

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.

No 6.

1741. February. CHRISTIAN BEGG against JAMES ARNOT.

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.

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.

1744. November 2. CLEUCH against LESLIE.

JAMES LESLIE disposed 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 apparenacy, *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, disposed 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, disposed the fore-said 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