1799) remitted the cause for further hearing to the Court of Session. The Lords adhered to the former judgment.

Act. *R. Craigie et alii.* Alt. *Solicitor-General Blair et alii.*

R. D. *Fac. Coll. No.* 216. *p.* 492.

*** On a second appeal, the House of Lords pronounced the judgment which is subjoined to No. 53. p. 14958, *voce* SUCCESSION.

No. 3. cludes the heir-at-law, where the granter, while in *liege poustie*, has executed a former settlement in favour of a stranger, containing reserved powers to alter on death-bed.

No. 4. In ascertaining whether the granter of a deed challenged on the head of death-bed, has lived sixty days, the day of its date is excluded, but the day of the granter's death is held to be completed, if he has survived any portion of it.

1801. *February* 3.

STEPHEN MITCHELL *against* MARGARET WATSON.

HUGH MITCHELL executed a disposition of part of his heritable property in favour of Margaret Watson, on the 23d May 1799.

He died on the 22d July following.

Stephen Mitchell, his heir-at-law, averred, that at the date of the disposition, Hugh had contracted the disease of which he died, and never afterwards went to kirk or market. He further averred, that Hugh executed the deed about two o'clock afternoon of the 23d May, and that he died about one o'clock of the 22d July.

On these facts he instituted an action of reduction of the deed on the head of death-bed, and

Pleaded; It is settled by the case 10th December 1793, Ogilvie against Mercer, No. 114. p. 3336. that in ascertaining whether the granter of the deed has survived its execution for sixty days, the day of its date is not to be counted. Now, according to this mode of reckoning, Hugh Mitchell survived only fifty-nine days, and a part of the sixtieth; and as the heir is the *persona prædilecta*, the defender cannot take the advantage of the maxim, *Dies inceptus pro completo habetur*; for that maxim has place only *in favorabilibus*.

Besides, the operation of the maxim is precluded by the act 1694, C. 4. which expressly requires, that "the person live for the space of threescore days."

The Lord Ordinary "assoilzied the defender," and his Lordship added the following note to his judgment.

"The above interlocutor is founded on the admission, that the deceased died "at one o'clock afternoon on the sixtieth day after executing the deed under "reduction, not reckoning the day of its date, so that I apprehend there is of "course room for the rule, *Dies inceptus pro completo habetur*."

On advising a reclaiming petition against the Lord Ordinary's judgment, it was

Observed on the Bench: The interlocutor is fully supported by the principles of the judgment in the case of Ogilvie against Mercer, in the House of

No. 4. Lords, of which an account is given in the Dictionary, No. 114. p. 8843. *voce* DEATH-BED.

The Lords refused this petition; and a second on the 24th February.

Lord Ordinary, *Meadowbank*. Act. *Maxwell Morison*. Alt. *M'Cormick*.

R. D. *Fac. Coll. No.* 217. *p.* 493.

*** See Note under the case of Ogilvie against Mercer, p. 3343.

1805. *December* 6. CAMPBELL *against* RANKIN.

No. 5.
The exception of death-bed not excluded by an anterior unfinished transaction.

HUGH LOGAN, of Logan, being desirous to make some recompence to George Rankin, of Whitehill, for his assistance in the management of his affairs, and being informed, that, in consequence of a destination in the titles of his estate, he could not convey any part of it by a gratuitous disposition, agreed to sell to Rankin, at a price considerably below their real value, the farms of Burnhead and Hylar, reserving possession during his own life. With this view, a minute of sale was executed in September 1801, by which these farms were conveyed to Rankin at the price of £2000; and the entry of the purchaser was to commence at the first term after Logan's death. By a clause in the minute it was provided, that it should be lodged in the hands of Kenneth Mackenzie, Writer to the Signet, till called up by the joint orders of the parties.

Mr. Mackenzie was afterward applied to for the purpose of making out a disposition; but, upon his declining to execute such a deed, and expressing his doubts that a sale of this sort might be reduced as *in fraudem* of the destination of the estate, a new transaction was entered into, by which a feu of these farms was granted to Rankin, and an annual feu-duty of £10. was stipulated in addition to the price formerly fixed. This feu-disposition, was granted on the 26th January 1802, at which time Logan was in an infirm state of health, labouring under a complication of disorders, which terminated in his death on the 12th of March following, without his having been either at kirk or market.

After Logan's death, Hugh Goodlet Campbell, his nephew and heir-at-law, raised an action of reduction of the feu-disposition of the 26th January, upon the head of death-bed; and Rankin raised an action against Campbell, as representing his uncle, to implement the minute of sale executed by Logan in September preceding.

These actions were conjoined, and a proof was allowed by the Lord Ordinary; which being reported to the Court, counsel were heard in presence, and memorials were afterward ordered. The heir-at-law

Pleaded: The object of Logan in granting this feu-right was evidently to make gratuitous alienation of his property, to the prejudice of the heir-at-law, who is entitled to reduce the disposition on the head of death-bed, as the granter, at the time of executing it, was labouring under the disease of which he