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

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.