

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.

The defender *contended*; That the deceased was not on death-bed when he executed the deed, but was only confined to his bed by old age, and a weakness in his feet; that he died of an apoplexy, with which he was seized eight days before his death.

'THE LORDS allowed a proof to both parties of the condition of the health and capacity of the deceased at the time of his granting the disposition quarrelled, and for some time before and afterwards to the time of his death.'

At advising of the proof, the pursuer *pleaded* from the evidence, That the deceased had been seized with the gout in his hands and feet about 14 years before his death; and that the fits of that distemper generally recurred upon him twice a-year: That he had been seized with an iliac passion about a year and a half before his death: That this distemper was removed by proper medicines; but that his constitution had been thereby impaired: That watery-swellings appeared in different parts of his body; and that he had remained bed-ridden for several months before his death: That the surgeon who had formerly attended him, and who had occasion to see him about a week before his death, depones, That, in his opinion, the iliac passion threw him into a lingering distemper, whereof he at last died: That other persons who saw the deceased both before and after the date of the deed quarrelled, depone, That he appeared to be *in trouble*, and to be an infirm and *dying man*: That a few days before his death, he was seized with a trembling fit, and from that time became sensibly weaker and weaker till he died; but, that this fit must not be considered as a new distemper, but as the crisis of the distempers under which he had long laboured.

The defender *answered*; That, at the time of executing the deed, John Primrose did not appear to have contracted the disease whereof he died, nor indeed to have been affected with any disease at all. He was confined to his bed by old age and a weakness in his feet, occasioned by former fits of the gout. He was seized with a trembling fit a very few days before his death, and more than a month after he had executed the disposition quarrelled; from that fit is the disease whereof he died to be dated; the iliac passion being an acute distemper, could not be the cause of his death after an interval of a year and a half. Neither could the gout be the cause of his death; for that it was fixed in the extremities of his body; and a gout of that nature is not to be held a disease rendering one incapable of disposing of heritage. Besides, the deceased was not actually affected with the gout when he executed the disposition quarrelled, but had only contracted a lameness from former attacks of that distemper. The sudden illness whereof he died, can no more be connected with the gout and iliac passion, than an ague in one year, and a flux in the next, can be connected with a fever whereof one dies in the third year.

'THE LORDS found the reason of reduction relevant and proven, and reduced the deed.'

Act. *A. Pringle & Bruce.*

Alt. *Miller & Lockhart.*

Clerk, *Kirkpatrick.*

Fol. Dic. v. 3. p. 173. Fac. Col. No 183. p. 273.