

extend to take away common law; neither is the provision adjected as an express condition upon which the tailzie was made, and no otherwise.

' THE LORDS repelled also this defence, in respect of the reply, and so having advised all the defences and disputes in the afternoon, albeit the parties had agreed before hand, and the heir of line's portion doubled; yet the LORDS were generally clear in the decisions above written, as relevant in themselves.'

*Fol. Dic. v. I. p. 211. Stair, v. I. p. 186.*

No 1.

1672. July 24.

PORTERFIELD against CANT.

ELIZABETH CANT having taken certain bonds to herself, and failing of her by decease, to the children of John Porterfield her son; and Mr Walter Cant having been tutor to Margaret Porterfield, only bairn of the said John Porterfield, the said Margaret pursues Catharine Cant as executrix to the said Mr Walter, to deliver the bonds, or the sums therein contained. The defender *alleged* absolvitor, because the pursuer being only substitute in the bond to Elizabeth Cant her good-dame, the said Elizabeth who was fiar, and might dispone, did assign the saids bonds to Sir Patrick Drummond, for the behoof of John Porterfield her son, father to this pursuer, whose debts the tutor paid, which ought to be allowed in the sums contained in these bonds. It was *answered*, That that assignation was *in lecto agritudinis*, whereupon the pursuer hath intended reduction, and repeats the same by way of reply. It was *replied*, That *posito* the assignation had been on death-bed, it is not reducible on that head; because there is a provision in the bonds, that it should be leisome to the grandmother to assign and dispone the sums at her pleasure, without consent of the substitutes; and so having disposed in favours of her own son the pursuer's father, who was her heir of line, and this pursuer as substitute, being but heir of provision, she might lawfully do the same. It was *duplicated*, That the privilege of heirs is not to be prejudged by their predecessors' deeds on death-bed, which doth extend generally to all heirs, so that a deed done in prejudice of an heir-male or of tailzie, in favours of an heir of line, though nearer of blood, is reducible; because the ground of the law is, that parties after contracting of the sickness whereof they died, become weak, and therefore are not allowed to alter the succession of their heritage, as it was established before they became sick; and the provision of the bonds reserving a power to dispone, can only be understood to be *legitimo modo*, in the way allowed by law, and cannot warrant a deed done on death-bed.

Which the LORDS found relevant, and sustained the reduction by way of reply.

*Fol. Dic. v. I. p. 211. Stair, v. 2. p. 109.*

No 2.

The law of death-bed takes place in favour of all sorts of heirs, whether the destination be by infestment or only in a personal deed.