

No 19. act prohibits only the alienation of lands, heritages, tacks, rooms, or possessions, which can never be extended to moveable sums, the present subject of debate.

THE LORDS repelled this nullity. See PACTUM ILLIGITUM.

Fol. Dic. v. i. p. 425. Forbes, p. 139.

1730. November. GALLOWAYS against HUNTER.

No 20.

A DONATION *mortis causa* being granted by a man to his niece, of his whole moveable effects to her, and the heirs of her body; which failing, to her other heirs and assignees whatsoever, with the burden of his just and lawful debts; found this disposition not vacated by her predeceasing the disponent, but that the succession was open to her other nearest of kin, she having died without heirs of her body. See APPENDIX.

Fol. Dic. v. i. p. 425.

SECT. V.

Whether implied conditions have effect in onerous deeds.

1688. February 15.

CUSHNEY against SMITON, or DUNCAN against SMITON.

No 21.

It was provided in a contract of marriage, that if the wife died without children, the half of the tocher should return to her father, his heirs and assignees. The event having existed, found that this not being in the case of a legacy, but

THOMAS CUSHNEY, merchant in Aberdeen, pursues William Smiton in Kinghorn, on a clause of his contract of marriage with Bailie Duncan's daughter, that if his wife die without children, he shall restore the half of the tocher; and subsumes, that the condition existed. *Alleged*, It was provided to return to Duncan, her father, and he died before her, and so *ante conditionis eventum*, and he could not transmit to Cushney his executor what he had not right to himself; and that such conditional provisions *evanescent*, if the legatary decease before the purification of the condition, *l. unic. § 3. C. De caduc. toll.* *Answered*, He has a right and disposition from Duncan's nearest of kin. THE LORDS at first demurred if this gave him a sufficient title to claim the debt; but at last they found, that the wife having died without children, the half of the tocher does return, with the interest, after the wife's death; and therefore discerned the defender to repay the half of the said tocher to the pursuer, he, before