

1739. February 3. & 13.

MARGARET and JANET CRAIGS against The MALTMEN of Glasgow.

A DISPOSITION was granted *in lecto* to certain trustees for the behoof of the disponent's only child, her heirs and assignees, in case she lived or attained to the age of 21; but in case of her decease before marriage, or 21 years of age, for behoof of the poor of the maltmen of Glasgow. And the child having died before majority or marriage; in a reduction at the instance of the next heir, the LORDS 'found the disposition to have been not only in prejudice of the remoter heir, but also in prejudice of the nearest heir at the time, she being an infant, and the estate upon her failure, even in infancy, provided to strangers; and therefore that it was reducible *ex capite lecti*, without prejudice to the defenders continuing in possession till they should be heard upon their claims, on which they pleaded at least a partial onerous cause.'

Fol. Dic. v. 1. p. 212. Kilkerran, (DEATH-BED.) No 2. p. 151.

No 18.

A substitution in a disposition to the nearest heir was reduced, at the instance of a remoter heir.

SECT. IV.

Competent to a Wife;—and to Children.

1628. July 10.

CANT against EDGAR.

ONE Cant pursues Edgar, for payment to the relict of umquhile Edward Edgar, of the third of her umquhile-husband's moveable goods. The said umquhile Edward being cautioner for umquhile Mr William Maxwell of Carvens, to his creditor, in an heritable bond; in the which bond, the said Mr William was obliged for his relief, and the said umquhile Edward being compelled, and having paid the sum, and dying before he was relieved, it was controverted if that relief contained in the heritable bond should be estimate an heritable sum, and so pertain to the heir of the cautioner; or if it was moveable, so that the relict would have in law her third thereof; which the defender alleged could not be found moveable, seeing he alleged that the relief was of the nature of the bond given to the creditor, which was heritable; likeas the defunct had, in his own lifetime, obtained decret against the principal, for whom he was cautioner and had paid, for re-payment of the principal sum, with the bygone annualrents, and decerned him to make payment also in time coming of the yearly annualrent, ay and while he were re-paid, whereby the same pertained to the defunct's

No 19.

A wife cannot be affected in her right to a third of moveables, by a deed on death-bed.