

1726. *January 26.*

No 3.

MARQUIS CLYDESDALE *against* The EARL of DUNDONALD.

THE law of death-bed takes place in favour of all sorts of heirs, whether the destination be by infertment or only in a personal deed.

*Fol. Dic. v. I. p. 211.*

\* \* \* *See* This case *voce* BASE INFERTMENT, No 3. p. 1266.

1738. *November.*IRVING *against* IRVING and her Husband.

No 4.

A substitute cannot reduce in a case where the institute could not.

A DISPOSITION having been granted in *liege poustie* to a younger son, with a power to alter, thereafter a new deed was granted in favour of the son of the said younger son, with a substitution to the eldest son; and, after all, a third deed on death-bed to the said son of the younger son, his heirs and assignees.

Of this last deed, a reduction on the head of death-bed being pursued by the eldest son, not only as heir at law, but as heir substitute, and of which right of substitution he could not be deprived on death-bed; it was found, 'He had no right to reduce either as heir of line, because of the first disposition in *liege poustie*, or as heir substitute; because, however a substitute has been found entitled to reduce, that was only where the deed was prejudicial to the institute. But, in this case, the institute was not prejudiced but benefited; and in no case can the substitute reduce where the institute could not.

*Kilkerran, (DEATH-BED) No I. p. 151.*

1740. *November 18.*WILLIAM HEDDERWICK *against* JAMES CAMPBELL.

No 5.

Reduction of a death-bed deed was found incompetent, in a case where the institutes in the disposition challenged, who were the nearest heirs at the time had obtained possession, and the action was at the instance of a remoter heir.

WILLIAM PRINGLE, upon deathbed, made over certain heritable subjects to Mary and Marion Pringles, his two daughters, and only children, and failing of these, in favours of James and Adam Parkers his nephews; Marion, the youngest daughter, died an infant, and Mary, the eldest, married the said James Campbell, to whom she conveyed the whole subjects, (by a postnuptial contract), disposed by her father, and thereafter died, in minority, without issue. William Hedderwick being likewise a nephew to William Pringle, by his eldest sister, and being by his uncle's death-bed deed cut out from a share of the succession to him, upon the failure of his two daughters, brought an action of reduction of that deed against James and Adam Parkers, as done on death-bed, to his hurt and prejudice; and against the said James Campbell upon the head of minority and lesion. In support whereof, it was *pleaded*, That the law of death-