1740. *December* 2. INNES *against* TARBET.

No. 18.
A Minister's interposing with a dying person to alter a testament made in health, *mali exempli*.

A Minister may lawfully suggest proper considerations to dying persons with respect to their worldly affairs, and the more these be in favour of the right heir, the more laudable. But where a woman had, when in health, executed her will by a deliberate act, for a Minister amidst his exhortations to the dying person, to interpose with her to alter that deed, though in favour of the true heir, was thought to be *mali exempli*, and was one of the circumstances on which her testament, though made in favour of her heir, yet, as it was altering a former made by her when in health, was reduced in this case.

Kilkerran. No. 1. *p.* 570.

1741. *February* 5. DOUGLAS *against* SPRUEL.

No. 19.
Testament reduced in part, and sustained as to the rest.

A testament was reduced in so far as concerned a legacy left to the particular person who appeared to have imposed upon the testator in making of it, but sustained in all other respects.

Kilkerran, No. 2. *p.* 570.

1742. *December* 15. ROBERTSON *against* MRS. JEAN KER.

No. 20.
Difference between testaments made when the testator is *in extremis*, and when he is of sound judgment.

In the reduction of a testament, a proof of circumstances being admitted, the following facts came out, 1*mo*, The writer of the testament got not his directions from the testator, nor had any communing with him, but had a note of the heads put into his hand by a friend of the testator's to be his direction for writing out the testament, which he immediately did in the testator's house, and delivered the testament ready for signing, to the same person from whom he got the note. 2*do*, The testament was not read over by, or to the testator, in presence of the testamentary witnesses; but was signed by him without reading at the time of subscription.

Upon this proof it was objected, that there was no evidence by witnesses, either that the testator gave orders to write this testament, or that he ever perused it after it was written.

It was answered: That this would be a solid objection against a deed executed *in extremis*, where the facility of imposition makes the bare subscribing of a deed not a sufficient legal evidence of its being the deliberate act of the man. But here the testator was of perfect memory and judgment, and so continued to his death, which was about ten or twelve days after executing the testament; and upon that account, the same faith ought to be given to this deed that is given by law to deeds