

1784. *August 4.*MRS. JACINTHA DALRYMPLE *against* JOHN MURRAY and Others.

No. 47.

Trustees liable for factors, by the conception of the trust, removed a factor for mismanagement. The second factor also acted improperly. A legatee, who had been dilatory in demanding payment, and to whom no fund now remained, was found not entitled to payment from the trustees, on the footing of their liability for their factors.

*Fac. Coll.** * This case is No. 67. p. 3534. *voce* DILIGENCE.1789. *November 20.* M'DOWAL *against* M'DOWAL.

No. 48.

The Lords found, That a trust-deed fell by the bankruptcy of a surviving trustee.

*Fac. Coll.** * This case is No. 175. p. 7453. *voce* JURISDICTION.1791. *May 18.* MACNAIR *against* MACNAIR.

No. 49.

Trust containing whimsical clauses.

Macnair, proprietor of some houses in Glasgow, conveyed the subjects, and his whole goods and gear, to his eldest son, as trustee for the truster's spouse and children after named; and failing him to his eldest heirs-male; and failing heirs-male, the truster's eldest heir-female for the time, and so on through his whole heirs-male and female, the eldest heir-female always succeeding without division; failing all of whom; his nearest heirs and assignees whatsoever. The deeds makes no provision for the minority or incapacity of any trustee, nor for his refusing to act; and its purposes are declared to be, 1^{mo}, To pay 4s. a-day to his widow; 6s. to his eldest son; 4s. each to a younger son and the eldest daughter; and 3s. each to three younger daughters, *per diem*. Certain sums are likewise directed to be paid to the descendants of the testator, in all time coming, on their attaining the age of twenty-five; and in case any of these descendants shall be in indigent circumstances, they shall receive 1s. weekly, from the age of eight to fourteen, and £.5 of apprentice-fee. And the deed provides, That the trustee shall draw 5 *per cent.* on all the rents and debts he shall uplift. In a reduction of this deed