

ing any mention of death-bed, or in *articulo mortis*, or at any time during his life; and though the deed, on death-bed, be in favours of wife and children, it hath never been sustained by the Lords in no time, though some have thought it the most favourable case.

THE LORDS sustained the provision, and repelled the reason of reduction, assoilzied therefrom, and found the letters orderly proceeded.

Fol. Dic. v. 1. p. 215. Stair, v. 1. p. 116.

No 61.

1663. February 25. HEPBURN against HEPBURN.

IN a destination of succession, in favour of heirs-male, there was a clause bearing, 'that it should be liesom to the said Thomas, at any time during his life, to alter the same.' This was found not to validate an alteration upon death-bed, though in favour of the heir of line.

Fol. Dic. v. 1. p. 215.

No 62.

*** See The particulars of this case Sect. 1. b. t. No 1. p. 3177.

1668. December 16. MARGARET BRYSON against ANDREW BRYSON.

MARGARET BRYSON being the only child procreate of the marriage betwixt Andrew Bryson and Elisabeth Elphinston, being infest in an annualrent out of the lands of Craighton, effeiring to the principal sum of 7000 merks, did thereupon pursue a pointing of the ground against Mr. Andrew Bryson her brother, who had right to the saids lands from John Johnston, to whom the said Andrew's eldest son had disposed the saids lands, being infest therein by his father before the said Margaret was infest in the annualrent foresaid. It was *alleged* for the defender, That he had a reduction on the pursuer's infestment as being granted *in lecto*. To which it being *replied*, That the reduction could only be sustained at the instance of the heir; whereas the right of fee, granted by Andrew Bryson to his eldest son, did only make him represent his father *passive* as successor *titulo lucrativo*, but gave him no active title to pursue this reduction *ex capite lecti*, nor none having right from him. *2do*, The pursuer's infestment depended upon a contract of marriage; and the said Andrew Bryson having burdened his fee of the said lands, disposed to his eldest son, with a power and liberty to affect the same at any time before his decease, the pursuer's infestment could never be quarrelled *ex capite lecti*.—THE LORDS assoilzied from the reduction, and sustained the infestment, notwithstanding that it was alleged, that that power to burden, at any time before his decease, behaved to be interpreted

No 63.

A father disposed his estate to his eldest son, reserving power, at any time during his life, to alter. This power he exercised on death-bed, which was found good against the disponee, who was heir, as he had accepted and bruiked by the disposition, containing this power to burden at any time during life which includes also death-bed.