as in two different papers, no good reason can be assigned. The Lords assoilzied from the reduction.—See APPENDIX No. 15.

Fol. Dic. v. 2. p. 459.

1735. *November* 15. PETRIE *against* LITHGOW.

No. 16.

A testament was reduced, it having been proved by the writer's oath, That it was not read over to the defunct at signing, nor was there any evidence, save the writer's own assertion, that he got any instructions from the defunct in what terms to draw the testament, so that the whole resolved upon the writer's faith alone. At the same time it was proved, That the defunct, some few hours before the testament was executed, had dictated a scroll of the particulars of her will, which differed in many articles from the testament.—See APPENDIX.

Fol. Dic. v. 2. p. 460.

1735. *December* 4. BRAND *against* BRAND.

No. 17.

A testament being executed *in liege poustie*, with the common preamble usual in such deeds, nomination of an executor, burden of debts, &c. the following clause is adjected: "Which several debts and expenses of my funerals, I hereby appoint the said Sarah Brand to pay out of the first end of her intromissions as executrix; and for the better enabling her so to do, I hereby make, constitute, and ordain her, her heirs and donatars, my cessioners and assignees in and to the principal sum of £.500 Sterling, heritably secured upon the estate of Bransfield." In a reduction of this testament by the heir, in so far as concerned the heritable subject, the defence was, That nothing hindered a testament and assignation *inter vivos* to be upon the same paper. Answered, Where the deed is principally intended to be a disposition or conveyance *inter vivos*, it will be effectual, though a nomination of executors or other testamentary clause be adjected. But where the deed appears to be a formal testament, there a conveyance of heritage is inept, if fixed law and practice is to be the rule. And one reason is, That a testament, at whatever time executed, has no effect but as being the last will of the defunct; it is therefore construed in law to be the deed of the latest minute, equally as if it bore that date; and so testaments, from the nature of the thing, must be ever subject to the law of death-bed. It is otherwise in deeds *inter vivos*, which, though not delivered, are understood to be valid of their date, subject indeed to revocation or alteration; and if valid of their date, they must be safe from the challenge of death-bed, where executed *in liege poustie*. The Lords sustained the reason of reduction.—See APPENDIX.

Fol. Dic. v. 2. p. 459.