

No. 17. in the subject.—N. B. Arniston thought the disposition not quarrellable on another ground, viz. that the immediate heir at the time was not prejudged, and differed from the judgment in Sir John Kennedy's case. (See Dict. No. 17. p. 3198.)

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1744. December 4, 15. IRVINE *against* IRVINE.

No. 18.

AN eldest son having accepted from his father of a settlement in satisfaction of all interest or claim to his father's estate personal or real after his death, except good will; the father on death-bed conveyed the rest of his estate to younger children. The son raised reduction *ex capite lecti* as to the heritage and heirship moveables, and proved death-bed; but was on the first hearing found barred from reducing by his acceptance of the settlement in satisfaction as said is, which carried by the President's casting vote, (6th November, 1744,) who considered it as a rational distribution of his estate. Arniston was also of the same opinion, and he thought it the same as if the father had settled the whole upon one with a reserved faculty; but afterwards the interlocutor was altered, and the reasons of reduction sustained both as to heritage and heirship moveables.

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1748. June 10. CUNNINGHAM *against* WHITEFOORD.

No. 19.  
Approbate and reprobate.

SIR JAMES CUNNINGHAM, in 1741, made a settlement of his estate, viz. of Livingston, in favour of his brother consanguinean, the now Sir David Cunningham, and of certain substitutes, with clauses not to alter; and of the lands of Whitburn to his nephew, by his sister-german Mrs Whitefoord of Dunduff, with the burden only of such provisions as he Sir James should grant to Mrs Whitefoord's sisters; and 18th December 1746, when on death-bed, he made a new settlement, differing from the former only in two particulars; viz. in this last he frees Mr Whitefoord of his sisters' portions, and burdens Sir James with them. The other difference was in Sir James's favour; viz. whereas in the settlement 1741, he had after the heirs-male of his brother's body, substituted both the heirs-male and heirs-female of his sister's body, before the heirs-female of his brother's body; he in the last deed 1746, preferred the heirs-female of his brother's body before the heirs-female of his sister's body; but in every thing else they agreed, particularly in burdening his brother with the payment of all his debts, and

to free Mr Whitefoord of them, who would otherwise have been liable as heir of line, and the lands of Whitburn by the investitures provided to heirs whatsoever; and this settlement 1746 contained the usual clause, revoking all former settlements. Sir David pursued a reduction of this last settlement *ex capite lecti*, and a declarator that the deed 1741 was revoked by the last deed; and the death-bed was proved; so that the defence was, that the last settlement was only reducible so far as it was in his prejudice, which it was only as to the L.1000 sterling provided to Mr Whitefoord's sisters; that he could not both approbate and reprobate the deed 1746, and reduce it on death-bed, and yet have the benefit of the clause revoking all former settlements, and that it could not be meant by that clause to revoke former settlements, so far as they were again repeated there. But the Lords both reduced the last settlement 1746, and found that Sir David was not barred from quarrelling it by the deed 1741; and found the deed 1741 revoked *in toto* by the deed 1746, (*me inter alios renitente.*)

\*\* Mr Whitefoord appealed, and the case was to have been argued 12th April 1749, but the matter was agreed, and security given by Sir David to Mr. Whitefoord for L.2000 sterling. I have both the printed cases.

See NOTES.

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#### DECLINATOR.

See Insurance-Office against Royal Bank, 13th December 1749, *voce* JURISDICTION.

#### DEFORCEMENT.

See Ramsay against Thomson, 11th July 1735, *voce* FORUM COMPETENS.

#### DELINQUENCY.

See REPARATION.

#### DOVE-COTE.

See Sir Robert Gordon against Lord Lyon, 3d July 1752, *voce* PROPERTY;—and Procurator-Fiscal of Haddington against Sundries, 23d June 1741, *voce* JURISDICTION.