

S E C T. III.

Competent to the Remoter Heir, after the immediate Apparent Heir's decease.

No 15.

The Lords found, that a disposition made *in lecto*, may be reduced, not only at the instance of the apparent heir living at the time, but he dying, at the instance of the heir who succeeds him.

1668. *January 21.* JANET SCHAW *against* MARGART CALDERWOOD.

JANET SCHAW pursues a reduction of a liferent infeftment, granted to Margaret Calderwood by the pursuer's father, as being *in lecto*. The defender *alleged* no process, because the pursuer was not heir the time of the disposition, but another heir apparent, who never entered.

THE LORDS repelled the defence.

The defender *alleged*, That this being a liferent infeftment to her by her husband, and but of a small value, it was valid, and the husband might discharge that natural debt of providing his wife on death-bed, she having no contract of provision before.—The pursuer *answered*, That the defender might take the benefit of her terce, which is her legal provision, beyond which, a deed on death-bed (in prejudice of the heir) is null, and this liferent is of the husband's whole estate; and yet the pursuer is willing it should stand, it being restricted to a third of the rents of the lands.

THE LORDS sustained the infeftment only for a third.

Fol. Dic. v. 1. p. 212. Stair, v. 1. p. 51E.

1672. *July 16.*

MARGARET GRAY and her SPOUSE, *against* JOHN GRAY and Others.

No 16.
Found as
above.

UMQUHILE MICHAEL GIBSON having but one daughter, married to John Gray, did dispoise certain tenements, which were all his heritage, to his daughter, and the said John her husband, the longest liver of them two in conjunct-fee, and to the heirs betwixt them; which failing, to the husband's heirs; and after his daughter's decease, Janet Gray, the only daughter of that marriage, enters heir to Michael Gibson, and with concurrence of David Scot her husband, pursues reduction of the disposition granted in favours of her father, as being done by her goodsire on death-bed, to the prejudice of her mother, who was immediate heir, and herself who was subsequent heir.—The defender *alleged* absolutor, *imo*, Because this pursuer was not immediate apparent heir the time of the disposition; and it is only competent to the immediate apparent heirs to quarrel their predecessors deeds on death-bed; *2do*, The mother, who was immediate apparent heir, homologated and acquiesced in this right, in so far as her husband and