

No 6. and not with a power to alter or recal the disposition ; and therefore found that the burden of the debts could not exceed the value of the whole moveables, and did not oblige the wife personally, but as intromitter with the moveables, *quoad valorem* of the whole moveables, and that the wife could not pretend her own right to a half, having accepted a disposition of the whole.

Fol. Dic. v. 1. p. 250. Stair, v. 2. p. 376.

1679. January 10.

GRANT against GRANT.

No 7.
A person having disposed to his brother, the whole sums and goods he should have at his death, if he survive him, and the disponent have no children of his own ; this was found not revocable, as a *donatio mortis causa*.

GRANT having no children, disposes ' the whole sums and goods he should have at his death, to his brother, if he survives him, and the disponent have no children of his own.' Thereafter he gives a disposition to his wife in the same terms, who craved preference, because the first disposition was *donatio mortis causa*, and so was ambulatory as a legacy, whereby the last disposition is preferable, at least it is but a tailzie for succession. It was answered, That the mention of death does not make a donation *mortis causa*, but when it appears that the donation is upon account of the imminency of death ; but this disposition is *inter vivos*, though the effect is delayed to the disponent's death ; it is true it did not restrain the disponent to transmit the property of his sums or goods, at any time of his life, the disposition not bearing to all sums and goods he then had, or should acquire till his death, but only disposes such sums and goods as then he should happen to have at his death ; but the said disposition implying, and expressing a warrant from his own deed, he could not evacuate the same by a disposition to his wife in the same terms ; and though the wife had first obtained possession, yet her husband being creditor by the prior disposition and clause of warrandice, he could not, without a cause onerous, disponent the same to any other, to take effect after his death.

THE LORDS found the first disposition preferable, as being *inter vivos*, and not *mortis causa* ; but seeing the effect of it was not till his death, whereby communion of goods betwixt man and wife is dissolved, and the goods divided, they found it could not extend to the wife's half of the sums or moveable goods. See HUSBAND AND WIFE.

Fol. Dic. v. 1. p. 250. Stair, v. 2. p. 668.

1686. February 16.

BLACKWOOD against CUNNOCHIE'S CREDITORS.

No 8.

THE debate between Robert Blackwood and the Creditors of Cunnochie was reported by Kemnay ; and the liferent granted by Major Arnot to Margaret Wood his spouse was preferred ; though it was objected, that it seemed to be