

No 84. tained as depending on that preceeding obligation, without prejudice to pursue upon the contract *prout de jure*.

Act. *Advocatus & Cunninghame.* Alt. *Nicolson, Aiton, & Lawrie,* Clerk, *Gibson.*
Durie, p. 457.

No 85.

1669. *February 26.* PARGILLEIS *against* PARGILLEIS.

A defunct had gone several times to the market, and walked there unsupported, and other times abroad, after the disposition challenged, sometimes a-foot, and other times on horseback. This was found relevant to elide the reason of reduction on death-bed, although he was helped up and down stairs, and to, and from his horse, which was led by the bridle, notwithstanding that he continued sickly to his death.

UMQUHILE Abraham Pargilleis having no children but one bastard daughter, disposes some lands acquired by him to Abraham Pargilleis, eldest lawful son of that daughter. John Pargilleis his brother's son, and nearest heir, pursues a reduction of that disposition, as being done in *lecto*; and the defender alleged that the defunct went abroad to kirk and market thereafter unsupported; and the pursuer replying that he was supported; and either party contending for preference, the one that he walked free of himself, and the other that he was supported;

THE LORDS considering the advantage to the party that had the sole probation, would prefer neither; but, before answer, ordained witnesses to be adduced for either party, concerning the condition the defunct was in, as to sickness or health when he subscribed the disposition, and the manner of his going abroad, whether free, or supported; and now THE LORDS having advised the testimonies, by which it was proven that the defunct was sick the time of the subscribing of the disposition, and that he continued sick till his death; it was also proven that he went unsupported a quarter of a mile, when the sasine was taken, six days after the disposition, and that after the same he went three times to Calder, and about three quarters of a mile off, and that he was helped to his horse, and from his horse, and that he was helped up stairs, and down stairs; but that he walked a-foot unsupported in the market of Calder, and up and down from my Lord's house, being three pair of butts of rising ground. It occurred to THE LORDS to consider whether the sickness proven would have been sufficient, not being *morbus santicus*, or *in extremis*, or whether the presumption of health sufficient to *liege poustie* was enough that he came out to kirk and market, albeit the sickness remained, and whether the probation of the sickness remaining could take away that presumption; and whether his being helped to his horse, and from his horse, or up and down stairs, and his man holding his bridle as he rode to, and returned from, Calder, did infer that supportation, which elides the presumption of health by going abroad, or whether the going freely on foot (having only a staff in his hand the rest of the way) was sufficient to prove that he went abroad in *liege poustie*.

THE LORDS found that the defunct's going abroad after the disposition, as is before express, was relevant to elide the reasons of reduction on death-bed, notwithstanding of his being helped up and down stairs, and to and from his horse, and by leading his bridle, and that notwithstanding that he continued sickly to his death.