in her power to have done if that had been delivered; as also, she thereby ' empowered him generally to do all ' things which she herself might have done before the date thereof,' supposing she herself had before that the full right; and also it appeared from the clause of delivery, which bore, that ' she had delivered up to him the writs in token ' of the premisses." So that they were not delivered at the time of the first disposition.

The deed appeared *ex facie* to have been drawn up blank in the disponee's name, and filled up afterwards; in some places the blank had been two little for the name and designation, and there the writing was crowded; in others two large, and that part was not filled up with writ; and the relatives of him, his, &c. had all been blank, the sex of the disponee not being resolved on; and all these blanks were filled up by John Sinclair of Rater, whereas the body of the deed was written by another, viz. William Monro: And as it had been extended, so it had been signed blank, for the writer was a witness to the lady's subscription, and yet did not fill up the blanks; but this was done in a very

different ink from the subscription of the lady, and all the witnesses, except that of William Sinclair the filler up, who also was not inserted and designed by William Monro, he having ended the enumeration of the witnesses with his own name, but added *ex post facto* in his own hand, and with this designation, 'Filler up of the blanks and witnesses aforesaid.' No 231.

The case had been, that the deed had been drawn by William Monro, and kept by the lady, who some time after had caused Rater fill up the blanks, and add his own name as a witness, together with the last line designing him the filler up; and though this was no fault, and at that time no nullity in the deed, yet it followed that the Earl could not make use of it as delivered, nor crave his minority to be deducted sooner than the second disposition.

That blank writings did not prove their delivery from the date, in competition with the interest of third parties, as was found in the case of an inhibition posterior to the date of a blank disposition, unless delivery should be proved prior to the inhibition, 15th January 1670, Lady Lucia Hamilton against the Creditors of Hay of Montcastle, No 227. p. 11550. The like determinations have been given in the questions concerning Gifts of Escheat, 19th December 1676, and 18th January 1677, Grant against Lord Banff, No 3. p. 1654.; and in the case, Keith of Bruxie against Mary Seton, (See APPENDIX.) where a blank bond was presumed not to be signed or delivered *in legitima potestate*.

Answered, That the presumption of delivery of writs held, as well when they were granted to children as to others; for though they could not keep them, their tutors could. And this case was not similar to that of bonds granted by a father to his children *in familia;* nor could it be pretended, that any after debt of the lady's would infer a revocation of this deed, which, by its conception, bore the instant delivery 'of the hail rights therein recited and 'conveyed.'

The second disposition rather proved the delivery of the first than the contrary; it recited and corroborated it, and was plainly intended to supply the defect of a procuratory of resignation, which the first wanted; it narrated, that she had formerly delivered up the writs, viz. at the date of the first disposition, to which that expression of the delivery being made in token of the premisses, behoved to apply, as did also the power granted to the disponee to act, as she formerly might have done. And the alteration in the course of succession ought to be considered as the act of the disponee, who, by accepting of a corroborative disposition in these terms, shewed his intentions of making that settlement.

It did not appear from any thing that had been said, that the deed was signed blank; for though it was writ by one, and the blanks filled up by another, that only showed the writer was not made acquainted with the name of the disponee, and the deed bore, that Rater was filler up of the blanks, and witness to the lady's subscription; so that it might as well be argued, that it was not writ, as the blanks not filled up before subscribing. But supposing it other-

No 231. wise, the presumption of delivery from the date applied as well to blank writs as others. And the decisions cited were far from proving the contrary; in that between Bruxie and Mrs Seton there were many additional circumstances, the deed quarrelled reserved the granter's liferent, contained a power to alter, and a clause dispensing with not-delivery, and was proved to have been blank, and therefore the burden of the proof of the filling up, or delivery *in legitima potestate*, was laid on the possessor. In the case of Grant, the presumption was admitted to be, that the blank bond was delivered of its date: The only question was concerning a transmission thereof from one holder to another, which received no determination, because Grant the possessor offered to prove the delivery to him before declarator of the escheat of the intermediate possessor, but the respondent apprehended the presumption was with him. That in the case of Lady Lucia Hamilton, the disposition was not blank, but to certain persons for behoof of creditors, who were not filled up, and it was a fraudulent deed.

The Lords adhered.

Act. *R. Craigie & H. Home.* Alt. *W. Grant & Ferguson,* Clerk, *Forbes.*

Fol. Dic. v. 4. p. 124. D. Falconer, v. 1. No 113. p. 134.

1746. *July* 30.

Walter Ruddiman *against* The Merchant Maiden Hospital of Edinburgh.

No 232.
Found in conformity with the above.

Thomas Young, son to Robert Young, merchant in Edinburgh, gave bond for 4000 merks Scots, 21st October 1689, to Alison Elliot, his mother, and she, 24th September 1695, assigned it to Thomas Smith, her grandson, son to Thomas Smith, brewer in Edinburgh.

Thomas Young died, being succeeded by his sisters, one of whom, Alison, having in her own right, and by acquisition from the rest, a title to the half of his effects, conveyed them, by mortification, to the Merchant Maiden Hospital of Edinburgh, *anno* 1716.

The bond was registered *anno* 1703, and the assignation 1733; and Thomas Smith having died April 1740, Anna, his sister, wife to Thomas Ruddiman, printer in Edinburgh, confirmed and assigned it to Walter Ruddiman, printer there, who brought an action against the Hospital for payment, or reduction of their right, on the statute 1621.

Prescription was *objected;* to which was *answered,* The minority of Thomas Smith.

Objected; The name of Thomas Smith, the assignee, appears to be wrote in a different hand from the body of the assignation; and, therefore, *non constat* that it was filled up at the date; and, as his minority can only be deducted from the time of the insertion thereof, it is incumbent on the pursuer to prove when that happened. Stair's Instit. Book 3. Tit. 1. § 5. says, 'If the cre-