

of these articles the Duchess became bound along with young Monteath. The deed contained likewise provisions to Monteath's younger children, for which the Duchess and her heirs were likewise bound. Three months after executing the above deed, the Duchess made a total settlement of her estate in favour of Douglas of Douglas, and others, as trustees, burdened with various legacies, in favour of Mr Monteath's younger children; and she thereby 'revoked all former settlements, except a settlement of L. 100 a-year, lately made on Walter Monteath.' On the Duchess' death, Monteath's younger children sued the Trustees for payment, both of the sums due them by the last deed, and likewise by the former, which they argued, being a contract, and not of a testamentary nature, was not revoked by the above clause, nor was it in the Duchess' power to have revoked it. *Answered*, This is not a question of power but of will. The Duchess was under no obligation to give the pursuers one penny, and if she chose to give them any thing, she had a right to give it under any conditions she thought proper; and the terms of the last deed do most clearly revoke all former settlements and bequests, unless that in favour of their father.—THE LORDS assolizied from the action.—See APPENDIX.

No 33.

Fol. Dic. v. 4. p. 117.

1782. July 17.

DRUMMOND against DRUMMOND.

DRUMMOND of Blair Drummond, after executing an entail of his estate in favour of the heirs of his body and other substitutes, executed a trust-deed, in favour of certain persons, of his whole entailed property, and all other lands he might acquire, and that for the purpose of paying off his debts; which being done, the trustees were to re-convey to the heirs of entail. This trust-deed was declared revocable. He afterwards married, and obliged himself in the marriage-contract to resign the entailed estate in favour of the heirs of the marriage and other heirs of entail. Of this marriage he had a son James, who died in infancy, and survived his father but a few months. Mrs Agatha Drummond, his sister, succeeded as heiress of entail, and an action was brought against her by her sister Mrs Mary, as executrix of her nephew James, claiming the rents of the entailed subjects which had fallen due during his life; upon this ground, though they fell under the trust-deed, that settlement must be considered as so far revoked, by the obligation in the contract of marriage relative to heirs. *Answered*, The trust-deed was for James' benefit, as heir of entail, and therefore ought not to be presumed revoked by the contract of marriage. So the LORDS found, and assolizied the defender.

No 34.

Fol. Dic. v. 4. p. 119.

* * * This case is No 55. p. 2313. *voce* CLAUSE.