

fit for accommodation, and recommended to some of their number to settle and agree the parties.

No 104.

This cause being of new advised, on a bill and answers, the plurality reduced the whole on circumvention, seeing *dolus unius alteri non debet obesse nec prodesse*. Against this sentence they appealed to the Parliament. See APPENDIX.

*Fol. Dic. v. 1. p. 219. Fountainball, v. 1. p. 329. 633. & 747.*

1728. November 13. REIDS against CAMPBELL.

No 105.

AN heir portioner, in her contract of marriage, having accepted a provision in lieu of all she could ask or crave through her father's decease, as this did not bar her from succeeding as heir *ab intestato*; so the father having disposed an heritable subject upon death-bed; it was not found to bar her from quarrelling the same, though it was pleaded to be equivalent to a consent to the death-bed deed; for the difference is great betwixt empowering one antecedently to do a deed which the law condemns as wrong, and acquiescing in it after it is done.

See APPENDIX.

*Fol. Dic. v. 1. p. 220.*

1733. December 4. INGLIS against HAMILTON, alias INGLIS of Murdiston.

No 106.

A PERSON in *liege poustie* took an obligation in writing from his presumptive heir, not to quarrel or impugn, on the head of death-bed, any deed or settlement which he should make, but, on the contrary, to ratify and approve the same. In a reduction, *ex capite lecti*, at the instance of this presumptive heir, of a death-bed deed, granted by the predecessor in his prejudice, the said obligation was objected to him by way of defence, and the maxim urged, *unicuique licet favori pro se introducto renunciare*. It was answered, *imo*, The law of death-bed was introduced for a protection to dying persons, to guard them from the artifices of cunning men; for, if the heir's interest were only concerned, this consideration would extend to alienations in *liege poustie*, as well as upon death-bed. *2do*, The heir is not at liberty to refuse his consent in such a case; and, if *metus carceris* be a good ground for avoiding an obligation, *metus exhereditationis* is much stronger.—THE LORDS repelled the defence, and found this antecedent consent not sufficient to bar the heir from quarrelling the death-bed deed. See APPENDIX.

An heir was found entitled to reduce a death-bed deed, altho' the granter had in *liege poustie* taken from him an obligation not to challenge any deed of his.

*Fol. Dic. v. 1. p. 220.*