

## No 80.

The Lords found these bonds were not reducible *ex capite lecti*.

he was sick before, and *omnis morbus desinit in febre* as the physicians tell us; and it does not import that he did all acts of judgment and understanding; for the law considers their liableness to impressions and importunity at that time; as was found, Creditors of Balmerino against Lady Couper, No 77. p. 3292.; Shaw *contra* Gray, No 32. p. 3208. : And the great distance of time betwixt the date of the right, and the granter's decease, was not regarded by the Lords, Clieland of Faskin, No 86. p. 3305.; though that interlocutor was much complained of.

THE LORDS having advised the probation, thought it hard to fix a death-bed so far back, and that it ought not to exceed a year; and that the immediate, not the remote causes of one's death were here to be considered; therefore they found death-bed not proven in this case and assoilzied from the reduction.

*Fol. Dic. v. I. p. 217. Fountainball, v. I. p. 720.*

## No 81.

What understood to be *morbus sentiens*.

1741. November 28.

SOMERVILL *against* GEDDIE.

IN a reduction upon the head of death-bed, the proof came out thus: *imo*, The granter, for a dozen of years before her death, was troubled, at intervals, with gravelish pains; and she died of a fit of the gravel upon two days illness. *2do*, She was not troubled with the gravelish pains when she signed the disposition challenged, which was at nine at night, though she was in bed at the time; and some of the witnesses add, that she did not appear to be in perfect health. *3tio*, She lived 45 days thereafter; and, until within two days of her death, was in the ordinary state of health she had been in for a dozen of years before, managing her affairs within doors, unless when she was troubled with the gravelish pains. *4to*, She was of entire judgment when she signed the deed.

THE LORDS, by a narrow plurality, found it proved, That Marion Miller was on death-bed when she granted the disposition in question.

*Rem. Dec. v. 2. No 22. p. 37.*

1756. January 28.

EDWARD PRIMROSE *against* JOHN PRIMROSE.

## No 82.

What is a sufficient proof of death-bed in a person who had been long confined to bed?

IN the 1737, John Primrose disposed his lands of Burnbrae to the pursuer, his heir at law; but, in the 1752, when betwixt 70 and 80 years of age, and confined to his bed, he destroyed that disposition, and disposed the lands to the defender, the son of his natural brother.

John Primrose neither went to kirk nor market after executing the last disposition, and died within 41 days of its date.

The pursuer obtained himself served heir in general to John Primrose, and brought a reduction of the disposition 1752, upon the head of death-bed.