

flux four or five days before the infestment, which continued to the time thereof, and continually to the time foresaid of his decease, he dying within so short a time, viz. 12 days;—Thereafter it was *alleged* by the defender, That the infestment was but a liferent, given by the husband to the wife, who of the law could not be prohibit to help his relict upon death-bed. Attour it was offered to be proven, That at the time of the giving of the infestment, and divers days thereafter, the husband was in that state that he might have come out to the kirk or market, and that he lay not bed-fast, but sat at table, and eat and drank as at other times when he had health; and his sickness being a flux, that reason could not take away the excipient's right.—THE LORDS repelled the allegation, and found the reason relevant.

Act. *Mowat.*Alt. *Russel.*Clerk, *Scot.**Fol. Dic. v. 1. p. 217. Durie, p. 13.*

No 73.
coming to
kirk or mar-
ket there-
after, could
not infest his
wife in a life-
rent.

1624. *January 7.*SHAW *against* GRAY.

A MOVEABLE bond, granted seven weeks before the party's decease, but she being sick at the time, though not of a *morbus santicus*, and not coming thereafter to kirk or market, was reduced *ex capite lecti*.

*Fol. Dic. v. 1. p. 217. Durie.**** See This case Sect. 7. *b. t.* No 32. p. 3208.

No 74.

1635. *July 30.*RICHARDSON and LORD CRANSTON *against* SINCLAIR.

A SALE of lands made by a person paralytic, an year before his death, and while he was sound in his judgment and understanding, was yet found reducible *ex capite lecti*, unless he had come abroad after it.

*Fol. Dic. v. 1. p. 217. Durie.**** See This case Sect. 7. *b. t.* No 34. p. 3210.

No 75.

1668. *February 25.*PATRICK DUN *against* ISOBEL and ELIRABETH DUNS, his Sisters.

UMQUHILE DR DUN having provided 4000 merks to one of his daughters, and 10,000 merks to another, and entertainment during their minority, that their portion might go to the fore, bearing annualrent; did thereafter grant to Isobel another bond of 2000 merks; whereof Patrick his heir raises reduction, as be-

No 76.
In a reduc-
tion on death-
bed, the de-
fender offered
to prove, that

No 76.
 though the defunct had broke his leg, and so could not go to kirk or market, he was notwithstanding in perfect health when he executed the deed challenged. This defence was repelled.

ing done on death-bed, after the defunct had broke his leg, and the same was out off, whereof he took a fever and died, and never went out to kirk or market :—The defenders *answered*, That they offered them to prove, that albeit the defunct happened not to come out, yet he was in his *liege poustie*, and perfect health, and did all his affairs, which did much more evidence his health, than the stepping out to the market; *2dly*, The bond in question being a provision to a daughter, it was a natural obligation, which the father might do on death-bed.—The pursuer *answered*, That the law allowed no other evidence to give capacity to dispone in *liege poustie*, but going to kirk and market; and if any equivalent were accepted, it would render the most ancient law dubious and elusory; as to the *second*, the defender having been portioned before, any addition on death-bed had not so much as the favour of a portion-natural.

THE LORDS repelled the defences, and sustained the summons.

Fol. Dic. v. I. p. 217. Stair, v. I. p. 534.

1671. June 28. THE CREDITORS OF BALMERINO *against* The LADY COUPER.

No 77.
 In a reduction upon death-bed, it is not necessary to condescend upon a particular disease.

THE deceast Lord Couper having made an heritable and irredeemable right of his whole estate and dignity to his Lady and her heir; the Lord Balmerino, his nearest heir in the estate, making use of the names of certain of his creditors, that he might not be necessitate to enter heir before the event of this plea, pursues a reduction of the said disposition, as being on death-bed.—The defender *alleged*, *1st*, That the reason of reduction, as it is libelled, is not relevant; that the defunct contracted a deadly disease before the making of the disposition, and that he died of the said disease, which is not relevant, unless the particular disease were condescended upon, otherwise it will remain conjectural and unsure; and witnesses cannot distinctly depone whether he was sick or not, specially he being an old man, so that they could not distinguish betwixt sickness and weakness through old age; *2dly*, The reason is not relevant, unless the disease were alleged to be *morbus santicus*, that might affect the mind, and infer a weakness, which is different from fatuity or insensibility; *3dly*, The defender alleged absolvitor, because he offered him to prove that the defunct was in health the time of the disposition, at least in as good health as he had been for several years or months before, when he did go ordinarily abroad to kirk and market, about all his affairs; at least, if he had any indisposition, it was not *impedimentum rebus agendis*, because it is offered to be proven that he constantly put on his clothes, and walked up and down his house, convoyed strangers to their chambers freely, without being helped or supported; and in the same manner went down with others to their horse to the green, made several accounts and bargains, and frequently played at cards, all which must necessarily infer his health, unless a circumstantial disease were condescended upon and proven; *2dly*, The defender offered to prove that after the disposition, the defunct went