

## C O N D I T I O N .

## SECT. I.

*Si Sine Liberis.*

1605.

LINLITHGOW *against* CAIRNCROSS.

No 1.

**W**HERE the bairn was born and died before the mother, (THE LORDS) fand, *quod extitit conditio, et casus restitutionis dotis soluta.*

*Fol. Dic. v. I. p. 187. Kerse, MS. fol. 65.*

1624. *March 2.*LO. CURRIEHILL *against* EXECUTORS OF CURRIE.

No 2.

IN an action at the instance of Lord Curriehill, against the executors of umquhile Walter Currie, for payment of the sum contained in a bond, given to the pursuer by the said Walter, whereby he obliged him, for the pains taken by the pursuer in his affairs, and because he had debursed some charges in doing thereof, to pay to him 500 merks, at the term after the said Walter's decease, if before his decease, the said Walter did no other deed, which might be derogatory to the said bond, and if also he died, having no heirs-male gotten of his own body; against this bond and pursuit, the executors compearing, *alleged* that the bond was *donatio mortis causa*; likeas, according to the tenor thereof, it was manifest, and conform thereto, the maker in his testament, had left the pursuer 1000 merks, and ordained the first bond, whereupon this pursuit is founded, to cease and become extinct; and also *alleged*, That Walter Currie had left one daughter only, who was married, and had sons, who behoved to be repute heirs-male gotten of his body, and so the condition of the bond thereby was taken away. These alleigances were repelled, and the bond found not to be *donatio mortis causa*, nor to be revoked by the said posterior testament, seeing it was made for onerous causes, and therefore was not revokeable, nor could

A bond was granted by a man to his lawyer for a sum payable at the first term after the grantor's decease, providing he died having no heirs-male of his own body. It was found, that the heirs-male born of the defunct's daughter, did not purge the condition, which was interpreted of sons begotten immediately by the grantor himself.