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-

ditioned to the father by the contract, prior to the legacy, yet the contract in that part was repute as of the nature of a testamentary cause, and so the last legacy done by the testament was preferred to that prior will specified in the contract, which was revocate by the said last legacy; neither was it respected, the expressing of this in a contract to make it to cease to be accounted as an act *sapiens naturam rei testamentariæ*; or that thereby the father was a creditor, who, if he had been one, could not be prejudged by any posterior will or legacy of the testatrix, except that the father could shew and qualify, that the defunct was his debtor, and that in law she was holden to him in this or the like sum, and that she might have been found legally astricted to him in any sum less or more, which not being shown, the legatar was preferred. No 3.

Act. *Craig.* Alt. *Primrose.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 250. *Durie, p.* 805.

1637. *February* 15. LAUDER *against* GOODWIFE of WHITEKIRK.

No 4.

AN assignation being simply granted, and without any clog, but the assignee granting back-bond to count and pay to the cedent, at his home-coming from abroad, this was found to be no *donatio mortis causa*, nor revocable by a posterior assignation granted abroad, the cedent never having returned home.

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

*** *See* This case No 6. p. 1692.

1662. *July* 25. NASMITH *against* JAFFRAY.

No 5.

A MISSIVE letter, written by a defunct to his spouse, bearing, that if he happen to die before his return, she should do with what he had as she pleased, was found to be only a *donatio mortis causa*, or legacy which could only affect dead's part.

Fol. Dic. v. 1. *p.* 149. *Stair.*

*** *See* This case *voce* HERITABLE and MOVEABLE.

1675. *December* 8. THOMSONS *against* The CREDITORS of ALICE THIN.

No 6.
A bond granted to a niece payable after the granter's death, in case he left no heirs of his

JAMES MASTERTON having given bond to his three nieces Thomsons, for 3000 merks payable after his own and his wife's death, 'only in case he had 'no heirs of his own body,' after the death of James Masterton and Alice Thin