

cause he was then minor, and had curators who had not consented to it; as likewise, that it was done inter virum et uxorem, stante matrimonio, quæ de jure prohibita et nulla est. It was *answered*, That that nullity received an exception, si morte confirmetur. It was *duplicated*, Non potest morte confirmari, si revocetur ante mortem, which was done in this case; because the Laird of Mellerstains in his own lifetime, and long after the Lady's infeftment, had given infeftment of the same lands to William Napier the pursuer's author; which the LORDS found not to be of the nature and effect of a revocation of the Lady's foresaid infeftment.

No 3.

Fol. Dic. v. 2. p. 133. Haddington, MS. No 1286.

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

A SPECIAL donation *mortis causa* not found revoked by a testament, mentioning goods and gear in general, which was interpreted to be only such as were not disposed.

No 4.

Fol. Dic. v. 2. p. 133. Durie.

*** This case is No 2. p. 359t.

1631. *July 12.*L. HUTTONHAL *against* CRANSTOUN.

THE Laird of Huttonhal having assigned the right of the tack of the teinds of Huttonhal, whereof he was tacksman, to his wife *in anno* 1618; after his decease she pursues for exhibition and delivery thereof to her. After exhibition, William Cranstoun, who had comprised both the lands and teinds from the husband, for debt owing by him, *alleged*, The right of the tack thereby pertains to him, and not to the lady assignee; for that assignation was but *donatio inter virum et uxorem, stante matrimonio*, done for love and favour, and was revocable: Likeas, at the very day of the assignation, she granted a back-bond to her husband, whereby she obliges herself to quit that right, whensoever her husband should require her, to him, his heirs or assignees, and the right of the back-bond; and the power which the husband had thereby to require her to quit her right, and also the husband's power which he had to revoke, he *alleged*, by the comprising from the husband of his right, was now competent to the comprising, and devolved in his person, sicklike as if he had been made second assignee by the husband to this tack; in which case, that first assignation made to the wife had been revoked, and now the like must be in respect of the comprising, which is a judicial assignation; and the Lady *answering*, That that comprising cannot be respected as a revocation, neither has the comprising

No 5.

Posterior comprising creditors found to have no power to challenge or revoke a donation by a debtor to his wife. See No 12. P. 1134^s.