

February 22.—THE LORDS advised the rest of the points of Tilliquhen's reduction against Invermaith, mentioned 20th current; and considered the probation anent the equivalent acts of sanity: And though the President affirmed, that he never saw them sustained, yet the LORDS thought there might be such acts stronger, and more pregnant, than the evidences of health required by our law of going to kirk and market. What if a man should ride several stages post after he had signed a disposition, which is drawn in question as signed on death-bed, and should come to the Session-house and plead causes, would not that validate the right, though he should never go to kirk or market, especially if they be deeds that are not strained nor affected, nor done of purpose and design, but ordinary acts in management of affairs, or for diversion or recreation? Therefore, the LORDS found the equipollent acts proven to have been done by Rossyth after February 1688, as his going to Inverkeithing at the election of a commissioner for that town, to the meeting of estates in 1689, his staying a whole day at sea in a boat at fishing, his walking in Lady Home's yard, his visiting prisoners in the tolbooth, were such as proved his convalescence, and that he was then in *liege poustie*, and were sufficient to validate the dispositions in January 1688, because many of these reiterated deeds were in 1688 and 1689. But the LORDS did not yet determine the validity of the disposition given by Rossyth to Invermaith in August in 1690, about four months before his death, because there were few deeds of health proven after that time, and the two attempts of his going to kirk and market after that were already found strains of nature, and therefore they superseded to advise this last part, till it might be tried if the parties in the mean time could settle and agree.

*Fol. Dic. v. 1. p. 217. Fountainhall, v. 1. p. 611. & 614.*

1696. June 11.

GORDON against GORDON.

THE LORDS advised the reduction *ex capite lecti*, pursued by James Gordon of Techmuiry against Gordon of Daach, of some bonds granted by the parson of Rothiemay, his father, to his daughters of the first marriage, and whereunto Daach had acquired right. The answer was, any thing the granter then laboured under, was not a *morbis* but a *vitium*, he, by a rheumatism, having contracted a lump in his back which dislocated two of the *vertebræ* or whorl-bone; and though he kept his bed, and was unable to walk even with crutches, yet the last of the bonds is more than three years before his death, and he cannot be reputed to have then contracted the sickness whereof he died; but truly he took a fever, which, in two or three weeks, dispatched him. *Answered*, The disjoining of his back was the cause of the sickness which carried him off, *et causa causæ est causa causati*; and, after he took bed, he had several fainting fits, and used much physick and cordials; and though he took a fever, yet

No 80.

A person by rheumatism contracted a lump on his back, which dislocated two of the *vertebræ*, so that he kept his bed, and was unable to walk even with crutches. In that condition he granted bonds, the last of which was more than three years before his death.

## No 80.

The Lords found these bonds were not reducible *ex capite lecti*.

he was sick before, and *omnis morbus desinit in febre* as the physicians tell us; and it does not import that he did all acts of judgment and understanding; for the law considers their liableness to impressions and importunity at that time; as was found, Creditors of Balmerino against Lady Couper, No 77. p. 3292.; Shaw *contra* Gray, No 32. p. 3208. : And the great distance of time betwixt the date of the right, and the granter's decease, was not regarded by the Lords, Clieland of Faskin, No 86. p. 3305.; though that interlocutor was much complained of.

THE LORDS having advised the probation, thought it hard to fix a death-bed so far back, and that it ought not to exceed a year; and that the immediate, not the remote causes of one's death were here to be considered; therefore they found death-bed not proven in this case and assoilzied from the reduction.

*Fol. Dic. v. I. p. 217. Fountainball, v. I. p. 720.*

## No 81.

What understood to be *morbus sentiens*.

1741. November 28.

SOMERVILL *against* GEDDIE.

IN a reduction upon the head of death-bed, the proof came out thus: *imo*, The granter, for a dozen of years before her death, was troubled, at intervals, with gravelish pains; and she died of a fit of the gravel upon two days illness. *2do*, She was not troubled with the gravelish pains when she signed the disposition challenged, which was at nine at night, though she was in bed at the time; and some of the witnesses add, that she did not appear to be in perfect health. *3tio*, She lived 45 days thereafter; and, until within two days of her death, was in the ordinary state of health she had been in for a dozen of years before, managing her affairs within doors, unless when she was troubled with the gravelish pains. *4to*, She was of entire judgment when she signed the deed.

THE LORDS, by a narrow plurality, found it proved, That Marion Miller was on death-bed when she granted the disposition in question.

*Rem. Dec. v. 2. No 22. p. 37.*

1756. January 28.

EDWARD PRIMROSE *against* JOHN PRIMROSE.

## No 82.

What is a sufficient proof of death-bed in a person who had been long confined to bed?

IN the 1737, John Primrose disposed his lands of Burnbrae to the pursuer, his heir at law; but, in the 1752, when betwixt 70 and 80 years of age, and confined to his bed, he destroyed that disposition, and disposed the lands to the defender, the son of his natural brother.

John Primrose neither went to kirk nor market after executing the last disposition, and died within 41 days of its date.

The pursuer obtained himself served heir in general to John Primrose, and brought a reduction of the disposition 1752, upon the head of death-bed.