

1777. July 3.

YOUNG *against* SCOTTS.

IN a reduction *ex capite lecti*, Young against Scotts, Lord Covington, Ordinary, "found it proven, That John Young was, in the construction of law, upon death-bed, and had contracted the disease of which he died before executing the disposition under challenge, and that he died within 60 days after executing said disposition; but found it also proved, that, as formerly in use to do, he went several times to the public flesh-market, in market time of day, freely and unsupported, either going or coming therefrom; and that, when in said flesh-market, he bought skins, or bought and priced butcher-meat, and thereby was, in the construction of law, so far convalesced as to validate and secure the deed from any challenge on the head of death-bed." These acts of convalescence happening at different times, each act was proved by one witness only, and therefore it was maintained that the proof of them was insufficient. But, upon petition and answers, the Lords adhered, (3d July 1777.)

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## REVOCATION ON DEATH-BED.

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SIR James Cuninghame executed a disposition of his estate in favour of his brother David, his heir-at-law, and charged him with certain provisions to other friends, reserving a power to alter. Accordingly Sir James, (10th June 1748,) made a new disposition in favour of his brother, with additional burdens. In a reduction of this last disposition, *ex capite lecti*, at the instance of David, the Lords found him free of both;—of the first, as expressly revoked by the second; of the second, on the head of death-bed. But, says Lord Bankton, (Vol. II, p. 306,) this would not have been found, had there not been an express clause in the second disposition, revoking the first. An implied revocation would not have been sufficient, unless the deed whereby it was inferred had been found to subsist.

Accordingly, another case occurred to this purpose.

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1775. November 22. ABRAM ROWEN *against* ROBERT ALEXANDER.

JAMES ROWAN, in 1768, disposed an heritable debt on the estate of Westsheilds, to John and Robert Rowans, his nephews, by a younger brother, Hugh, reserving a power to alter, even on death-bed.

When on death-bed, *anno* 1768, he disposed the same debt to another nephew, Robert Alexander, by a sister; but this deed contained no revocation