

but that the said right should be affected with the said debts, it was debated among the Lords, what the import should be of the said clause, and if the creditors of the husband had thereby a real interest in the goods, or only a personal action against the receiver of the disposition: and it was thought that the goods being extant and undisposed of, the receiver of the disposition with the said quality was in the case of a trustee or executor; and the creditors of the husband competing upon their diligence, to affect the same with those of the wife, would be preferable; but if they were disposed of by the wife, tho' the price be not employed for the use of the creditors, though they be extant, the husband's creditors have no interest in the same, seeing the wife was *domina*, and might sell the same; and buyers finding her in possession, are not concerned to enquire what way she should employ the price. *Vide* 17th December 1675, Thomson *contra* Eleis, *voce* MOVEABLES.

No 141.

Dirleton, No 302. p. 148. and No 315. p. 154.

* * * See Stair's report of of this case, No 6. p. 3593.

1679. January 10. GRANT *against* GRANT.

No 142.

A MAN having disposed to his brother the whole sums and goods he should have at his death, 'if he survived him, and the disponent have no children of his own,' the LORDS found that this could not disappoint the wife of her legal interest in the goods in communion.

Fol. Dic. v. 1. p. 396. Stair.

* * * Fountainhall reports the same case:

A RELICT being pursued upon a general assignation to goods, for delivery, alleges it is only *donatio mortis causa*, collated *in tempus mortis* of the disponent, and so was revocable, and revoked by a posterior right made to her.—*Answered*, It had not the requisites of a *donatio mortis causa*, and could never be revoked, *nisi per supervenientiam liberorum*, and *in dubio* a donation, (especially if in part it have onerous causes,) *presumitur inter vivos, et conditio est valida, l. 35. § 2. D. De donat. mortis causa. Et lege 13. § 1. in fine D. eodem. Donatio mortis causa* may be left so, *ut nullo casu sit ejus repetitio*. See No 1. p. 3591. where a disposition to moveables, to take effect after the granter's death, excludes the executors.—THE LORDS preferred the first disposition to the second, except in so far as it was in implement of her contract; but annulled it *quoad excessum*; but found the first did not prejudice her of her half of the moveables as relict.

Fountainhall, MS.

* * * See Stair's report of this case, No 7. p. 3596.