*** Gosford reports this case:

No 236.

In a double poinding betwixt the said parties, for preference to a sum resting by the Earl of Dalhousie to George Boswell, it was *alleged* for Major Inglis, that he had right to a tocher of 5000 merks from John Manson, to whom the said George was obliged, by contract of marriage, to pay the foresaid sum, and thereupon, as a true creditor, craved, that the Earl of Dalhousie might be decerned to pay him what sums of money he was duly resting to the said George. It was *answered* for the Children of the said George Boswell and their tutor, That they ought to be preferred notwithstanding, because their father, before the contract of marriage with Mason, had granted a bond of provision to his children, and, for their farther security, had assigned them to the sums of money due to them by the Earl of Dalhousie, and so having the first right, they ought to be preferred in this pursuit, especially, seeing the competition being betwixt children, all their provisions by bond or contract of marriage, granted by their father, were but *meræ donationes*, or if they be constructed to be *debita naturalia*, and so found in law, then the rest of the children having both the first obligation, and a particular assignation to that same bond for security, they ought to be preferred. It was *replied* for Major Inglis, That notwithstanding of these answers, he ought to be preferred; and as to the first, there is a great difference betwixt tochers which a father is obliged to pay by contract of marriage, and where he gives bond to the rest of the children for a portion natural, the first being not only a true and lawful debt, but a privileged debt amongst lawful creditors, whereas the other is always reputed *mera donatio*, and all lawful creditors preferred; and as to the second, it cannot militate, because, albeit it was prior, and did bear an assignation, yet remaining still in the possession of the father, he had power to revoke the same, and could not hinder him to contract debt thereafter, nor prejudge posterior creditors, as being a latent deed. The Lords did prefer Major Inglis, unless the rest of the children would prove, that not only their father granted the bonds of provision bearing the foresaid assignation, but that likewise he had actually delivered the same before the contract of marriage with his daughter and Manson, and that the children had absolute power thereof, so that the father could not revoke, as being master of the bond and assignation.

Gosford, MS. No 981. *p.* 580.

1685. *December* 2. Lady Bathgate *against* Cochran of Barbachly.

No 237.

In the poinding of the ground pursued by the Lady Bathgate, upon an infeftment of annualrent of 2500 merks out of the land of Bathgate, there

No 237. was compearance made for the creditors, and particularly for Cochran of Barbachly, who had right to several infeftments of annualrent, and comprisings upon the estate. And it was *alleged* for him, That there could be no poinding of the ground, as to 1300 merks of the said annuity, because the Lady had disponed the same in favour of for her husband's use and behoof, and which was ratified judicially upon oath. It was *answered*, That the foresaid disposition was never a delivered evident, and was now in the hands of the granter, and produced by her. It was *answered*, That the same being judicially ratified, it did necessarily infer, that the said paper was delivered. It was *duplied*, That the ratification being accessory, followed the principal disposition; and there was nothing more ordinary than women to ratify dispositions before the Judge Ordinary; and yet, to retain both disposition and ratification in their own hands, until affairs be finally ended. The Lords found the objection of not-delivery relevant, being now produced in the granter's hand, and that the defence was noways elided by the ratification upon oath.

P. Falconer, No 108. *p.* 75.

1697. *November* 16.

No 238. Daniel Simpson Writer *against* Euphame Finlay and John Colvill her Son.

A father granted a disposition to his son, kept latent for 17 years. Adjudication for a debt afterwards contracted was preferred.

Newbyth reported Daniel Simpson writer against Euphame Finlay and John Colvill her son. Quintin Finlay dispones some tenements to his son, and failing him by decease to the said Euphame his daughter in 1676; but no infeftment is taken thereon till 1693, by the space of 17 years after the disposition. But long before the infeftment, he borrows money upon bond; the right whereof coming into the said Daniel's person, he adjudges the tenement, and pursues for mails and duties. Compearance is made for the said Euphame and her son, who *alleged*, The father was *bona fide* denuded by the disposition, before the contracting these debts, and the same was perfected by infeftment before Daniel affected the lands by his real right of adjudication; and so the disposition could not be said to be in defraud of debts which were not then in being; and a father may, by bonds of provision, give portions to his children, if he be solvent and responsible, for these and all his other debts, at the time of his granting thereof. *Answered* for the creditors, That this disposition being latent and not so much as registered, but concealed for 17 years, and in favour of children, (though in implement of their mother's contract of marriage) it can never compete with true and onerous debts, which though contracted after the said clandestine disposition, yet long before it was any ways made public; and rights made in favours of children are not presumed to be delivered evidents of the date they bear, without some adminicle to astruct it; and by the current of decisions the Lords do not regard such latent alienations made by parents to