

is only presumptive since till the contrary is made appear. See
 ibid. 547 lib. 3 fol. 4 828 vers. No to the third point.

The Common Defences in this Action are prima that the Decedent
 of the dead quarrelled was at the time in legal possession, that is in
 perfect health quasi in legitima potestate or in lege potestate, in the
 posture of a liege able to procreate his Master in the War without any
 incapacity by Disposition or Sickness. 2^d That tho he was sick at
 the Making of the deed, yet he be covered perfect health thereafer.
 Which Defences are Allowed to be proved two Ways, 1^o by his going
 free and Unsupported to, and Returning from Kirk and Market
 in day time when people are there gathered together after the
 dead quarrelled act of Deed. 2^o Feb. 1692 tho he should go of Deed
 to Render the same effectual, and die immediately when he come
 home. It is not necessary that the Disposer should go both to
 Kirk and Market, but his going to either is sufficient. He may
 go and Return freely not supported in any place of the way. 2^o Feb.
 1691 Creditors of Balmorino contra Lady Cooper. This must be
 performed in the day time when people are gathered together
 the Church or Church-yard upon any publick Account Civil
 or Ecclesiastical, as to bury the dead or hear sermons; or when
 people are gathered together in the Market place for buying
 and selling. The Instruments taken of his appearing there, may
 expressly bear, that it was taken in the Audience and View
 of the people gathered together. 2^o Feb. 1692. Becomes
 if these points were sufficiently proved by going to the Church
 or Market place, tho there were no Congregation or Convent
 there; or about witnesses might be brought along by the party
 in whose favour the Disposition was made to touch the
 that the State and Condition of the Disposer's health might
 not be exposed to the publick View of the different witnesses.
 That the Author of the deed quarrelled was in Liege possession at the
 time or he covered perfect health thereafer is proved by his
 going day after the deed, the during that time he went not to Kirk
 or Market Act 4 fol. 6 Par. 4^o.

The ordinary Reply to the first Qualification of liege poss
 is, that the Deceased did not walk to Kirk or Market freely
 was supported, and appeared to have strained Nature, or that
 Continuance of his Sickness appeared by his fainting or
 Continuance of his Sickness appeared by his fainting or
 being in going or Returning. Stair lib. 3 fol. 4 828 vers. No to
 both point lib. 4 fol. 20 546. For under standing what
 Supportation to take off these points, we must distinguish
 whether the Deceased after the deed quarrelled went to Kirk

and Market once only out of Design to Valt date the same: Or if he
 went several times of Course without any such Design. In the case
 of such Reiterated acts of course, no assistance taken by the De-
 ceased which was ordinary for him to do when in perfect health, will
 infer Supportation: as if an old Man Infirm by an defect of his legs
 or feet not arising from inward Sickness, should be helped in rugged
 grounds or Difficult places, or a Lady accustomed to be led by the
 hand should go so frequently to Kirk and Market. But if a person go
 but once to Kirk or Market Indistinctly, to Valt date a night, tho
 Support for Convenience or Honour might be used, tho ordinary for
 him or her to do it upon other Occasions: tho otherwise the Continuance
 of Sickness will thence be presumed. Stair lib. 3. Because he is supposed
 to strain Nature to the utmost, to Manifest health by his going to
 Kirk and Market, and to take help only upon the Account of
 Weakness. Before Answer to the Petition of which Contrary Al-
 legations, the Lords Allow witnesses to be produced by either party,
 as to the Condition of the health or Sickness of the Deceased, his going
 to Kirk or Market, and the Manner of it, and the symptoms of
 Sickness that appeared on him. Whereby neither party being
 preferred to the sole proof, both the Choice of the witnesses, so
 as to be able to sustain them, and charge any one witness who know
 any thing of the Matter is left unexamined. 2^o Feb. 1669 Bogillies
 contra Parquillies 3 Decemb. 1672 Bland contra Bland Stair lib.
 548. For many Indirect Courses have been taken to support
 death bed Deeds. Sir George Mackenzie's Treatise of Actions Cap. 6
 of the Deduction tells us of a person whom the Jews fined severely by
 the privy Council of Scotland, for being accessory to the causing
 one Man perforce and then who was in lie to Amittudine, by going
 to Kirk and Market in his Name to Make a Disposition made
 by himself in law. Since the Law hath pitched upon going to Kirk
 or Market as open places where the Disposer may be seen by all
 men and Unsuspected witnesses; Domestic and Equivocal acts
 in and about the house Requiring as much Strength as going
 to Church or Market, will not be sustained to prove liege poss
 or Convalescence. It can't other wise that the usual Law would be
 Doubtfull and Elusive, for that private acts may be proved by
 a few persons chosen and prompted for that purpose. 25 Feb. 1668
 Dun contra Dunns. Stair lib. 3 fol. 4 828 Insign lib. 4 fol. 20 547
 Mackenzie First lib. 3 fol. 8 541. Thus the Disposer going
 frequently to and walking in his garden and halva pair
 of houths from his house Unsupported 7 Feb. 1671 Lawrie of