

## SECT. VII.

## Against what Deeds the Law of Death-bed Strikes.

1568. *March 26.*      *ANDERSON against ANDERSON.*

No 30.  
Found that, conform to the *leges burgorum*, a bur-gess may alienate lands on death-bed, for payment of his debts contracted prior thereto; but that in this case, the heir must be first required to pay the said debts, and to maintain the clinique *in lecto*.

IN ane reduction moved be Wa. Anderson, oy and air to Patrick Anderson, burgess of Perth, against George Anderson, the said Patrick Anderson's second son, to whom his father had sold ane tenement of land in the said burgh, in the time of his sickness whereof he deceased, it was excepted be the defender, that his father had necessities with money, both before his sickness and in time of the same; and seeing that the said father had conquest the said tenement himself, he might sell the same to pay his debts taken before his sickness, and to sustain his necessities the time of his sickness, according to an law written in *legibus burgorum*; the whilk allegiance was fand relevant; and, after the admitting the same, the pursuer *alleged*, that the said alienator had sufficient in moveables to have paid the alleged debts, and to have supported his own necessities, if he had lived half an year longer nor he did, and als the said persewar being his air was sufficient to have paid his debts, and also made support of the said necessities; in respect of the whilk, the defanct should have required the said air, before he had made such alienation in his death-bed; the whilk reply the Lords fand relevant to take away the exception that was before fand relevant.

*Fol. Dic. v. 1. p. 214. Maitland, MS. p. 214.*

1621. *March 10.*      *LA. DUNLOP against THOMAS DUNLOP.*

No 31.

FOUND that a tack may not be disposed upon death-bed in prejudice of the heir.

Pronounced and declared to serve for a practique for ever, notwithstanding of whatsoever preceding practiques.

*Fol. Dic. v. 1. p. 213. Kerse, MS. fol. 140.*

1624. *January 7.*      *SHAW against GRAY.*

No 32.  
The law of death-bed strikes at

IN an action betwixt Shaw and Gray, for reduction of a bond made by a woman called Shaw, to whom the pursuer was brother and heir, given to the said

Umphra Gray defender, containing the payment to him of 600 merks, the reason being, that the bond was made *in lecto ægritudinis*. THE LORDS found that reason relevant, viz. That the bond was made by the party thereby obliged, she at the date thereof being diseased of a sickness, whereof she never convalesced, but whereof she died, about the space of seven weeks thereafter; which reason was sustained, albeit the defender *alleged*, that the same ought not to strike upon bonds made for payment of moveable sums, which might be made upon death-bed, and that the municipal law, whereupon the reason was founded, was only to restrain parties to make alienations of their lands and heritable rights, in prejudice of their heirs upon their death-beds; and also *alleged*, That in this case, this bond cannot be reputed done *in lecto ægritudinis*, in respect that the party, maker of the bond, at the date thereof, and by the space of six weeks thereafter, was of good health, to administer her lawful affairs, and in that same estate for sickness as she was in by the space of an whole year before, viz. that albeit she kept the house for the indisposition of her body, having a lent sickness of hydropsie all that time, yet she lay not bedfast, but rose daily and put on her clothes, and went up and down the house; which allegiance was repelled, seeing the party alleged not, that she came out to kirk and market, or at least did other deeds of health, equivalent to such outcoming; and found, that the law struck as well upon moveable bonds, as upon deeds done in heritage; for upon the moveable bonds, the heritage might be comprised, and so the heir thereby prejudged; and albeit it was a lent-sickness, *et non morbus santicus*, the reason was found relevant. And because the party to whom the bond was given was an apothecary, who *alleged*, that the bond was made to him for drugs, and satisfaction of his cure ministrated by him, during the whole space of her being in sickness; the LORDS found, that they would sustain the bond *pro tanto*, viz. for the prices of his medicines, as should be proven to have been furnished to her by him, and also for such further sum, as in the end of the cause should be modified by the LORDS, for satisfaction of his pains and for his art.

Act. Hope et Oliphant.

Alt. Nicolson, jun. et Russel.

Clerk, Hay.

Fol. Dic. v. I. p. 213. Durie, p. 95.

1632. July 13.

POLLOCKS against FAIRHOLM.

SOME Pollocks being served heirs to Robert Halliday, pursue reduction of two bonds of some moneys made by him, as being done on death-bed, and so in prejudice of his heirs. The defender *alleging*, that these same bonds were given of these sums for furnishing made to the defunct, viz. for furnishing of malt, as much as extended to 500 merks, which was the sum contained in the one bond, and which was at sundry times made to him, and whereupon the

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No 32.

moveable bonds as well as heritage, since for these also the heritage may be comprised, and so the heir prejudiced.

A moveable bond sustained to an apothecary for the price of drugs furnished.

No 33.

A bond was sustained, tho' granted on death-bed, being for goods furnished.

The Lords repelled an allegation, that another bond by the same