

duced *in toto*; for albeit persons on death-bed may not burden their heirs, yet the mind of the law is, that they cannot do such deeds as may take away the heritage from them, which ought to be understood to take it from them directly, and to give it to a stranger; but that they may not provide a *legitime* to their own bairns, they being then of sound judgment, albeit in sickness, and therewith to burden the heir, where the heritage is not thereby evicted, albeit it may be thereby something burdened for so just a cause, ought neither to be found the meaning of the law, nor maxim adduced in this reason; and it is against the law of God, of nature, and all reason; to find that the father, even on death-bed, may not do such a deed, as to provide his bairns, who were destitute of help, and that one should have all. THE LORDS repelled the allegiance, and sustained the reasons; for they found, that the father on death-bed, could not make any provision in favours of his bairns, albeit unprovided, which might burden the heir with payment thereof, and that he could do nothing, but in so far as he might do in his own part in law belonging to him, in so far as concerned his moveables, and that the maxim was universal for all, concerning bairns alike as any other persons whosoever; and found, that no modification ought to be made.

Act. *Advocatus*.Alt. *Stuart*.Clerk, *Hay*.*Fol. Dic. v. I. p. 213. Durie, p. 847.*

1665. February 23.

JACK against POLLOCK and RUTHERFOORD.

MARION RUTHERFOORD married David Clerk, and had no contract of marriage with him, but he having acquired a little ruinous tenement, took it to her and him in conjunct-fee, and in the time of the plague, he provided her to the annualrent of 5000 merks. His heirs raise reduction of the provision, as being *in Tecto ægrutidinis*, after he had kept his house upon suspicion of the plague, of which he died. It was *alleged* for the said Marion, That keeping the house upon suspicion of the plague could not be as *in lecto ægrutidinis*, unless it were proven, that he was infected with the disease, before the provision was granted. *2dly*, Even in that case, defuncts are not hindered to give liferents to their wives, for which there is a natural obligation, according to Craig's opinion.

THE LORDS repelled the first allegiance, but found the second relevant, in so far as might extend to a competent provision to the wife, and therefore, having examined many witnesses *hinc inde*, upon the estate of the husband, and the tocher and frugality of the wife, and finding his means did consist in a tenement worth 500 merks by year, beside that inconsiderable tenement, wherein she was infest, they restricted her annualrent, which came to 300 merk, to L. 123, which was about the terce of the tenement, albeit terces of houses within burgh are not due.

No 35.

No 36.

Husbands *in lecto* are not hindered to give liferents to their wives, otherwise unprovided.

No 36.

In this process, the wife and her second husband, and having repaired the other little tenement, which was ruinous, and built it much better than ever it was; for which they pursued for the reparations.

THE LORDS found, that they ought to have the reparation decerned, not only in so far as is necessary, but *in quantum*, the heir will *lucrari*, by getting greater mail to be paid at the wife's death, she leaving the tenement in as good case as now it is.

Fol. Dic. v. 1. p. 213. Stair, v. 1. p. 275.

No 37.

1668. January 21.

SHAW *against* CALDERWOOD.

THE LORDS found, That a wife being provided *in lecto* by her husband, her provision should be restricted and sustained as to a terce, she being no otherwise provided before.

Fol. Dic. v. 1. p. 213. Dirleton, No 141. p. 58.

* * The same case is reported by Stair, Sect. 3. *b. t.* No 15. p. 3196.

No 38.

1676. February 1.

LAWRIE *contra* DRUMMOND.

A disposition being challenged as on death-bed, the disponee alleged onerous causes, and descended, that he was creditor to the defunct by a clause of warrandice. The Lords sustained the disposition as a security of the clause of warrandice; but that the lands disponed upon death-bed might not be perpetually burdened with that relief, they restricted it to distresses occurring within seven years.

WILLIAM LAWRIE having adjudged the lands of Scotstoun upon a debt due by Mr John Drummond the apparent heir, and to his own behoof, pursues a reduction of a disposition of the saids lands granted by Sir Robert Drummond to Sir John Drummond, as being done on death-bed, which disposition bears, 'For love and favour, and for divers onerous causes;' whereupon the Lords did formerly find, that the disposition was sustainable, in so far as an onerous cause could be instructed; and thereupon Sir John having produced several debts due by Sir Robert to him, doth now insist, upon this ground, that Sir Robert was debtor to Sir John by the clause of warrandice of the lands of Meidhope, disponed by Sir Robert to Sir John *in liege poustie*, which not being for an equivalent cause onerous, anterior creditors might reduce the same, in which case Sir John could have no recourse upon the warrandice, the estate going to a singular successor; and it cannot be questioned but a disposition on death-bed, making a personal warrandice real, was for an onerous cause, and not reducible.

THE LORDS sustained the disposition as a security of the clause of warrandice of Meidhope, providing that any distress upon that clause be timeously intimate, and that Sir John make use of all the rights he hath to exclude the distress, either by virtue of Sir Robert's disposition or otherways; and that the lands may not be perpetually burdened with that relief, they restricted the