No. 4. 1734, Feb. 15. BALLANTYNE *against* BALLANTYNE.

THE Lords found that the father being fiar, he could not prejudge his heir on death-bed, notwithstanding the faculty. Unanimously.

No. 5. 1734, Feb. 21. CHRISTIESON *against* KERR.

THE Lords found the astruction not sufficient, but prejudice to the defender to astruct further.

No. 6. 1736, June. 3, 16. BROWN *against* MUIR.

IN a reduction *ex capite lecti*, the Lords found the reason of reduction proved, and found the defence of convalescence not proved, although the deed was signed at Ayr and the defunct died at Irvine;—but the Lords sustained the defence that the disposition was written and signed by the granter's eldest son and apparent-heir, (this pursuer's elder brother) as witness, which they found imported his consent; but they seemed not to think that it would have been sufficient that the apparent-heir had only signed as witness, unless he had also been writer. June 16th Adhered without answers.

No. 7. 1736, July 30. CREDITORS of SIR P. STRACHAN *against* BALDWIN.

THE Lords found the reduction *ex capite lecti* competent to the creditors, and found the liferent reducible in so far as it was an annuity or may affect the estate, reserving action on the right of terce against intromitters as accords.—14th July.—30th July adhered.

No. 8. 1736, Nov. 24. EARL of ROSEBERRY, &c. *against* The LADIES PRIMROSE.

THE Lords adhered to the interlocutor 29th July, repelling the reason of death-bed; for the major part thought the market cross of Edinburgh a market place, though others, particularly Dun, &c. differed as to that point.

No. 9. 1736, Dec. 8. HENRYSON *against* HENRYSONS.

THE Lords refused the bill and adhered, reducing *ex capite lecti*, notwithstanding the natural obligation, and the order to write the deed before death-bed.

No. 10. 1738, NOV. 22, 28. WILLIAM IRVINE *against* AGNES IRVINE, &c.

THE Lords thought the obligement 1711 not delivered evident, and though it had, thought it alterable. They thought also that William, the substitute, could not quarrel the alteration any more than Christopher himself could quarrel, had he been cut out of the right. As to the decision of Sir John Kennedy and Arbuthnot, some of the Lords, particularly Arniston, doubted if it was agreeable to law;—and I own so did I, but I did not think we should vary in so important points of our law. But we all agreed that there

was no consequenee from that decision to the case where the alteration was all in favour of Christopher the disponee, and therefore found the pursuer had no title as heir or creditor to reduce the dispositions in favour of Christopher.

No. 11. 1739, Feb. 3, 13. CRAIGS *against* MALTSTERS of GLASGOW.

IN a concluded cause, a question occurred of a disposition on death-bed to the immediate heir an infant, and failing him, to these maltmen, passing by all his remoter heirs, which was the same case that was determined in 1722, Arbuthnot against Sir John Kennedy. Several of the Lords doubted much of the point in general, particularly Arniston, but he thought in this case, where the disposition was to an infant, who could not dispone or alter the destination, the deed was in prejudice even of the immediate heir the infant, and that therefore it was reducible. Others of us were of the opinion of the former judgment;—and though the point was at least very doubtful at first, yet I thought it not right to alter our decisions in such a general point. However, we agreed to determine this point in the terms Arniston mentioned, and found that this disposition was to the prejudice of the immediate heir the infant, though that argument I doubt will extend to the case.—13th February, The Lords adhered without answers.

No. 12. 1740, Jan. 15. MACKEAN *against* MACKEANS.

I WAS this week in the Outer-House, and I mark their papers chiefly for one question, Whether bonds secluding executors, containing a power to alter at any time in life, *etiam in articulo mortis*, may be disposed of on death-bed. I am told the Lords did not determine that general point, though several thought it could not;—but they found that the reserved power in this bond referred not to the succession of the heir, but to the liferent given to the wife, and that therefore he could not dispose of it on death-bed in prejudice of the heir. I own I doubt of the first part, because without the addition of that part of the clause *etiam in articulo mortis*, the other part would enable him to dispone in prejudice of the liferentix at any time, since she had not the benefit of the law of death-bed, and therefore that addition could only be intended with relation to the heir, and that would bring it to the general point, which deserves to be well considered, though I cannot say that I altogether differ from the interlocutor. They *a fortiori* found the law of death-bed extended to the other bonds secluding executors; but they rightly found, that it did not extend to Sir Harry Innes's bond, where the only deed altering the original substitution was the death-bed disposition, which therefore did not prejudge the heir; besides, the bond was *sua natura* moveable, the substitution did not render it heritable, and he might have disposed of it even by testament;—and they likewise justly found the disposition of the lands reducible where the original destination was first revoked, and at the distance of several days a disposition of it made in prejudice of the heir on death-bed.

No. 13. 1740, Nov. 18. HEDDERWICK *against* CAMPBELL.

THE Lords adhered to the Ordinary's interlocutor, and I was indeed of the same opinion but for an additional reason, that I thought the contract of marriage accepting the