DONATIO MORTIS CAUSA.

1624. *March* 2. LORD CURRIEHILL *against* EXECUTORS of CURRIE.

No 1.

A BOND being granted by a man to a lawyer, bearing, that it was for pains taken by him in his affairs, and because he had debursed some charges in doing thereof; and therefore binding him to pay the said lawyer a sum at the term after the granter's own decease, if, before his said decease, he did no other deed derogatory to the said bond; and also, if he died having no heirs-male of his own body; this bond was found not to be *donatio mortis causa*, being granted for onerous causes, and so not revocable nor alterable.

Fol. Dic. v. 1. *p.* 251. *Durie.*

*** *See* This case No 2. p. 2937.

1626. *March* 8. TRAQUAIR and ROBERTSON *against* BLUSHIELS.

No 2.

A man granted a bond to his brother, containing disposition to certain goods, with provision, that they should not be delivered till after his decease, and the decease of his daughter. The brother's assignee pursuing for delivery of the goods, after the death of the granter, and his

JAMES TRAQUAIR having received a bond from umquhile Thomas Traquair, his brother, whereby the said Thomas disponed to him certain particular goods and gear, with provision, that the same should not be delivered till after his own decease, and the decease of his daughter, she dying unmarried; to which bond James Traquair having made one Robertson assignee, after the decease of the maker of the bond, and his daughter, who died before her father, and unmarried; he pursues Eupham Blushiels, relict of the said umquhile Thomas, for delivery thereof. In the which action, it being *alleged*, That that bond was *donatio mortis causa*, and that the giver of the bond survived six or seven years after the making thereof, and retained the use and possession of the goods disponed to the time of his decease. Likeas, the said bond being *donatio mortis causa*, as said is, was revokable, and was in effect revoked, in so far as the maker thereof made his testament, wherein he nominate his executors, and left his whole goods and gear to them, which makes the executors to have right to

No. 2. daughter, the deed was found not to be a *donatio mortis causa*, and therefore not revoked by a testament made by the granter.

the saids goods, contained in the said bond, seeing he left his whole goods to the executors, and so must extend to the special goods disponed in that bond, and render the said bond ineffectual, and the same is thereby innovate and become null. And, it being further *alleged*, That the goods contained in the said bond were heirship goods, and could not be disponed after that manner, in prejudice of the heir of the defunct, viz. another of his brethren, who was retoured heir to him, and so had the best right thereto, wherein he could not be prejudged by that preceding disposition, which never took effect, but ceased and became void by the retention of possession six years thereafter, and the defunct's being in possession when he died, as said is, whereby the heir had good right to the same; which allegeances were repelled; for the LORDS found, that the retention of the possession, and the clause foresaid, whereby the delivery was suspended to the time of the decease of the maker, and of his daughter, did not derogate from the bond, but that it ought to be effectual at the time destinate therein; neither found they the bond was revocate by the posterior testament, especially seeing therein no mention was made of any of the goods mentioned in the bond, but only that he left his goods and gear generally to his executors, which behoved to be understood only of such goods as were not disponed before; and sicklike found, that the heir had no right to the same; but, by the contrary, that if the heir had these goods, he might be compelled by the foresaid bond to deliver the same.

Act. *Mowat.* Alt. *Hope.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 250. *Durie, p.* 190.

1636. *March* 18. BELLS *against* PARKS.

No 3. A contract betwixt a father and his daughter, hereby he was provided to a certain sum payable at her decease, and which he accepted in full of all that might fall to him by her decease, was found to be a *donatio mortis causa*, and alterable at pleasure.

THE bairns of one Bell, their umquhile father, pursuing for a legacy of 300 merks, left to their mother in legacy by their mother's sister; and the father of the testatrix claiming the same sums as pertaining to him, in respect, that, by contract betwixt him and the testatrix, it was expressly appointed, that the father should only receive payment of 300 merks, and which was contracted by that contract to be paid to him out of the readiest goods and gear pertaining to his said daughter, and which he bound himself to accept, in full satisfaction of all which might befall to him, and which he might claim by the decease of his said daughter; and the said daughter thereafter, in her testament, leaving in legacy this same sum of 300 merks, contained in that contract to her sister, whose bairns, and the father contractor foresaid, contending which of them hath best right to this 300 merks, or if ilk party should have right to 300 merks as distinct, and two several sums,——THE LORDS found, that this was but one sum, and not two; and the LORDS found, that the legatar's bairns had the only right thereto, and not the father, by the contract; because, albeit it was con-