

proved by witnesses.

And is understood to be on death bed, if before signing and the grantor was sick and never recovered there after. Which may be admitted or overturned Regularly by a Redaction. as Caple held, and not by Exception 11 January 1666 Sealon and 13 contra Dundas. And Redaction of a Death bed deed may be sustained tho there was no fulfillment there in the grantors life time 23 of 1676 Apparent heir of Heriot contra His Creditors. but in some cases the allegation of death bed is received by Exception, as in Declarator and Petitory actions, 20 Feb. 1669 Barclay contra Barclay Or in Reductions 3 Feb. 1672 Rume contra Bryffon. Death bed was sustained by Exception against a bond wanting witnesses alleged to be holograph. In respect the bond was apparently defective, the allegation of death bed instantly justified by the presumption of law; that a holograph will proves not its own falsity to be kept the grantors sickness 14 November 1668 Calderwood contra Schaw.

Deeds may be annulled or over turned upon the Reason of death bed not only by heirs of line, but also by Heirs of blood 21 Feb. 1661 Hopburn contra Hopburn Or any other sort of heir 26 January 1626 Mo. of 1693 de la Cour contra Ed. Dundas. And Heirs of blood Entitled, but also at the Justices of Apparent heirs 23 Feb. 1676. Apparent heirs of Heriot contra His Creditors. For in many cases Apparent heirs to a Dispenser on death bed cannot enter heir especially in the subject Dispensed, as where fulfillment death follows upon the Disposition, until he remove by Redaction the Right of seizing his predecessor. Redaction is competent even to ancestors not apparent heirs Immediately or at the time of the predecessor death, but became such long thereafter 21 January 1668 Schaw contra Calderwood 16 July 1672 Gray contra Gray. May a substitute heir be prejudiced of a Remote heir was Reduced for being made on death, not withstanding that the nearest heir was the substitute. It was pleaded for the substitute that since the former was a parallel heir can validate any deed on death bed by consenting and homologating it so as to exclude every after heir, tho the Immediate Apparent heir should never enter heir, the deed is reliable must be to the prejudice of the heir at the time was only consent for his own Interest. In respect it was answered that such a person being more easily brought upon to Do pay a Remote Heir than a nearer, it was Reasonable to guard against that event more Carefully. It is of no moment that the Immediate Apparent Heirs Consent doth exclude every after heir from quarrelling; for his Consent death

shall whether he or any subsequent heir suffer by the death bed deed. Having thereby all suspicion of fraud or Imposition is taken away, and the good and justness of the Heirs Mans Import; that the dying person had Disposed to the heir, and that the heir had in large practice made over his right to a stranger, which would exclude all possibility of Challenge at the Justice of the Remote heir 13 July 1722 Kennedy of Pitcairn contra An. Ballind of London Mariner. Redaction upon the head of death bed lies also at the Justice of the Apparent heirs Creditors or of Creditors of the Deceased 4 January 1674 Beattie contra Roxburgh even at the Justice of such Creditors as have personal bonds. 23 November 1669 Creditors of Lord Comper and Balmerino contra Lady Comper. But such action cannot be pursued by Creditors of the Apparent heir who did Reductio from without being justly, unless these Creditors had appropriated or adjudged from him in his Lifetime. 18 Feb. 1676 Grollor contra M. Lyle.

Altho the ordinary Rules of Evidence will bear, that before the deed in question the grantor contracted a mortal Disease where of he died yet it is not necessary to Evidence upon the particular Disease 26 June 1671 Creditors of Balmerino contra Lady Comper. Nor is the pursuer obliged to allege or prove that it was Moribund, continued 4 July 1624. Shaw contra Gray. A Deed affecting the whole head and body, Or that he was bedfast when the deed was done Feb. 1622 Robt. Mon contra J. Fleming. Altho the parties keeping the house and dying before he went abroad, be not a sufficient presumption that he had contracted the Disease who says he died before he left the house; yet small evidence of sickness will do, will suffice being otherwise it were easier to bear from access to the party, all Indifferent or Impartial person found who might prove his fondness. Thus death bed was found Relevantly Lybelle; that the Grantor of the deed quarrelled was before he died upon first suspicion of the Plague and died before he came out without necessity to prove that he was infected when the deed was done; saying there was no ways to get further evidence 23 Feb. 1665 Kirk contra Robt. & Nath. Ford 3 Feb. 1673 Nicol contra Jo. Closson. So that if one were then to the house by Reason of a sore wound or Bruise and there came abroad thereafter, his death in that time might be Reduced as on death bed; saying it is hard to know when favours arise from such causes Shaw lb. 4 Feb. 20 1674. It being proved that sickness was once contracted, and that death followed, the Continuance of the sickness is presumed: According to the Rule, probatis Extremis, presumitur Medius. But this