

1677. December 11.

LOCKHART *against* LOCKHART.

UMQUHILE John Lockhart did dispoſe his whole means and eſtate in truſt to the Lord Lee, for the uſe and behoof of ſeveral perſons related to him on the mother's ſide, leaving nothing to William Lockhart, his brother by the ſecond marriage. There was a declarator purſued againſt the ſaid William, for declaring, that the diſpoſitions made by John his brother, were valid deeds done in *liege pouſtie*, and that after the firſt diſpoſition he went from Edinburgh to Calder, and was there at ſermon in the kirk; and after the ſecond diſpoſition renewed at Calder, becauſe the firſt was vitiate by alterations, he did ride to the Lee. William not compearing, witneſſes were adduced and proved the libel, and thereupon decret followed. William raiſeth reduction of this decret, and of the two diſpoſitions, upon this reaſon, that the decret was in abſence, and the allegiance of ſupportation was neither proponed for him, nor were the witneſſes examined or deponed thereanent; but he offers to prove, that John had contracted the diſeaſe (whereof he died) before both diſpoſitions, and that after he ſubſcribed the firſt, he was carried in a ſedan to Calder, and when he went on foot to and from the kirk, he was ſupported; after the ſecond diſpoſition, that when he rode from Calder to the Lee, his man rode behind him to hold him upon the horſe; that he was viſibly in a dying condition, and was helped to and from his horſe, and that he never came out of the houſe of the Lee till he died, but was carried once in a chair to the garden, and not able to walk up and down his chamber without help, and that in a part of the way to the Lee he was tied with a cloath that he might not fall from the horſe.

All which the LORDS found proven, and therefore reduced both the diſpoſitions and decret, albeit a prior teſtament was produced, wherein moſt of the ſame proviſions were left in a legacy, ſigned two years before his death. Whereupon it was *alleged*, That the preſumption of doing theſe things by weakneſs or importunity, were taken off; which was not reſpected, ſeeing his teſtament was ambulatory, and ineffectual as to heritable rights, ſo that he might have changed his mind between the teſtament and the diſpoſitions; neither was it reſpected that moſt of his eſtate came by his mother's father.

*Stair, v. 2. p. 576.*

1694. February 20.

LADY SCOTSTON *against* DAVID DRUMMOND.

THE LORDS adviſed the probation led in the caſe purſued by Lady Scotſton and Colquhoun of Tilliquhen, her truſtee, *contra* David Drummond of Invermaith, for reducing the diſpoſitions made of the lands of Roſſyth, &c. by William Stewart, the laſt Laird thereof. THE LORDS did not regard the firſt defence proponed for Invermaith on his bond of tailzie, ſeeing it did not appear that it ever was delivered, or that the poſterior diſpoſitions were relative to, or in im-

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No 78.

Death-bed was inferred by the defunct being held on horſe-back by a perſon ſitting behind him, when he went a journey.

No 79.

A running ſore was found to be a diſeaſe whereof one may die as well as of ſickneſs; and there-