

No 96. affect therewith the estate, or burden the heir on whose bond it was adjudged, especially seeing the disposition bore for love and favour, and redeemable for a rose-noble.

THE LORDS found the reason of death-bed sufficiently proven, and that his private going abroad (though unsupported) was not equivalent to going abroad to kirk and market, or public meeting, where the disease continued to affect the brain; but they found the paying of debts equivalent to the worth of the land relevant by way of exception, in regard the disposition bore to be for payment of his debt.

*Fol. Dic. v. 1. p. 218. Stair, v. 1. p. 716.*

No 97. 1671. June 28. CREDITORS OF BALMERINO *against* LADY COUPER.

IN a question of death-bed it being proved, that the defunct himself constantly put on his own clothes, walked up and down his house, conveyed strangers to their chambers freely without help or support, and in the same manner went down with others to see them take horse, made several accompts and bargains, and frequently played at cards; all this was not found relevant to infer health, or equivalent to the going to kirk or market.

*Fol. Dic. v. 1. p. 218.*

\* \* \* See This case, Section 10. *b. t.* No 77. p. 3292.

1683. February.

THE YOUNGER DAUGHTERS OF MOUNTONHALL *against* The ELDEST.

No 98.  
Many strong circumstances inferring convalescence, not admitted as equivalent to going to kirk and market.

IN a reduction *ex capite lecti*, at the instance of James Hamilton of Moutonhall's two younger daughters, of a disposition of his land and 20,000 merks, in favours of his eldest daughter, whereby she was made to have a greater share than the rest;

The defender, for supporting of her right, *alleged* upon deeds done thereafter by the disponer, equivalent to the going to kirk and market, which, upon probation, amounted to this, that he rode to Edinburgh, and called at Caldcots by the way, where he spoke with one Hislope, and also that he passed by Peppermill; but that appeared not to have happened on the same day. Again, one witness deponed, that he spoke with him on the street of Edinburgh; another deponed, that he bought his barley in a change-house in Edinburgh; and one deponed, that he went to Fisher-row, and bought a midden of muck: And several witnesses deponed, that he walked unsupported about the doors, and managed his business discreetly, after the date of the deed quarrelled; but that he never went to church after his disease, which was a gout and a palsy, nor did ever recover of it.

*Answered*; Law having fixed upon the going to kirk and market, as signs of *liege poustie*, equipollent acts are not to be sustained, unless, at least, they have the essential qualities of these of kirk and market, viz. be public, and performed before indifferent witnesses; for, how easy might two witnesses be got to support him for the space of four miles, except at particular places. And it was not deponed, that he lighted from off his horse; and a man under a great sickness might ride so far.

THE LORDS found the defunct was *in lecto*; and therefore reduced the disposition.

*Fol. Dic. v. 1. p. 218. Harcarse, (LECTUS ÆGRITUDINIS.) No 648. p. 179.*

No 98.

1683. February. WILLIAM LIVINGSTOUN *against* JANET GOODALE.

IN the reduction of a disposition of some heritable sums made by a Quaker *ex capite lecti*, the LORDS sustained the following qualifications sufficient to elide the reason of death-bed, That the disponent had several weeks after the disposition sitten in his shop, and sold his goods; and, that he had walked before his shop-door, and bought a suit of cloaths in the next shop; and that he being a Quaker, was not obliged to go to church to ratify his deed.

*Fol. Dis. v. 1. p. 218. Harcarse, (LECTUS ÆGRITUDINIS.) No 651. p. 180.*

No 99.

1687. November 25. KEIRIE *against* CRAIGENGELT.

IN the case between John Keirie of Gogar and Craigengelt, in a reduction *ex capite lecti*, the LORDS refused to sustain these acts as equipollent to his going to kirk and market, that after the disposition he came down a very rugged way beside Stirling, without any help, and there took coach and went to Alloway, where he died.

*Fol. Dic. v. 1. p. 219. Fountainball, v. 1. p. 483.*

No 100.

\* \* \* Harcarse reports the same case:

IN a reduction *ex capite lecti*, of a disposition made by one Craigengelt to John Keirie's son, at the instance of the disponent's heir;

It was *alleged* for the defender; That the defunct did posterior acts of health equivalent to the going to kirk and market, viz. he came a pair of butts out of his house unsupported to a coach, wherein he travelled six miles to Alloway, and walked up two pair of stairs to John Keirie's house, and did several other domestic acts.