

Answered; Law having fixed upon the going to kirk and market, as signs of *liege poustie*, equipollent acts are not to be sustained, unless, at least, they have the essential qualities of these of kirk and market, viz. be public, and performed before indifferent witnesses; for, how easy might two witnesses be got to support him for the space of four miles, except at particular places. And it was not deponed, that he lighted from off his horse; and a man under a great sickness might ride so far.

THE LORDS found the defunct was *in lecto*; and therefore reduced the disposition.

Fol. Dic. v. 1. p. 218. Harcarse, (LECTUS ÆGRITUDINIS.) No 648. p. 179.

No 98.

1683. February. WILLIAM LIVINGSTOUN *against* JANET GOODALE.

IN the reduction of a disposition of some heritable sums made by a Quaker *ex capite lecti*, the LORDS sustained the following qualifications sufficient to elide the reason of death-bed, That the disponent had several weeks after the disposition sitten in his shop, and sold his goods; and, that he had walked before his shop-door, and bought a suit of cloaths in the next shop; and that he being a Quaker, was not obliged to go to church to ratify his deed.

Fol. Dis. v. 1. p. 218. Harcarse, (LECTUS ÆGRITUDINIS.) No 651. p. 180.

No 99.

1687. November 25. KEIRIE *against* CRAIGENGELT.

IN the case between John Keirie of Gogar and Craigengelt, in a reduction *ex capite lecti*, the LORDS refused to sustain these acts as equipollent to his going to kirk and market, that after the disposition he came down a very rugged way beside Stirling, without any help, and there took coach and went to Alloway, where he died.

Fol. Dic. v. 1. p. 219. Fountainball, v. 1. p. 483.

No 100.

* * * Harcarse reports the same case:

IN a reduction *ex capite lecti*, of a disposition made by one Craigengelt to John Keirie's son, at the instance of the disponent's heir;

It was *alleged* for the defender; That the defunct did posterior acts of health equivalent to the going to kirk and market, viz. he came a pair of butts out of his house unsupported to a coach, wherein he travelled six miles to Alloway, and walked up two pair of stairs to John Keirie's house, and did several other domestic acts.

No 100.

Answered; The qualified defence is not relevant to import health, nor equivalent to the going to kirk or market: For, 1. The defunct's going in coach, contrary to his former custom, is an argument of great weakness; and the reason of the law's pitching on kirk and market is, because there indifferent and unsuspected witnesses will be found; and a person will not willingly expose himself in public. But if men were allowed to perform the *indicia sanitatis* before picked out witnesses and confidents, heirs could have no security against death-bed deeds.

THE LORDS repelled the defence as qualified.

Harcarse, (LECTUS ÆGRITUDINIS.) No 660. p. 189.

1694. February 20.

LADY SCOTSTOUN and COLQUHOUN of Tillihaven *against* DRUMMOND of Innermaith.

No 101.

THE following acts to prove re-convalescence sustained equivalent to going to kirk and market, viz. going from Edinburgh to Inverkeithing, to assist at the election of a Commissioner to Parliament, spending the whole day in a boat at sea in the way of diversion, walking in the Lady Home's yards, and visiting prisoners in the tolbooth.

Fol. Dic. v. 1. p. 219. Fountainball.

* * * See This case, Section 10. *b. t.* No 79. p. 3297.

1736. November 24.

JAMES Earl of ROSEBERRIE and His CREDITORS, *against* Lady MARGARET and DOROTHEA PRIMROSE.

No 102.

In a reduction, it was proved, that the defunct, after granting the deed challenged, had come into Edinburgh from his country seat some few miles distant, gone to the Cross betwixt twelve and one, walked there half an hour unsus-

ARCHIBALD Earl of Roseberrie, after contracting the disease of which he died, disposed part of his heritage to his younger children; of which the present Earl brought a reduction on the head of death-bed; and, a proof having been allowed to both parties, the substance thereof amounted to this, That the grant-er, some months before the date of the deed, was seized with a *diabetes*; but thereafter growing better, so as to be able to go about his ordinary affairs, he one day rode into Edinburgh, lighted at the Grass-market, and from thence came up to the High-street, and walked at the Cross for a considerable while, betwixt twelve and one o'clock; but, having rode out that evening to Dalry, he met with such stormy weather by the way, as occasioned his disease to return upon him, of which he died in a fortnight thereafter.