

1751. January 25.

LYON against GRAY.

No 11.

A settlement, when made on the dispoonees and their heirs, is not understood to be *mortis causa donatio*.

WILLIAM M'CUN, in 1739, made a settlement of his personal estate upon John Lyon and James Gray, which he disposed to them equally between them, their heirs, executors, and assignees, reserving his own life, and a power to alter, burdening them with his debts and legacies, appointing them also his sole executors and universal legataries; and in 1742, when upon a voyage to the West Indies, he granted commission to the said John Lyon and James Gray, with whom he joined John Anderson, to sell his lands of Donaldsheill for payment of his debts, which were accordingly exposed to sale, and bought by Wother- spoon for the behoof of Lyon and Gray.

After this Gray dies; M'Cun also dies in the West Indies; and Lyon, the surviving executor, confirms the effects, and obtains decree against the heirs of Gray for payment of the half of the price of the lands purchased by them as aforesaid.

The reason of suspension of this decree was, that the charger and suspender's father had an equal interest in the defunct's effects; and as the charger had already uplifted as much as was sufficient to pay all the defunct's debts, the half of what remained belonged to the suspender, and particularly the half of the price pursued for.

*Answered* for the charger; That the settlement made upon them by M'Cun was *mortis causa donatio*, and fell by James Gray's predecease; that therefore the suspender had no right by that settlement, especially considering, that when the said settlement was made in 1739, the granter was upon the point of setting out upon his first voyage to the West Indies, which he proceeded in accordingly.

THE LORDS found the settlement not to have been a *donatio mortis causa*, and sustained the reason of suspension.

It may be true, that the granter, soon after said settlement in 1739, set out upon a voyage to the West Indies; but no such thing is mentioned in the settlement as the *causa dandi*: The settlement is conceived in the stile of a deed *inter vivos*, though to take effect at death, which is the case of every settlement wherein the granter's life is reserved, and a power to alter: It confers an immediate right, only subject to a power of alteration; and which of all is most material, it is made upon the dispoonees and their heirs and assignees, which is a distinguishing characteristic of a deed *inter vivos*, from a deed *mortis causa*: Upon which single consideration a deed was found not to be *mortis causa donatio*; November 1730, Galloways *contra* Hunter. See APPENDIX.

*Fol. Dic. v. 3. p. 184. Kilkerran, (DONATIO MORTIS CAUSA) No 1. p. 167.*