disposition was equal and rational and not reducible on minority and lesion, and proposed to add that to the interlocutor, (and Drummore was of the same opinion) for I thought that if that contract could be reduced, and thereby the acceptance of the death-bed disposition set aside, that reduction would be competent to the heir at law upon the head of death-bed.

No. 14. 1742, June 24. URQUHART *against* URQUHARTS.

THIS disposition was reduced *ex capite lecti, renitente* President, who thought that death-bed was not proved, because though the granter was sick at the time, yet it is not proved that he was sick of the disease of which he died, that is a suppression of urine, and thereafter a palsy; but my greatest difficulty was as to the wife's defence founded on the decision 23d February 1665, Jack against Pollock, (DICT. No. 36. p. 3213.) to which it was answered, that the marriage here dissolved within year and day, and therefore a conventional provision would fall—and the Lords repelled the defence with respect to that answer.

No. 15. 1743, Jan. 4. JAMES WOOD *against* NORRIE.

THE question was, Whether promissory-notes granted in Ireland which were already found valid though not holograph are probative of their dates so as to affect heritage in Scotland, notwithstanding the law of death-bed, notwithstanding it would not affect heirs in Ireland. Arniston thought that it would overturn the law of death-bed, and 2dly, that in England they have no regard to deeds in Scotland for affecting their estates without seal;—and the Lords by majority found they do not prove their date against the heir.—*Renit.* President, Kilkerran, Balmerino, Murkle, *et me.*—22d June 1744 Adhered, when I did not vote.

No. 16. 1743, Nov. 23. JANET SOMMERVELL *against* MARION GEDDIE.

THIS was a question of death-bed—and turned upon, Whether a woman whose deed is quarrelled was fiar, or only liferenter with a substitution to her heirs and a faculty to her to dispone? The conception of the three deeds was very singular, and I keep the papers partly for that reason. Arniston had found that the woman was not fiar, but the * adhere *multum renitente* President, but without a vote.

No. 17. 1744, Nov. 2. JOHN LESLY *against* ROBERT CLEUGH.

A MAN on death-bed disponed to his eldest son and heirs of his body, which failing to his second son's children. After his death his eldest son accepted and ratified his father's disposition, but then he happened also to be on death-bed;—and after his death the second son raises reduction of both on the head of death-bed. Kilkerran found the reduction not competent at the pursuer's instance. We agreed that the pursuer not being heir or apparent-heir to his brother in this subject, he could not quarrel his ratification, and consequently could not quarrel the father's disposition,—though if he could reduce he would be heir to his father in the subject,—and therefore we adhered. Arniston went far-

* There is a word here in the manuscript not easily read.

ther, and though that the father's disposition was not reducible since the immediate heir was not prejudged though the remote heir was, and differed from the judgment in Sir John Kennedy's case.

No. 18. 1744, Nov. 6. Dec. 4, 15. IRVINE *against* IRVINE.

AN eldest son having received from his father a settlement in satisfaction of all interest, claim, or pretence to his father's estate personal or real after his death except good will; the father on death-bed disponed some heritable subjects to his younger children,—whereof the eldest son raised reduction. The President looked on this as a rational partition of his estate with the heir's implied consent by his acceptance in satisfaction. Arniston thought it the same as disponing lands to an heir with a reserved faculty to burden, which may be exercised upon death-bed;—and it carried by the President's casting vote to sustain the defence. *Pro* were Justice-Clerk, Drummore, Arniston, Monzie, Dun, and President. *Con.* were Haining, Strichen, Kilkerran, Balmerino, *et ego*.—4th December The Lords Altered, and found the reasons of reduction relevant both as to heritage and heirship.—15th December, Adhered.

No. 19. 1748, June 10. CUNNINGHAM *against* WHITEFOORD.

THE deceased Sir James Cunningham of Milcraig in 1741 made a settlement of his whole estate except the lands of Whiteburn, the investitures whereof were to heirs whatsoever, to his brother-consanguinean, the now Sir David Cunningham and heirs-male of his body, whom failing to his sister-german Mrs Whitefoord of Dinduffs and the heirs-male of her body, whom failing the heirs-female of her body, whom failing the heirs female of his said brother's body, with prohibitions to alter, with the burden of all his debts, and obliged him to dispone Whiteburn to Mrs Whitefoord's son free of all debts, except what he should settle on Mrs Whitefoord's daughters, which Mr Whitefoord was bound to pay. 18th December 1746 he made a new settlement with these single variations, that he granted two bonds for L.1000 sterling to his two nieces, and burdened his brother with them and freed Mr Whitefoord of them; and on the other hand, in the substitution he preferred the heirs-female of his brother's body before the heirs-female of his sister's body; and in the end of this deed there was the clause usual in such cases revoking all former settlements, and after signing this settlement, his factor who wrote it taking out of his repositories a duplicate of the deed 1741 said he thought it might be burned, and he hoped to see him also alter and burn this settlement as he had done several preceding settlements, and Sir James making no objection, that duplicate was burned, but as another had been also signed and lodged with Lord Drummore, the factor bid him also call for it, but it never was called for. He died February 1st 1747, and Sir David pursued reduction of the deed 1746 *ex capite lecti*, with a declarator that the deed 1741 was effectually revoked by that deed 1746. Death-bed was proved, and there was no compearance for the young Ladies, nor defence for their bonds for L.1000. But for Mr Whitefoord it was contended, that the revocation could not be extended further than it differed from the deed 1741, for he could not by one and the same deed mean to revoke or alter a settlement that by that very deed he was renewing; and therefore as to the settlement of the lands