

1734. *February 15.* BALLANTYNE *against* BALLANTYNE.

No. 4.

LANDS being taken to a man and his wife in conjunct fee and liferent, and to their son in fee, with power to the father to sell, annailzie, &c. *etiam in articulo mortis*; the son died, and thereafter the father annailzied the lands on death-bed. In a reduction at the instance of the next apparent heir, the Lords found the father fiar, and repelled the defence on the father's faculty, and reduced the disposition. But the case had been more difficult had the son been fiar.

1734. *February 21.* CHRISTIESON *against* KERR.

No. 5.

The onerous cause of a bill on death-bed not sufficiently astructed, by two witnesses saying that the defunct acknowledged he owed the money.

1736. *June 16.* BROWN *against* MUIR.

No. 6.

DEATH-BED, that reason of reduction sustained, though the deed was signed at Ayr, and the granter died at Irvine; but the defence sustained that it was written and signed by the pursuer's elder brother, then the apparent heir, as witness; but it was thought that his signing as witness would not alone have been sufficient.

1736. *July 30.*

CREDITORS of Sir PATRICK STRACHAN *against* BALDWIN.

No. 7.

AN annuity provided to a wife on death-bed in the form of a contract of marriage, by one *obæratu*s at the time reduced *ex capite lecti* even at the instance of creditors, so far as might affect the fee of the estate, and not sustained to the extent of a terce; but the Lady being dead, action reserved to her representatives, upon her right of terce, against the tenants or intrmitters with the rents, as accords.

1736. *November 24.*

EARL of ROSBERRY and His CREDITORS, *against* LADY MARGARET and DOROTHEA PRIMROSE.

No. 8.

THE Lords thought the market cross of Edinburgh a market place in the construction of law, and therefore in the Earl of Rosberry's case, they found

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 poustic*, 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.