under the deed of trust, which being calculated for his benefit, was not to be presumed to have been revoked by the contract of marriage. No 55.

THE LORDS assoilzied the defender.——*See* PRESUMPTION.

Reporter, *Lord Stonefield.* Act. *Wight.* Alt. *Ilay Campbell.* Clerk, *Orme.*
Stewart. *Fol. Dic. v.* 3. *p.* 125. *Fac. Col. No* 53. *p.* 84.

1788. *July* 24. ROBERT HAY *against* MISS FRANCIS HAY.

No 56.
The expression, *lawful heirs-male*, employed in certain parts of an entail, with the same meaning, so far as appeared, as that of *heirs-male of the bodies* of the substitutes, used in other places of the deed, was, nevertheless, strictly interpreted in conformity to the words.

SIR ROBERT HAY of Linplum executed a deed of settlement, by which he devised his estate to such of the younger sons of the family of Tweeddale as were then in existence, *nominatim et seriatim*, and the *heirs-male of their bodies*, 'whom 'failing, to Alexander Hay, second son to Alexander Hay of Drummelzier, and '*his lawful heirs-male*;' and, after some other substitutions, 'to the heirs-fe-'male of the body of John Marquis of Tweeddale.' From the tenor of the deed, however, it appeared highly probable, that the alteration of the expression 'heirs-male of the bodies,' as applied to the Tweedale family, into 'lawful 'heirs-male,' employed with respect to that of Drummelzier, was not occasioned by any difference in the intention of the granter, but had crept in through the inaccuracy or want of skill of the writer, who was not a conveyancer by profession.

Alexander Hay died without issue; and the prior substitutes having failied, the succession was claimed by his brother, Robert Hay, as his heir. It was likewise claimed by Miss Hay, as heir-female of John Marquis of Tweeddale, the intermediate substitutes having also failed. In the competition of brieves which followed, it was

Pleaded for Miss Hay: When, in interpreting the settlement of an estate, a doubt arises with respect to any restriction or limitation of property, no latitude of construction ought to be allowed; but when the only question is, whether the granter has devised his succession to one heir or to another, the opposite principle prevails, and that construction is to be adopted which is best calculated to give effect to his will, *secundum id quod credibile est cogitatum*, *l.* 24. *ff. De Reb. dub. Voet. ad eund. tit.* § 4.; Blackstone's Commentaries, b. 2. cap. 23. No doubt the term *heirs-male* commonly denotes heirs-male in general; yet it is capable of being limited to the *heirs-male of the body*, when from circumstances such is evinced to have been the will of the devisor. A similar interpretation of the parallel expression *heirs-female* has had repeatedly the sanction of the Court; No 50. p. 2306. and No 51. p. 2308. And in the civil law, the rule is established, *l.* 17. § 8. *ff. Ad senatusconsult. Trebell.*; *Mantica, De conjecturis alt. volunt. lib.* 8. *tit.* 14. § 6. Even the statute of 1685 affords an instance of the limited interpretation of the word 'heirs,' it being there confined to de-

No 56. scendants alone. If, then, the expression in question can possibly be understood of the *heirs-male of the body*, and not the *heirs-male in general*, of Alexander Hay, that first construction should be admitted, as evidently more conformable to the views of the entailer.

Answered, There is no room here for a *quæstio voluntatis*, since the expression of the entailer is not ambiguous, but precise and definite; the term *heirs-male* having only one signification. The authority of the Roman law, or of civilians, however weighty in other matters, is but of little avail in questions of tailzied succession, which may relate to various heirs and substitutions unknown in that law. At the same time, unless the words *alieno hærede*, which occur in *l.* 17. § 8. *Ad SCtum Treb.* be converted into *sine hærede*, a change for which there is no authority, that text will not support the opposite argument. With regard to the supposed limited acceptation of the word 'heirs' in the language of the act 1685, it is not the descendants alone of the person forfeiting that are there meant, but such of his heirs, whether of his body or not, as are called by the entail, in opposition to the person next in substitution and his heirs. The calling of persons and their heirs in general, though not usual in entails, is exemplified in the entail of Duff of Braco, Record of Tailzies, vol. 4. p. 340. It is only to be added, that the doctrine now maintained was strongly sanctioned by the judgment of the House of Lords, in the cases of Bailie *contra* Tenant, 17th June 1766, *voce* SUCCESSION; and of Edmonstone *contra* Edmonstone, 24th November 1769, *voce* TAILZIE.

The cause was reported on informations appointed by the Judges Assessors to the Macers, when

THE COURT considered themselves as bound to give judgment according to the signification of the term in question, it being by the majority deemed unambiguous; notwithstanding that the probable intention of the entailer was admitted to be contrary,

The interlocutor of the Court was as follows: 'THE LORDS find, That the claimant Robert Hay is preferable, and entitled to be served heir of tailzie and provision, under the settlement in question.'

To this interlocutor they adhered, on advising a reclaiming petition with answers.

Reporter, *Lord Monboddo.* For Mr Hay, *Wight, Rolland.*
Alt. *Lord Advocate, Blair.* Clerk, *Menzies.*

Stewart. *Fol. Dic. v.* 3. *p.* 124. *Fac. Col. No* 38. *p.* 62.

This case was appealed.—April 7. 1789.—The HOUSE of LORDS ORDERED and ADJUDGED, That the appeal be dismissed, and the interlocutors complained of be affirmed.