No 32. Mr Paterson having afterwards got a power of attorney from Abraham, the third son of William, and having served him heir of conquest, he brought the present action in his name against the disponees, calling for the several deeds, in order to their being reduced and set aside; and to have it found, that the pursuer, as heir of conquest of his said uncle, had the only good and undoubted right to his heritable estate.

The Lord Ordinary, by one interlocutor, found, "That the first deed of settlement, in the 1763, which is general of the whole estate, heritable and moveable, belonging to the defunct, in favour of Bessy Rowan his wife, and of Robert and James Rowans his nephews, equally betwixt them, containing a power of revocation, is a valid and effectual deed, so far as not revoked: Finds the disposition executed by the said deceased James Rowan, in favour of the said Bessey Rowan his spouse and Robert Alexander his nephew, of his lands of West Shield, in the proportion of one third of them to her, and two thirds to Robert Alexander, whom he burdens with a variety of donations to the persons therein mentioned, and bears date in the 1768, as it contains no clause of revocation, general or special, does not therefore hurt, in any respect, the settlement 1763, except in so far as the two deeds are incompatible: Finds, so far as concerns Bessey Rowan, no alteration is made; but, so far as concerns the two-thirds of the lands disponed to Robert Alexander, this being incompatible with the former settlement, of necessity implies a revocation; and as this last deed is admitted to have been executed on deathbed, sustains the reasons of reduction so far as concerns the two thirds of West Shield; but repels the reasons of reduction as to all the other subjects.' And, by a subsequent one, 'having also considered that the disposition 1763 is revocable, and the deed 1768, which conveys to the representers, is a clear alteration of the former deed, and was executed on deathbed, adhered to the former interlocutor."

But the case having been brought before the Court by a reclaiming bill and answers; moved chiefly by the defender's plea that there was no express revocation in the latter deed,

"The Lords sustained the defence, and assoilzied the defenders."

Act. *Rolland, M'Queen.* Alt. *Ilay Campbel.* Clerk, *Campbell.*

Fol. Dic. v. 4. *p.* 120. *Fac. Col. No* 200. *p.* 139.

No 33. 1776. *December* 11. Monteath *against* Douglas of Douglas.

In a contract entered into between Mr and Mrs Monteath, on the one hand, and the Duchess of Douglas, and Mr Monteath younger, on the other, Mr Monteath bound himself to settle his whole estates on the younger; and on the other part, Monteath younger bound himself to pay all his father's debts, with an annuity to him of L. 100 during his life; and for payment and performance

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 assoilzied 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 assoilzied the defender. No 34.

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

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