

lified revocation on death-bed hath been sustained as effectual in our law, 25th January 1677, *Ker contra Kers*, No 64. p. 3248.

No 69.

THE LORDS found, That the first tailzie was not annulled by the cancelling of Saltcoat's side-scription from the joining of the first and second sheets thereof; but was revocable, and revoked on death-bed, by the revocation on the back thereof; and found, that the quality in the revocation is not relevant to sustain the first tailzie, for supporting the second, and conveying thereby the right of succession in favour of Mrs Margaret Menzies; and therefore reduced both tailzies, and declared in favour of Mrs Baillie, one of the heirs of line.

*Forbes*, p. 226.

1740. *January 16.* JOHN M'KEAN *against* ELSPETH RUSSELL.

JAMES M'KEAN being creditor to Sir Hary Innes in a bond for 2000 merks, payable to himself if in life, and, after his decease, to certain other persons, containing a power to James, at any time in his life, to uplift, receive, and discharge the same, without consent of the persons whose names were therein mentioned, did, on death-bed, exerce this faculty, and gave it away, not only from the heirs at law, but likewise from the substitutes.

No 70.

In a reduction on the head of death-bed, it was *pleaded* for the heir at law, That the death-bed deed did evacuate the substitution, whereby there came to be place for him; and though with the same breath the subject is given away to strangers, the alienation could not be effectual against him, being done on death-bed.

THE LORDS repelled the reason of reduction.

*Fal. Dic. v. 3. p. 172. C. Home, No 140. p. 240.*

1755. *February 11.*

DAUGHTERS of WILLIAM LORD FORBES, and their HUSBANDS, *against* JAMES LORD FORBES.

No 71.

By contract of marriage betwixt William Lord Forbes and Dorothy Dale his promised spouse, executed at London September 1720, he became bound to provide his land estate to the heirs male of the marriage; whom failing, to his other heirs male. And, as by this contract the Lord Forbes put himself and his heirs under a limitation not to alter the order of succession, nor even to contract debt in prejudice of the heir male of the marriage, it was thought reasonable to reserve a power for providing the younger children, which was done in the following words: ' That in case there shall be an heir male of the intended marriage, and one or more younger children, it shall be lawful for the said Lord Forbes, at any time in his life, *ac etiam in articulo mortis*, to make such

It was found by the Court of Session, that notwithstanding of a reserved faculty of making provisions to a certain extent to younger children, the defunct could not prejudice his heir, by provisions made on death-bed.