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

of Livingston, with the burden of debts (other than the said L.1000 sterling) and the destination of succession contained in it, Sir David was not prejudged by the death-bed deed, and therefore had no right on the head of death-bed to quarrel it, and the heir could not approbate and reprobate it; and therefore if a disposition were made *in liege poustie* to a stranger, reserving power to revoke, and the granter should on death-bed dispone the same subject to another stranger and revoke the former disposition, that revocation would only operate in favours of the last disponee to support his disposition, but not in favours of the heir at law to reduce the last disposition on death-bed, and the first disposition as revoked by the last one. This cause was heard in presence yesterday and advised this day, when the Lords repelled the defence that Sir David was barred by the disposition 1741 to reduce the disposition 1746, found that deed 1741 revoked *in toto* by the deed 1746, found the reasons of reduction of the deed 1746 relevant and proved, and therefore reduced it *in toto*, *renit*. Drummore, Kilkerran, Haining, Strichen, *et me*, (then in the chair.) For the interlocutor were Minto, Arniston, Dun, Monzie, Murkle, Tinwald, Shewalton.—10th June 1748 Adhered by Arniston President's casting vote;—but appealed, and agreed by giving Whitefoord L.2000.—11th December 1747.

EJECTION.

No. 1. *1739*, July 13. PRINGLE *against* EARL HOME.

THE Lords adhered to their former interlocutor of 12th June, in which the only thing remarkable was an objection against the execution of a decreet of removing before the Sheriff, that next day after the decreet the tenant Pringle was ejected without any charge on the decreet, which the Lords repelled.

ESCHEAT.

No. 1. 1739, Jan. 13. CREDITORS of SIR DAVID BAIRD *against* ERSKINE.

THIS case was argued at the Bar and on the Bench two full days, upon the question, Whether a creditor obtaining a gift of escheat fallen by his own diligence, and granting back-bond to denude after payment in favours of other creditors be liable in any diligence, and in what? (in which Lord Arniston having declined himself being one of the creditors in the back-bond, pleaded the cause about one hour and a half.) The Lords generally inclined to think, that a donatar would not be liable for exact diligence, that is neither for *culpa levissima* nor *culpa levis*, but that such donatar is liable for dole or *culpa lata*, that is supine negligence, and in so far differed from the decision observed by Lord Harcarse in