

of marriage, he declares the tocher shall be repaid, if there exist no bairns of the marriage; the Lords, upon this, found his intention has been to pay back the tocher in that sole case of not existence of children, and therefore sustained the declarator.

*Advocates' MS. No. 367, folio 148.*

1672. *July.* MARGARET GRAY and DAVID SCOT her Spouse, *against* JOHN GRAY and his CREDITORS.

ABOUT the same time, in a reduction, pursued at the instance of Margaret Gray and David Scot her spouse, against John Gray, father to the said Margaret, and the said John his creditors, the following case happened: Michell Gibsone dispones some tenements of lands to Catharine Gibsone his daughter, and to Jo. Gray her husband, his son-in-law, in liferent, and to the bairns of the marriage procreated betwixt them; which failyieing, to the said Jo. Gray the husband, his heirs and assignees. Catharine dies, leaving only one daughter behind her, called Margaret Gray; who is taken away while she is scarce twelve years old, by David Scot, servant to Walter Pringle, advocate, and married on him without her father's consent; who immediately serves his wife heir, in the foresaid tenements, to her goodsire Michell Gibsone, and intents a reduction of the disposition made to the father, as done *in lecto*.

Against which it was ALLEGED, that such actions are only competent to the heir of the granter, and that only when they are to his prejudice; but *ita est*, this pursuer, the time of the granting the disposition quarrelled, was neither heir nor apparent heir to her goodsire the disponer, her mother being on life; neither was the deed to the heir's prejudice, but rather in her favours, it reserving her liferent thereof; neither did ever the heir quarrel it, or show any dissatisfaction at it either by word or writ, in her lifetime.

The Lords FOUND the pursuer had interest to reduce, albeit she was neither heir nor apparent heir the time of the granting the said right, but immediate heir by progress. As also the reason being proven, they did reduce the disposition in so far as by the termination the father was constituted fiar; but sustained it *quoad* his liferent, because *in omni eventu* he would have had right to that; for *esto* there had not been a disposition, but he had served his wife heir to her father in these tenements, he would then have had right to the liferent by the courtesy of Scotland, she being heretrix. See the information beside me. *Vide supra*, 11th December, 1669, *Shaw and Handyside* against *Calderwood*.

*Advocates' MS. No. 369, folio 149.*

1672. *July.* GEORGE SUITTY *against* ROBERT BELL.

IN the same month of July 1672, in an action pursued before the Bailies of Edinburgh, by George Suitty against Robert Bell, (but which was truly managed