

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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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

No 33.
 clinique was
 for furnishing
 made to his
 father. They
 refused to
 sustain the
 bond for
 these, except
 it were alled-
 ged, that the
 defunct was
 heir or exe-
 cutor to his
 father, where-
 by law would
 have obliged
 him to pay
 the sums.

said parties having compted, finding it to amount to this sum, he then made and subscribed this bond ;—the LORDS found this allegiance relevant, to sustain the bond, albeit it was made on death-bed, the forefaid real furnishing being proven to have been really made, equivalent to the said sum, and which the LORDS found probable by witnesses, the furnisher also giving his oath upon the truth of the furnishing after probation. And it being also *alleged* for the other bond, containing other 500 merks, that the creditor had recovered this bond, for satisfaction of the like sums owing before to him, and particularly which he had furnished to the defunct's father, which then the defunct took on him by his bond to pay ;—the LORDS found this allegiance relevant for so many of the sums, as the defender should prove furnished to the defunct's self, but repelled that part of the allegiance, anent the furnishing made to the defunct's father, for the which they would not sustain the bond, except it were alleged that the defunct was heir or executor to his father, whereby in law he would have been liable to pay sums addebted by his father to this defender.

Clerk, *Gibson*.

Fol. Dic. v. 1. p. 214. Durie, p. 645.

1635. July 30.

RICHARDSON and the LORD CRANSTON RIDDEL *against* SINCLAIR.

No 34.
 A sale of
 lands, though
 for a reason-
 able price,
 was reduced
ex capite lecti.

UMQUHILE Sir Robert Richardson, father to the pursuer, having disponed his lands of Pencaitland to John Sinclair, heritably and irredeemably, for the sum of four score and five thousand merks, whereof 30,000 merks were appointed to be paid to the said Sir Robert's eldest daughter, and 32 or 33,000 merks were appointed for payment of debts owing to his creditors, and the rest was divided among the rest of his bairns, viz. 7000 merks to his second son, other 7000 to his second daughter, and the rest, viz. about 10,000 merks to his eldest son ; and the said John Sinclair, being thereupon infest, holding of the superior, the said Sir Robert thereafter, about the space of one year or thereby dies ; before whose decease, the said John intents an action of declarator against the said umquhile Sir Robert in his lifetime, and against the said pursuer, his son and apparent heir, to hear it found and declared, that the undoubted heritable right and property of the said lands pertains to him, by virtue of the said alienation ; after execution of the which summons, and citation of the said parties, the said Sir Robert died before any further process was deduced in that action ; after whose decease, the said Sir Robert his son, dispones his right of the lands to my Lord Cranston Riddel, and his right to reduce John Sinclair's securities ; and the said Sir Robert being served and retoured general heir to his father, the said Lord Cranston Riddel pursues for reduction of the said contract and disposition made by the father to the said John Sinclair, upon this reason, as done *in lecto ægritudinis* to the heir's prejudice ; in which action, the retour being quar-