No 5. at the instance of the pursuer, a remoter heir; and therefore found him not entitled to insist in this action of reduction.

Fol. Dic. v. 3. p. 169. C. Home, No 158. p. 268.

1741. *February.* Christian Begg *against* James Arnot.

No 6.

Debated, but not determined, whether a donatar of *ultimus hæres* has the same privilege with a natural heir to reduce a deed done on death-bed?

Rem. Dec. v. 2. No 18. p. 32.

1744. *November* 2. Cleuch *against* Leslie.

No 7.

It is only the person who is heir to the granter of the deed by which he is excluded, to whom the objection of death-bed is competent.

James Leslie disponed his estate on death-bed to Archibald his eldest son, and the heirs of his body; whom failing, to the children of John his second son, with the burden of an yearly liferent to Violet Johnston his eldest son's wife.

Archibald, the eldest son, about a year after his father's death, died without issue; and, on death-bed, ratified his father's disposition, by executing a new disposition in the precise terms of it.

In the action of reduction of both dispositions, by John, the second son, on the head of death-bed, it was found not competent to him to quarrel Archibald's ratification on the head of death-bed, for this reason, that none can object death-bed but he who is heir to the granter in the subject from which he is by that deed excluded; but, as Archibald died in the state of apparency, *quoad* the subject in question, and that, by the disposition to him from his father, the pursuer was excluded, and he could in no shape qualify his being heir to Archibald, he could not therefore quarrel any deed of Archibald's.

Fol. Dic. v. 3. p. 169. Kilkerran, (Death-bed) *No 3. p. 152.*

*** Lord Kames reports the same case:

A ratification is not a deed that can be reduced as on death-bed.

James Leslie of Newgrange, in May 1737, being on death-bed, disponed certain subjects, worth about L. 60 Sterling yearly, to Archibald Leslie his eldest son, and the heirs of his body; which failing, to the children of his second son John Leslie, excluding John himself from the succession. And the disposition is burdened with L. 20 Sterling yearly, in name of jointure, to Violet Johnston spouse of the said Archibald Leslie. In March 1738, Archibald Leslie being also on death-bed, and having no hopes of issue, disponed the foresaid subjects to James and Elisabeth Leslies, children of his brother John, bearing to be for fulfilling his father's disposition; and specially ratifying the said provision of L. 20 Sterling yearly in favour of Violet Johnston his spouse. John

Leslie, after his brother's death without issue, being now heir apparent to his father, brought a reduction on the head of death-bed of his father's settlement, concluding particularly against the jointure provided to Violet Johnston. The defence was, that this settlement was ratified by Archibald Leslie, at that time heir-apparent. No 7.

Answered, This ratification was executed also on death-bed.

Replied, That a ratification, granted by an heir apparent, is not one of those deeds that can be challenged upon the head of death-bed; the rule of law is, that a man upon death-bed cannot alienate his estate in prejudice of his heir; but every deed done upon death-bed, whereby a third party happens to be deprived of an expected succession, is not reducible. A man dies, leaving a son and daughter of a first marriage, and a son of a second marriage; if the eldest son die in apparency, the second son will be heir to the estate, yet there is nothing in law to bar the eldest son from making up his titles, even upon death-bed, though, by this step, the second son will be excluded by the sister. In short, the law restrains proprietors from disinheriting their heirs upon death-bed; but bars not any rational deed, such as a ratification of a predecessor's settlement, though the consequence may be to set aside one who would otherways succeed. 2*do*, *Esto* a ratification were a deed of that nature to fall under the law of death-bed, yet one requisite is wanting to found that reduction, which is, that the pursuer must qualify himself to be the defunct's heir in that subject of which he is deprived by the defunct's deed; but the pursuer, though heir to his brother Archibald, who granted the deed challenged, is not heir to him in the subject with regard to which the deed is executed, but is heir to his father in that subject.

'THE LORDS assoilzied from the reduction.'

Rem. Dec. v. 2. No 56. p. 84.

1753. *July* 31.

Mr JOHN GOLDIE *against* The TRUSTEES of MURRAY of Cherrytrees.

No 8.
The Crown's donatar, on a gift of *ultimus hæres*, is entitled to pursue a reduction of a disposition of lands granted by the last possessor, upon the head of death-bed.

MARGARET MORISON, proprietor of the lands of Maison-Dieu, when fifteen years of age, and on death-bed, executed a settlement of her estate in favour of James Murray of Cherrytrees. She died about four weeks after the date of this deed, without heirs.

Mr John Goldie, her uncle by the mother's side, obtained from the Crown a gift of the said lands of Maison-Dieu, as having fallen to his Majesty as *ultimus hæres*.

In consequence of this gift, Mr Goldie raised a declaration of his right, wherein he called Mr Murray of Cherrytrees; and concluded for reduction of the