No 15.

againſt forgeries, which they would be greatly ſubject to, were they allowed to be proper vehicles, for conveying gratuities *inter vivos* or *mortis causa*. The purſuers acknowledgment, that a bill cannot be in the form or ſtyle of a *mortis causa* donation, is an unwary giving up of the cauſe. Can a tolerable reaſon be aſſigned, if a bill may relate to a *mortis causa* donation, that this relation muſt not be expreſſed in the bill? The defender takes it for a general rule, without exception, whatever is the true and lawful *cause* of granting a writ, may truly and lawfully be expreſſed in the writ; and ſhe ſubmits it, if their acknowledgment does not turn ſtrongly againſt the purſuers, That ſince a *mortis causa donatio* cannot be expreſſed in a bill, a *mortis causa donatio* cannot be the *cause* of a bill; and that a bill is not the proper vehicle for ſuch conveyances.

'THE LORDS found, That a legacy, or *donatio mortis causa*, cannot be habily and effectually conſtituted by a bill.' *See* LEGACY.

Fol. Dic. v. 1. *p.* 95. *Rem. Dec. v.* 1. *No* 35. *p.* 72.

1724. *February* 13.

KATHARINE, ANNA, and CHRISTIAN HUTTONS, *againſt* DAVID HUTTON.

No 16.
Found, that a bill granted on death-bed, was not a legal method of conſtituting a debt or legacy, even to the effect of affecting moveables, in ſo far as the bill was gratuitous.

THESE purſuers inſiſted in a reduction of a bill for L. 350 Scots, granted by their father, when on death-bed, to his brother the defender: They alleged ſeveral circumſtances to infer that it had been unduly elicited; but principally inſiſted on this reaſon in law for avoiding of it, *viz.* That it was granted on death-bed, and that it appeared, from the defender's acknowledgment, to be gratuitous, at leaſt as to L. 300, and therefore was of the nature of a legacy, which could not be legally conſtituted by a bill; for a legacy ought to be contained in ſome formal and probative writ, ſuch as a teſtament duly executed: And though bills were probative in matters of commerce, yet in caſes ſo very foreign to that buſineſs, as the granting of legacies, their privileges could not take place. Thus in the caſe of Sir Robert Myrton againſt George Livingſton *, where Sir Andrew Myrton had accepted a bill, as an additional portion to his daughter, payable after his deceaſe, the Lords found the bill null, as not being in *re mercatoria*; and 9th November 1722, Fulton *contra* Blair, No 15. p. 1411. it was found that a legacy, or *donatio mortis causa*, could not be habily conſtituted by a bill. And if ſuch bills were allowed to be granted by one on death-bed, it would make way for many impoſitions upon weak dying perſons.

It was *answered* for the defender: That the law required no other ſolemnities to deeds upon death-bed, than ſuch as were neceſſary in other writs; and, therefore, as bills were probative of a gift, and were good when granted even without an onerous cauſe, by one perſon in health to another, there was no law incapacitating a dying perſon, when in found judgment, to give a donative to his friend in the ſame way. And the argument, from poſſible impoſitions, might be good

* *See* PROVISIONS to HEIRS and CHILDREN.

for making a new law; but, as the law ſtood at preſent, the bill was good and probative. No 16.

THE LORDS found, That a bill granted on death-bed, was not a legal method of conſtituting a debt or legacy, even to affect moveables, in ſo far as the bill was gratuitous.

Reporter, *Lord Cullen.* Act. *Jo. Forbes.* Alt. *Pat. Grant.* Clerk, *Mackenzie.*
Fol. Dic. v. 1. *p.* 95. *Edgar, p.* 31.

1736. *November* 26. and *January* 7. 1737.
WEIR *againſt* PARKHILL.

No 17.
Found in general that a donation cannot be conſtituted by a writing in the form of a bill.

MARY WEIR, relict of Malcolm M'Gibbon muſician in Edinburgh, accepted a bill for L. 7000 Scots, payable to John Weir of Kerſe her brother, of a date prior to her ſecond marriage with John Parkhill, of the following tenor: 'Dear 'Siſter, Pay to me, John Weir of Kerſe, or my order, at my dwelling-houſe in 'Edinburgh, eighteen months after date, the ſum of L. 7000, Scots money, 'value due by you to me, as your deceaſed huſband ordered you; make thank-'ful payment, and oblige,' &c.

In a proceſs at Weir's inſtance againſt Parkhill, the ſecond huſband of the ſaid Mary Weir, for payment of this bill, the LORDS, by their interlocutor of the 26th November 1736, Found, 'that a donation cannot be conſtituted by a writing in the form of a bill, and found it proved by the tenor of the writing in queſtion, that the ſame is gratuitous, and therefore ſuſtained the defence and aſſoilzied.' And, on adviſing petition and anſwers, by their interlocutor 7th January 1737, Found 'that a donation cannot be conſtituted by a writing in the form of a bill; and found it proved by the tenor of the writing in queſtion, joined with the purſuer's admiſſion in the courſe of the proceſs, that there was no teſtament executed by the deceaſed Malcolm M'Gibbon, Mary Weir's firſt huſband, ordering the payment of the ſum in debate, and therefore found that the ſaid writing is gratuitous,' and with that addition, 'adhered to their former interlocutor.'

Neither of the ſtatutes 1681 nor 1696 have ſaid any thing to determine what is a proper bill, what not. They have given force to no writing as a bill, which ſuch writing would not have had before. All they do is, to give the further privileges of annualrent, and diligence, to writings, ſuppoſed to be probative as bills; ſo that what writing conſtitutes a bill, is left to be gathered from the practice, and law of nations; and as, by the practice of nations, bills were deviſed as a vehicle for tranſporting money, for the utility of commerce; it was ſaid, that the very firſt notion of a bill was, that it be for value, either with reſpect to the drawer or acceptor; and where no value is, the very reaſon ceaſes for which bills were, by the practice of nations, introduced.