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 disponed to his brother, the whole sums and goods he should have at his death, if he survive him, and the disponer have no children of his own; this was found not revocable, as a *donatio mortis causa*.

GRANT having no children, dispones 'the whole sums and goods he should 'have at his death, to his brother, if he survives him, and the disponer 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 disponer's death; it is true it did not restrain the disponer 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 dispones 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, dispone 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

only *donatio mortis causa*, because it mentioned in the narrative that he was going abroad and might die before his return, and so was *contemplatione mortis* and null, because he returned; which the LORDS repelled. No 8.

March 25.

THE case of Margaret Wood, relict of Major Arnot, and her Creditors, against Lovel of Cunnochie's and her Husband's Creditors, mentioned 16th February 1686, was reported by Kemnay. THE LORDS find that Margaret Wood the liferentrix, by her infeftment, proceeding upon an heritable bond prior to the Creditors' adjudication, did carry all right which the granter of the bond had, though it be not *specifice* named; and therefore prefer her assignees *quoad* her right, to the Creditors of her husband the granter:—To which they adhered on the 27th February 1687.

Fol. Dic. v. 1. *p.* 249. *Fountainhall, v.* 1. *p.* 403. 410.

1699. *February* 17. LESLY *against* LESLY.

No 9.
A gentleman going abroad, tailzied his estate to a cousin, and failing him, to his brother, narrating, that he desired to avoid differences in case of his not return, therefore he disponed, &c. reserving a power to alter, and dispensing with the not delivery. The first substitute died, and thereafter the tailzier returned, and died; the second member of the tailzie entered heir on the disposition. It was found, that notwithstanding the granter's return, the tailzie was still obligatory.

THE Lord Pollock, Justice Clerk, as probationer, reported the following cause in order to his trial, and after the same he was admitted. Mr John Lesly going to Holland in 1691, to study the laws, he makes a disposition and tailzie of his estate, both heritable and moveable, to Mr John Lesly of Tulloch, his cousin, and failing of him to George Lesly his brother, bearing in the narrative, that he desired to avoid differences in case of his not return, therefore he disponed, &c. reserving a power to alter, and dispensing with the not delivery. Before his return, Mr John, the first substitute in the tailzie, was deceased, and he dies himself in 1695, whereupon George, the second member of the tailzie, enters by the foresaid disposition. Margaret Lesly, being likewise his cousin, she and Walter Grant of Artindilly, her husband, raise a reduction and declarator, that the said disposition being conceived in conditional terms in the narrative, only to take effect in case of his dying abroad, and he having returned, it became utterly void and null, as effectually as if he revoked it, and was truly *donatio mortis causâ* in view and contemplation of the eminent hazard, he having shipped at Leith that same day, and the sea being infested with Dunkirk pirates, &c. *per l.* 29. *D. de mortis causa donat.* Likeas it bore no provision of his own children, in case he should marry, and therefore has been only a temporary settlement during his absence; and if the words be transposed from the narrative to the dispositive part thus: 'Therefore in case of my not return, I dispone my estate to Tulloch,' there would have been no dubiety in the case; and therefore such an omission ought not in subtilty to carry away his fortune. *Answered*, That the mentioning mortality in a writ, does not always make it a donation *mortis causa*; neither do narratives affect and influence dispositions, unless they be insert and repeated in the dispositive clause, which is not in this