

term'd a Donation or Gift. The Person who grants it is call'd the Donor and he to whom it is made, the Donee or Donatory. Some Gifts take Effect in the Lifetime of the Donor, others are not of Force till after his Death. Where a Gift takes Effect in the Life of the Donor, he is stript of the Thing given, and his Heir becomes Vassal of it. l. 1. ff. de donat. l. 1. ff. de rev. cor. For a Donation which does not divest the Donor of the Thing given, and leaves him at Liberty to revoke the same, that is to say, it is not properly, speaking a Donation, that takes place in the Lifetime of the Donor. Upon this Principle the common Rule stands of donations nihil datur, to give and to retain a thing nothing, or to give for nothing. The Meaning of which is that if the Donor keeps what he gives, he has not divested himself, and is not give. Les Loix Civiles &c. Tom. 1. Part. 1. Liv. 1. Tit. 10. pr. A Gift of this Kind which takes Effect in the Lifetime of the Donor is perfected, either with or without Writ, by the Consent of the Donor or Giver, and the Acceptance of the Donee or Donatory. For if the Donee does not accept it, the Donor is not divested of the Thing which he gives, and his Right remains still with him l. 19. §. 2. ff. de donat. l. 6. ff. de req. Jur. l. 10. ff. de donat. l. ult. C. de rev. don. If the Donee is incapable of accepting, as if it be a Child that cannot speak, nor express any Desire of having the Thing given; the Acceptance must be made by a Person that is capable of accepting for him, such as his Father, his Tutor l. 26. C. de donat. Les Loix Civiles &c. Tom. 1. Part. 1. Liv. 1. Tit. 10. Sect. 1. §. 3. A Gift not requir'd in Writ must be proved by the Donor's Oath. A Donation not requir'd, will be held accepted, so as if a Creditor affect it, the Donatory cannot thereafter repudiate the same; Stewart Answers to Trotter Double Tit. don. non accept. A Gift which takes Effect during the Life of the Donor, is either proper or improper.

A proper Donation, is one's bestowing something upon another gratis without any other Motive than that the Donor may exercise an Act of Liberality. Such a Donation being often the Mean of Corruption and Effect of Irregularity, proper Donations betwixt Man and Wife may be reduced by the Grantor, vid. supra pag. 258. and all Liberality of this Nature is so little favour'd in Law, that none are presumed to gift, or rei sua facturam facere l. 25. ff. de probat. But strict Proof is requir'd to shew the Intention of the Giver, for left is a Debtor presumed to gift while he is Debtor: For any posterior Obligation granted by him in Favour of his Creditor, without an obvious cause, is interpreted to be in Security or Satisfaction of the former. pro tanto 16. Novemb. 1700 Lord Justice Allcock and his Lady contra Hamilton of Boncloughie. 17 Feb. 1632. Kinneard contra Yeaman 27 Novemb. 1605. Robert Son contra her Father's Heir 2 Feb. 1600. Elkirch contra Inglis Novemb. 1600 Children of Law contra Liddell. Yea before the Act of Parliament

A Debtor must be just before he is bound, and therefore

Parliament 1696. Actes. sess. 6. Part. 2. The Trust was rather presumed than a Gift; any Right takes by one's Will, and one being then reckon'd a Trust, so as the Acquirer might have possession, and other, if he was not Content to him to donate his self, Stair Lib. 1. Tit. 8. 2. vers. That which is done, the Trust be no probable only by Writ or Act of the Trustee, l. Act. 25. 1. Acte is so, for a person put under a Gift, is not a Trustee, cannot take any Gift from his Tutor, or other, for Maintenance, or good Use, distinct from the Act of 2. June 1677. Vissel contra S. Murray 9 Feb. 1076. Ronaldson contra Dryden. Proof of a Trust is an Allowance to take Gifts from his Tutor freely, the Law is in St. Murray was a Trustee, but appointed. For in a Trust, the Tutor is not to be paid, but the Gift is to be given to the Donee, or his Heir, or other, as the Tutor may get the Interest, tho' not by Way of Contract, whereby the Tutor might get the Interest for his self. Many, so long as their Debtors are not in a Condition to pay, but these Presumptions take no Place in some Cases, as if a Tutor, or other, in one way his Children, is presumed to be a Trustee, unless any other way, or made them Debtors to him for it. Where a Presumption is not only in the Case of alimenting by a Tutor, but also when a Mother alimends her Children that have no lands, or other Estate, or other, as their own, as she does to their Quality 2 Feb. 1672 Cap. Guthrie contra L. McHarston and his Brother, or when the Grandfather or Grandmother entertain their grandchild, or when the Father's Lifetime, without Tutor with his Father for his Aliment, or without requiring him to take him home 21 July 1675 L. Lud-jahairn contra L. Light 11 June 1600 Gordon contra Loflie. But their requiring the Father to take home the Children takes off the Presumption of gratis Entertainment. And where a Sister entertain'd her furious Brother for 14 Years without any Agreement, she was not presumed to have done so out of natural Affection, but found to have Action for Payment of a Modification upon that Account against the Excess of her Mother in so far as she was lucrata by not keeping him in her own Family, about the Executrix had never been required to receive the furious Person into her Family 23 July 1670 Thomson contra Wilkie 2. Aliment furnished to any Person of Discretion after Pupillarity without Agreement, or signifying to the Party to remove or pay for it, is presumed to be given gratis whatever Means he have 2 Feb. 1672 Cap. Guthrie contra L. McHarston and his Brother 6 June 1676 Rig contra Rig observed by Trotter. Stair Lib. 1. Tit. 8. §. 17. l. 1. If the Furnisher was not in Use to get Money for Entertainment or Provisions, For if he was in Use to sell Provisions or board Persons for Money Entertainment given by him to any Person, tho' without Agreement, will be a Ground of Action for Payment Stair Lib. 1. Tit. 8. §. 2. Vers. In all Cases. But Aliment furnished to one under Pupillarity, or to Priests or to other weak Persons, is not presumed to be given gratis.