

*Answered* for the defender ; That every act of supportation should be proven by two witnesses ; and the taking of a glass of sack was proper enough to the party at his going abroad to hear a long sermon, though he had not been sick. *2do*, Sir John used to go to church in coach. And, further, his taking of a coach on this occasion was but reasonable, his Lady being with him, and the season of the year dirty. *3tio*, The taking his Lady by the hand at the church-door was but an act of civility ; and his sitting in the church during a long sermon, and the christening of a child, was *per se* a sufficient act to demonstrate such a measure of health and strength as the going to church required ; and the instrument bore, that he went vigorously, and all the way unsupported, which the witnesses insert adhered to ; and the witnesses as to the supporting being but *testes singulares*, the defender's probation is most pregnant.

THE LORDS found the deed was done on death-bed, and that the positive probation of *supported* was more pregnant than the negative of *unsupported*. And the LORDS thought, that the exercising acts of health and strength, for validating rights, by the help of coaches, sedans, or leading Ladies, are used but as blinds to cover weakness, and subject to a suspicion, which was rational for the party to prevent, had he been able.

Thereafter it was *alleged* for the defender ; That the deed could not be reduced as on death-bed, because it was granted in remuneration of a right passed from by the receiver, in favours of her husband the granter.

*Answered* ; That the bond quarrelled was of a date five days posterior to the Lady's renunciation, and she accepted a settlement of the date thereof, in full satisfaction of all that she could claim, &c.

*Replied* ; The Lady offered to prove, by the writer and witnesses of the deed of settlement, made to her when she quitted her former security, that it was communed she should have the 20,000 merks bond over and above ; and that it was drawn at the same time with the rest of the papers, but that Sir John being indisposed, could not sign them altogether.

THE LORDS adhered to their interlocutor, in respect of the clause, *In acceptation, &c.* in the settlement, prior to the bond ; but, before reporting, recommended to the Lord Chancellor to settle the parties.

*Fol. Dic. v. 1. p. 218. Harcarse, No 654. p. 181.*

1686. *March.* JOHN CUNINGHAME *against* JAMES HAY.

IN a reduction of a disposition by John Suttie to James Hay, *ex capite lecti*, at the instance of John Cuninghame, who had adjudged from Balgon, apparent heir to the disponent ;

The defender having *alleged* upon the disponent's going to kirk and market, and adduced witnesses for proving thereof,

No 90.

It is not being at church and market, so much as the going there, which infers perfect health.

No 90.

It was *answered* for the pursuer ; That the probation was defective, in so far as the witnesses do not say that they saw the defunct come out of his chamber and return home ; but only, that they saw and left him at such a place upon the street, which argues, that he was not in a condition to go down and up stairs unsupported, otherwise the witnesses had been also called to that part of the progress. And it is not the being at church and market, but the going there, that infers perfect health. *2do*, The progress was performed in an unlawful time, under cloud of night, between four and five o'clock, in the month of December. *3tio*, Acts of supportation are proven at the shop where he was, and he returned home in a chair or sedan, into which he was helped, and groaned heavily ; and he died within seven days after. *4to*, The witnesses vary in their depositions from what is asserted in the instrument, *5to*, The going to church in the night-time, when the party's condition could not be exposed to the view of indifferent and unsuspected persons, but only to picked witnesses, taken along to serve a turn, is not sufficient to elide the exception of death-bed. *6to*, The not returning home before the witnesses is a material defect. And the being carried in a sedan is a plain supportation and argument of death-bed.

*Replied* for the defender ; It was not necessary to have witnesses to the going out of the house and returning. *2do*, The progress needed not to be made in the time of the forenoon's service ; for the vespers was the most solemn meeting at church before the Reformation, and the evening prayers since ; and the defender passed from the instrument. *3tio*, Any acts of supportation are denied ; and a sedan is not a supporter.

THE LORDS, *nemine contradicente*, found the disposition was made *in lecto*, and reduced.

*Harcarse, No 656. p. 183.*

1711. December 5. CRAUFURD *against* BRICHEN.

No 91.  
A man having been many months ill of a *tympanites*, and while under the disease having signed a disposition, after which he did not live 60 days, but died of the same disease, yet went unsupported to kirk and market after granting the writ ; the Lords finding

JAMES CRAUFURD skinner in Glasgow, having disposed some houses and other heritage to one Brichen, to breed up a boy in the skinner-craft, as a fund in all time coming ; Mr Mathew Craufurd, his nearest heir, raises a reduction of that disposition as done *in lecto* ; and a probation being allowed both parties, before answer, as to the state and condition of his health the time of subscribing, and his coming to kirk and market after the date of it, unsupported ; the probation came this day to be advised ; and it appeared that in February 1707, he was taken with a dropsy, but which did not hinder him to go about his business abroad till September thereafter : That on the 13th of August he signed the disposition quarrelled, and on the 15th he was all day in church, and thereafter he went to the flesh-market and bought some meat therein, as also cleared accounts with several people, and interchanged discharges with them ; and went to Doctor Maitland's house, and consulted him, who depones he found