

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 confidants, 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.