No 57. yet the warrant was granted when he was in *liege poustie*, by the precept, which bears in itself to be an irrevocable power and warrant to take sasine; so that the vassal had in his *liege poustie* done *quantum in se fuit*, to alienate this ward-fee.

THE LORDS found, That if the disposition, containing the precept, was delivered to the vassal without reservation in the disponer's *liege poustie*, it would infer recognition, though the sasine was taken after his sickness; and found, that if the disposition and sasine were on death-bed, it would exclude recognition by way of exception, recognition not being a possessory, but a petitory, or declaratory judgment; but, seeing it was alleged that the disposition was delivered to the Lord Frazer, the LORDS, before answer, ordained the Lord Frazer to depone from whom, and when, he received the said disposition; and whether he had any direction to take sasine thereupon, or any direction to the contrary, and also that the bailie, attorney, notary, and witnesses in the sasine should depone by what warrant they did proceed therein.

Fol. Dic. v. 1. *p.* 215. *Stair, v.* 1. *p.* 641.

1678. *June* 22. BIRNIES *against* The LAIRD of POLMAISE and BROWNS.

No 58.
A disposition executed in *liege poustie*, but blank as to the disponer's name, was found reducible, as upon death-bed, as the disponee's name was filled up upon death-bed.

UMQUHILE James Short having married Polmaise's daughter without his consent, or tocher, or contract of marriage; during the marriage, James did provide his wife to the liferent of a tenement in Stirling, and some acres thereabout, and to the stock of 10,000 merks due by Tillibarden, with the burden of his mother's liferent of the tenement and sum; but thereafter he revoked this disposition, as a donation betwixt man and wife *stante matrimonio*, and disponed the same to his mother, who transferred the right thereof to her oyes Sir Andrew Birnie's children by James Short's sister; whereupon they pursue reduction against Polmaise, as having now right by progress to the 10,000 merks, as being a donation betwixt husband and wife revocable, and revoked. The defender having *alleged* that there being no contract of marriage, this provision was in place thereof, and therefore was not revocable, especially seeing that it was but a rational provision by a burgess to a gentlewoman's daughter, who had induced him to marry her without her father's consent;—the pursuer *answered*, That the law had sufficiently provided wives by a terce and third, and any further provision after the marriage was a donation revocable, and so revoked. THE LORDS, before answer, did ordain either party to adduce probation what was the estate of James Short the time of this provision; and by the probation it appeared, that he had a tenement worth 10,000 merks, burdened with the mother's liferent, and this 10,000 merks, so likewise burdened; that his mother was a woman near 70 years, and died shortly after; and that the acres about Stirling were worth two chalders of victual un-liferented by his mother, but that his wife liferented the whole, and that he had 11,000 merks of

debt, and therefore found the provision of the fee of 10,000 merks to be exorbitant, and to be revoked as a donation. In the same libel, there was a reduction against James Short his nieces, by another sister called Brown, of the disposition of a tenement in Stirling, failing heirs of his body, on this reason, that albeit it was subscribed before his sickness, yet the persons names were left blank, and were not filled up till he took the sickness, whereof he died; so that on death-bed he could not prejudge his heirs; and it being *alleged*, that before his sickness he had not only subscribed the writ, but had delivered it to the writer, to the use of his nieces, and had given him direction to fill up their names; and that albeit the writer had not done it till his sickness, yet the subscription and warrant before, to fill up the blank, was sufficient to fill up the heir;—it was *answered*, That this warrant at most was but a mandate, which ceased so soon as the constituent was become incapable to dispone. No 58.

THE LORDS having ordained the writer and witnesses insert to be examined, the writer, out of whose hand the writ was recovered, did depone, that it was subscribed before the defunct's sickness, but a blank left for the names, and that the defunct, after his sickness, had ordered his nieces, the Browns', names to be insert in the blanks, without any mention that before his sickness he had given warrant to fill up their names, or delivered the writ to their behoof. Whereupon the LORDS reduced the right, in so far as it might concern the Browns; but the question came not to be determined in case the warrant had been given before sickness to fill up the names, and they had only been filled up *in lecto*.

Fol. Dic. v. 1. *p.* 217. *Stair, v.* 2. *p.* 624.

1687. *January* 18. PENNYCOOK *against* THOMSON.

No 59.
Found as above.

THE reduction pursued by James Pennycook, as assignee by Adam Scot, against Janet Thomson, of her disposition from Adam Scot *ex capite lecti*, is advised. *Alleged*, 1*mo*, Adam Scot passed by his son for his horrid ingratitude, in following him with a whinger to stab him; which is *exhæredatio cum elogio*. 2*do*, Though it was signed blank, and not filled up with her name till he was on death-bed; yet the witnesses deponed, that at the signing (when he was in *liege poustie*) he declared that disposition was for Janet Thomson; so it was all one as if it had depended on an anterior onerous cause; but the LORDS reduced it, and did not regard this, because he might alter his purpose and resolution.

Fol. Dic. v. 1. *p.* 217. *Fountainhall, v.* 1. *p.* 441.

*** Harcarse reports the same case:

FOUND that the filling up of one Thomson's name on death-bed in a disposition, signed by Adam Scot in favours of ——— in *liege poustie*, was quar-