

it proven, that after the disposition quarrelled, he was at the market cross of Edinburgh in market time of day, and walked there a considerable time unsupported, and therefore in regard there is no proof of supportation in his coming to or going from the said market place, repelled the reason of reduction; although his physician and surgeon proved, that on that very day the disease of which he died was upon him. *Vide inter cosdem, voce HEIRS PORTIONERS.*

No. 8.

1736. December 8. HENRYSON *against* HENRYSONS.

AN assignation to an heritable bond to two orphans, the granter's grandchildren, who had nothing, reduced *ex capite lecti*, notwithstanding the natural obligation, and that the granter had ordered the assignation to be made out while in *liege poustie*, but was delayed by his writer.

No. 9.

1738. November 28.

WILLIAM IRVINE *against* AGNES IRVINE and HER HUSBAND.

JOHN IRVINE of Drumcoltran, in 1708, disposed his lands to his youngest son Thomas and his heirs, reserving a power to alter. In 1711, after Thomas's death, he, upon the narrative of good deeds received from Thomas, obliged him to reiterate and renew all dispositions in favour of Thomas, in name of his son Christopher and the heirs of his body, whom failing to the descendants of his own eldest son; and this paper, among a bundle of other papers, he put in the hands of his ordinary writer. In 1713, a few days before his death, he granted a new disposition in name of Christopher, then an infant, his heirs and assignees, to which Agnes Irvine his sister has now succeeded. William Irvine, heir-at-law to John by his eldest son, pursues reduction of this last disposition 1713, *ex capite lecti*, both as heir of the investiture and as substitute, failing heirs of Christopher's body, by the obligation 1711. The Lords thought the putting that writing with others in his writer's hands was no delivery, and though it had been delivered was alterable, being only an obligation to renew a disposition that reserved a power to alter; and that as Christopher could not on the head of death-bed quarrel any alteration, no more could these substitutes to him; and here all the alteration was in Christopher's favour, and both that deed and the disposition 1708, excluded reduction *ex capite*

No. 10.

Title to pursue re-
duction *ex capite*
lecti.

No. 10.

lecti at the pursuer's instance as heir-at-law; and therefore found that the pursuer had no title either as heir or creditor to reduce the disposition in Christopher's favour.

1739. *February 13.*

MARGARET and JANET CRAIG *against* MALTSTERS of GLASGOW.

No. 11.

A DISPOSITION being made on death-bed to the granter's immediate heir, an infant, whom failing to the Maltsters of Glasgow; some of the Lords doubted if the judgment in Sir John Kennedy and Arbuthnot's case was right, * but agreed to reduce this disposition as in prejudice of the infant; and therefore the Lords found that this disposition was not only in prejudice of the remoter heir, but also in prejudice of the nearest heir at the time, she being an infant, and the estate being upon her failure even in infancy provided to a stranger, and therefore reducible *ex capite lecti*. But *quæritur*, will not even this decision justify that of Sir John Kennedy?

1740. *January 15.*

MACKEAN *against* MACKEANS.

No. 12.

BONDS secluding executors cannot be annailized on death-bed. (Harcarse's Decisions, 661.) † *do*, Lands taken to one and the heirs of his body, whom failing to another person as substitute, *proviso*, that the fiar might at any time *etiam in lecto* redeem from the substitute by payment or consignation of an elusory sum; and he having accordingly used an order of redemption 13th November, and upon the 30th November when he was on death-bed, disposed them to another; this last disposition found reducible at the heir-at-law's instance, though he was cut out of the succession by the substitution in the original right, because that substitution had been taken away by the order of redemption.

1740. *November 18.*

HEDDERWICK *against* CAMPBELL.

No. 13.

DEATH-BED excluded by the immediate heir-at-law, (who was first instituted, and strangers substituted) who was a daughter, accepting the disposition, and conveying the subjects therein contained in her contract of marriage to her husband though in minority.—N. B. The interlocutor finds her attaining possession sufficient to exclude the reduction.

* Dict. No. 17. p. 3198.

† Dict. No. 42. p. 3219.