

No 505.

*stie*, or that he was so short a while sick, that he could not write it in that time, and anent the long peaceable possession the defender has had, without being ever questioned by his eldest brother, or his nephew, thereanent, and such like presumptions, to fortify and adminiculate the date of the disposition.

*Fol. Dic. v. 2. p. 258. Fountainhall, v. 2. p. 54.*

No 506.

1702. December 25.

GORDON against ROSS.

A MAN having granted a holograph disposition of some lands to a second son, with the burden of two liferents, and some other debts; in a reduction of the disposition, at the instance of the eldest son, as being holograph, the LORDS sustained the disposition only for a security of the onerous cause for which it was granted.

*Fol. Dic. v. 2. p. 258. Fountainhall.*

\*\*\* This case is No 32. p. 5050. *voce* GENERAL DISCHARGE, &c.

1703. February 19.

JAMES GRAHAM against The CREDITORS of Sir JAMES STANFIELD.

No 507.  
Effect of holograph as to reduction *ex capite lecti*, when the person has died suddenly.

IN the ranking of the Creditors of Sir James Stanfield of Newmilns, Bailie James Graham produced a bond, all written and subscribed by the said Sir James; against which it was *objected* by the other Creditors, That they repeated a reduction *ex capite lecti* against it; for, being holograph, *non probat suam datam*; and so is presumed to have been on death-bed. *Answered*, That brocard is founded on a presumption, *quæ cedit veritati*; but so it is, he was never on death-bed, nor did any sickness or infirmity precede his death, seeing he was found murdered in his bed, for which his son was executed, as is notour by the process, and otherwise. THE LORDS sustained the answer; and found death-bed could not take place here; and assoilzied. Craig, De Feudis, Lib. I. Dieg. 12. debates, how far deeds, granted by one going straight to fight a duel, or where the plague is raging in a town, or by one going to be cut for the stone, are reputed to be done on death-bed; and he thinks from the time the infection entered his house, though it cannot be precisely proved he was then touched with it, that he can make no valid right to affect his heir, &c.

*Fol. Dic. v. 2. p. 260. Fountainhall, v. 2. p. 181.*

\*\*\* A similar case was decided, January 1730, Ross against Ross.—*See* APPENDIX.