

1751. *February.* CRAWFURD *against* JOHNSTON and Others.

No 52.

A father cannot on death-bed, vary a nomination of curators made in *liege poustie*.

FOUND, That as a father cannot name curators to his children on death-bed, so neither can he on death-bed vary a nomination, which he had made in *liege poustie*, by a new nomination, only a part of those formerly named; though he might have thrown the former nomination into the fire.

*Fol. Dic. v. 3. p. 171. Kilkerran, (DEATH-BED.) No 7. p. 154.*

1757. *February 25.*

AGNES LOGAN and her CHILDREN *against* ANDREW CAMPBELL.

No 53.

Found, that provisions to younger children, even moderate and rational, were challengeable by the heir if granted on death bed.

PROVISIONS to younger children extremely moderate and rational, being granted on death-bed, the tutors to the heir thought it their duty, much against their inclination, to challenge the same. According to the late practice of the Court of Session, with respect to younger children unprovided, of modifying such aliment as to afford some stock out of the savings, it was made appear, that the heir was really at no loss by the provisions granted to the younger children in this case. The case was so clamant that it produced a hearing in presence. Humanity and equity pleaded for the provisions. But the current of decisions lay the other way. Without gathering all that was said on either side, it will give more satisfaction to follow out one train of reasoning. The argument for the heir was very simple, that he cannot be hurt by any deed done by his predecessor on death-bed. The argument for the younger children, in the best light I can put it, is what follows:

To draw the attention of the reader, I must premise that this point is of greater consequence than one at first is apt to imagine. So averse are men to think of death, that an ultimate settlement of their affairs is generally postponed from time to time without end. Daily instances accordingly of children left unprovided, or provided no sooner than on death-bed. The greater the fortune, the greater chance for such event; persons in opulent circumstances having generally a peculiar aversion to death.

The law of death-bed, as set forth in the statutes of King William, cap. 13. goes no further than to prohibit gratuitous alienations of land on death-bed. And this is made more plain in Reg. Mag. L. 2. cap. 18. § 7. &c. There it is laid down, that in *liege poustie* a man may gift a reasonable or moderate portion of land to whom he pleaseth. But that he cannot do this on death-bed; for, says the law, 'Where a man in deadly sickness maketh an alienation, which in health he did not think of; the same is presumed to be done through trouble of mind, and not deliberately, nor by good advice.'