No. 13. The Lords found the reason of reduction relevant, That the testament was not subscribed in the terms of the act of Parliament 1681, and finished by the defunct himself without assistance.

Forbes, p. 421.

*** It appears from the report of a subsequent branch of this cause, No. 12. p. 13307. *voce* QUOD POTUIT NON FECIT, that this judgment was affirmed upon appeal to the House of Lords. See No. 15. p. 13409.

1728. *December.* MARY HOPKINS *against* DUKE of ATHOLE.

No. 14. One Hopkins intending to dispose of his effects to his relict, upon death-bed caused write out a testament, but after it was read over to him in usual form, he became so weak as not to be able to subscribe more than the three first letters of his name; however, the witnesses having subscribed, and given their affidavits upon the true matter of fact in support of the writ, the will was approved of in the prerogative court of Canterbury, and the relict appointed executrix, administratrix, &c. Upon this title having pursued for a debt owing to her husband in Scotland, the Lords refused to sustain the testament for above £.100 Scots.—See APPENDIX.

Fol. Dic. v. 2. *p.* 461.

1733. *July* 11. DOUGLAS *against* ALLAN.

No. 15. A person *in liege poustie*, made a total settlement of his estate by disposition, whereby he conveyed in general all his effects heritable and moveable in favours of his wife in life-rent, and of his grand nephew in fee. In the same deed he conveys his whole moveables in favours of his wife, in case she should survive him, and names her sole executrix. After this he leaves several legacies, and lastly reserves to himself a power to alter; and there is a clause dispensing with the not delivery. In a reduction of this deed at the instance of the heir, it was alleged to be null, in so far as concerns the heritable subjects, because it was a deed of a testamentary nature, since the wife was named executrix in it; and, according to the opinion of my Lord Stair, deeds by testament, though done *in liege poustie*, have no more effect than on death-bed. Answered, The deed is nowise of a testamentary nature, nor nowise a testament, in that part of it which conveys the heritable subjects, but is a plain disposition *inter vivos*, made *in liege poustie;* and there is nothing in law to hinder the adjecting of a clause naming an executor in the most formal disposition of lands, yea, it has been known done in a contract of marriage; and why a disposition and a testament may not be in one paper, as well