

ought to be more effectual than a deed in writing; for if it were, persons on deathbed might easily prejudge their heirs. No 478.

THE LORDS inclined to find the reason relevant in these terms, viz. That Sir John the time of litiscontestation was sick of the disease whereof he died; and that it was not enough to allege he was sick, or on deathbed, at the taking of the term, or the time of the circumduction; because litiscontestation is *contractus judicialis*, where parties are compearing, and one upon deathbed may satisfy prior obligations; but, before answer, a joint probation was allowed, as to the state of the defunct's health the time of litiscontestation.

Fol. Dic. v. 2. p. 256. Harcarse, (LECTUS ÆGRITUDINIS.) No 650 p. 179.

1687. November 22. CRAWFURD against BELL.

No 479.

THE case of Crawford in Lithgow against Bell, was reported by Carse. A father on deathbed calls his son, and declares that the right of such a comprising standing in his name is but a trust, and takes his promise to denude of it to the true party; accordingly the boy afterwards gives them a bond, but being minor he is induced to revoke it. *Alleged*, He cannot revoke it, being charged by his father, *ad levamen et exonerationem conscientia*, to do it. *Answered*, What his father did *in lecto* does not tie him, being heir. THE LORDS, from a principle of conscience, allowed a trial by witnesses, or otherwise, if the father was heard, at any time in his health, to acknowledge that right to be only a trust; but did not sustain his declaration *in lecto*.

Fol. Dic. v. 2. p. 255. Fountainhall, v. 1. p. 481.

* * Sir P. Home reports this case :

JAMES BELL having granted a bond to Euphane and Christian Crawford, making mention that Walter Buchanan of Drumakill having granted a bond to Mr Andrew Kerr for the sum of 1000 merks, and that Mr Andrew had granted an assignation of the same to Isobel Main, the said Euphane and Christian's mother, which being blank in the name, they filled in Alexander Bell, their nephew, his name, in the same; upon which there being an apprising led of Drumakill's estate, and infestment past in the said Alexander's name; and that the said Alexander Bell, upon death-bed, did declare to the said James Bell, his son, that this assignation was only in trust to the said Euphane and Christian Crawfords, and required his son to denude himself of the trust in their favours; and being willing to perform his father's commands, and having got up the charter of sasine, that past upon the apprisings, in order to serve heir in special, therefore he is obliged to serve himself heir, and then to demand the apprising, in the pursuer's favours, and to deliver back the charter and sasine;

