

suers have no occasion at present to enquire, or to enter upon these general topics, as there was here no onerous cause for granting the provision; for the conveyance of the English estate, by the Lady to Sir Patrick, was no more than a *color quaesitus* to make the appearance of onerosity, as it does not appear that she had any right to it herself.

As to the *third* observation, That the liferent ought to be sustained, at least to the extent of a terce, it falls to be observed, that there is a very wide difference between these two rights, a terce being no more than a right to the fruits; whereas an infestment of annuity affects the fee. And, although the Lady might have insisted upon her terce, either against the tenants or intromitters with the rents, as may the defender her assignee; yet he cannot, in virtue of the terce, affect the fee of the estate, for rents which she ought to have uplifted during her own lifetime. Nor is there any ground to support the annuity as a security for the terce, as if the heir and creditors had no harm by it; seeing their prejudice is manifest, if a right to the rents is turned into a burden upon the property, and the relict gets liberty to ly still and allow the rents to be run away with, which she had a title to uplift, and thereafter to come and be ranked on the fee to the exclusion of creditors. But it is plain, a person on death-bed has no power to make such a transmutation of right to the prejudice of his heir or creditors.

And, with regard to the clause declaring, That the jointure should cease in case she succeeded to L. 100 Sterling a-year, it is *answered*, That, if one in such circumstances cannot make the plainest bargains for his heir, much less can he make bargains of chance. Besides, even in that event, the Lady was only to give down her liferent to her own children, but still it was kept up against the creditors; so that that clause does not appear to concern the present question.

THE LORDS sustained the reason of reduction, in so far as the annuity could affect the fee of the estate.

*C. Home, No 30, p. 58.*

1747. December 17.

LESLIE against LESLIES.

It is laid down in our law-books, That bonds of provision to younger children are reducible upon the head of death-bed, however rational and moderate: And so it was here adjudged; the bonds of provision were reduced *ex capite lecti*, and the defence, that they were rational and moderate, repelled.

*Fol. Dic. v. 3. p. 171. Kilkerran, (DEATH-BED.) No 6. p. 154.*

No 50.

No 51.