

## S E C T. XI.

## Reconvalescence by going to Kirk and Market.

1629. July 7. MAXWELL against FAIRLEY.

A DISPOSITION made *in lecto ægritudinis* is declared by the Lords to be when a person contracted a sickness whereof he died, and was not able to go out of his house without help; and all dispositions made in prejudice of his heirs during the time of his being in this estate are null, and although the sick person be brought out of his house to the kirk and market-place by the help and support of men and horse (as sometimes falls out) after the said disposition was made, and thereafter return to his house, and does not after then, once or twice, resort to kirk and market without help, as said is, the disposition will be thought done *in lecto ægritudinis*.

*Fol. Dic. v. 1. p. 217. Auchinleck, MS. p. 54.*

\* \* \* Durie reports the same case.

IN a reduction of a bond of alienation of lands at the instance of the heir of the annailzier, because it was done *in lecto ægritudinis*; and the defender alleging, that the day of the date of the said bond, the maker thereof came to the church, and heard the prayers, and thereafter came to the cross and market-place, and thereafter went and drank in two taverns, which were of his familiar acquaintance before, and then returned home again, and played at the cards with his friends, who came to visit him divers times thereafter, and lived after the bond a month or thereby; so that albeit he kept the house all this time thereafter, yet that could not be counted as a deed done *in lecto ægritudinis*, he being then sound in mind and knowledge, and of health of body; and he offered to prove that he came out as said is, being then healthful and not supported by any who led him, but done freely of himself, without help or aid of any other. This allegiance was repelled, and the pursuer preferred to the probation, alleging *impedimentum*, that that day when the defunct came out, he was upholden, and led by the arms until that he did the acts foresaid, being then sick and infirm, of the sickness whereof he never recovered, but died within the space of twenty days or thereby thereafter; and albeit there was a preceding contract between the defunct and the defender, whereby either of them made others their heirs, yet seeing the bond had no relation, nor yet bore to be done for implement of the said contract, the said bond was not sus-

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A disposition was found to be *in lecto*, because though the party went to kirk and market, yet he was supported.

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tained as depending on that preceeding obligation, without prejudice to pursue upon the contract *prout de jure*.

Act. *Advocatus & Cunninghame.* Alt. *Nicolson, Aiton, & Lawrie,* Clerk, *Gibson.*  
*Durie, p. 457.*

No 85.

1669. February 26. PARGILLEIS against PARGILLEIS.

A defunct had gone several times to the market, and walked there unsupported, and other times abroad, after the disposition challenged, sometimes a-foot, and other times on horseback. This was found relevant to elide the reason of reduction on death-bed, although he was helped up and down stairs, and to, and from his horse, which was led by the bridle, notwithstanding that he continued sickly to his death.

UMQUHILE Abraham Pargilleis having no children but one bastard daughter, disposes some lands acquired by him to Abraham Pargilleis, eldest lawful son of that daughter. John Pargilleis his brother's son, and nearest heir, pursues a reduction of that disposition, as being done in *lecto*; and the defender alleged that the defunct went abroad to kirk and market thereafter unsupported; and the pursuer replying that he was supported; and either party contending for preference, the one that he walked free of himself, and the other that he was supported;

THE LORDS considering the advantage to the party that had the sole probation, would prefer neither; but, before answer, ordained witnesses to be adduced for either party, concerning the condition the defunct was in, as to sickness or health when he subscribed the disposition, and the manner of his going abroad, whether free, or supported; and now THE LORDS having advised the testimonies, by which it was proven that the defunct was sick the time of the subscribing of the disposition, and that he continued sick till his death; it was also proven that he went unsupported a quarter of a mile, when the sasine was taken, six days after the disposition, and that after the same he went three times to Calder, and about three quarters of a mile off, and that he was helped to his horse, and from his horse, and that he was helped up stairs, and down stairs; but that he walked a-foot unsupported in the market of Calder, and up and down from my Lord's house, being three pair of butts of rising ground. It occurred to THE LORDS to consider whether the sickness proven would have been sufficient, not being *morbus santicus*, or *in extremis*, or whether the presumption of health sufficient to *liege poustie* was enough that he came out to kirk and market, albeit the sickness remained, and whether the probation of the sickness remaining could take away that presumption; and whether his being helped to his horse, and from his horse, or up and down stairs, and his man holding his bridle as he rode to, and returned from, Calder, did infer that supportation, which elides the presumption of health by going abroad, or whether the going freely on foot (having only a staff in his hand the rest of the way) was sufficient to prove that he went abroad in *liege poustie*.

THE LORDS found that the defunct's going abroad after the disposition, as is before express, was relevant to elide the reasons of reduction on death-bed, notwithstanding of his being helped up and down stairs, and to and from his horse, and by leading his bridle, and that notwithstanding that he continued sickly to his death.