

that, upon the whole, it was evident that, if the prosecution succeeded, the creditors would be the sole benefitters, and that Richard and his family were ruined.

The case of *Douglas of Tillivhilly* was quoted and reprobated ; but the case of *Thomson of Cummanhead*, decided *anno* 1772, was quoted with approbation.

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## DEATH-BED.

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1776. July 9.

FAICHNEY *against* FAICHNEY.

IN the cause, this day decided, 9th July 1776, Faichney against Faichney, Lord Monboddo gave his opinion, that a person advanced in life to the age of 66, labouring under a gradual decay of nature, and afterwards dying of it, cannot be said to have contracted a disease of which he died, in terms of the law of deathbed : he is under no disease, further than arises from old age, and the settled period and boundary of human life ; and therefore he contended, that, in such a case, there was no necessity for any proof of reconvalence ; for reconvalence supposed sickness, of which, in his opinion, there was none : but if any such proof was necessary, he thought that a party going to church unsupported, though weak, and not perhaps staying out the whole public worship, but returning unsupported, that this was all which the law required to validate the deed. In this case, the person was a minister, who was in use to go regularly to church, and stay out the service ; whereas, on this occasion, he had not only rode to church, but, over and above a louping-on stone, had been helped on and off his horse. Had been late in going into the church,—not till after the lecture was begun,—and had come out after the sermon, before the last prayer, or the blessing.

The majority of the Judges thought this an incomplete act, and that it did not validate the deed, no more than going to market and coming away in the midst of a bargain. Lord Justice-Clerk extended Lord Monboddo's doctrine to every case of a *morbus santicus*, and contended, that, if the mind was entire, the weakness of body should be strictly interpreted so as to preserve to every man the *libera testamenti factio* as much as possible. All seemed to agree, that, where a party goes to kirk or market, *dedita opera* to validate a deed on deathbed. The behaviour of such a person was to be examined and attended to with special minuteness. The Lords had formerly repelled the reasons of reduction ; “ but this day they sustained them, and reduced the deed.”

Case of *Provost of Aberdeen*, decided 13th December 1757 ; See Principles of Equity, p. 121.