

ditioned to the father by the contract, prior to the legacy, yet the contract in that part was reputed 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cause, and so the last legacy done by the testament was preferred to that prior will specified in the contract, which was revoked by the said last legacy; neither was it respected, the expressing of this in a contract to make it to cease to be accounted as an act *sapiens naturam rei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.

Act. Craig.

Alt. Primrose.

Clerk, Hay.

Fol. Dic. v. I. p. 250. Durie, p. 805.

No 3.

1637. February 15. LAUDER against GOODWIFE of WHITEKIRK.

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. I. p. 250. Durie.

No 4.

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

1662. July 25. NASMITH against JAFFRAY.

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. I. p. 149. Stair.

No 5.

* * See This case voce HERITABLE and MOVEABLE.

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

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

No 6.

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