

I take it, therefore, to be quite clear, that though a female infant has not the capacity to bind *her own real estate* by a marriage settlement, that nevertheless she may or may not give it validity by her acts, or by express confirmation, when the disability ceases to exist, and that, therefore, such settlements cannot be regarded as purely and absolutely void.

Supposing this to be the true doctrine, and it would seem to follow necessarily that the settlement of the 11th of February, 1835, so far as the real estate of Mrs. Stephenson is concerned, cannot be allowed to stand, it having been executed by her during her minority, and she having died before attaining her full age, or having done or having been capable of doing any act to give it validity. But conceding the settlement to be voidable merely, and to require some act of dissent or disaffirmance to destroy its efficacy, it is material to inquire whether these exceptants are in a condition to entitle them to avoid it, they being the brothers and sisters, and children of brothers and sisters of the whole blood of Mrs. Stephenson.

It is very certain that Mrs. Stephenson, who died under coverture, and a minor, was not herself in a situation requiring or enabling her to avoid the settlement, and her infant child, who died but a few weeks after its birth, was equally incapable of doing so, and if these parties are not permitted to avoid it, then it follows that the settlement must stand, and all the consequences resulting from regarding it as a valid instrument must ensue.

These parties, by their exceptions filed on the 15th of November, 1839, contest the validity of the settlement, and by their petitions filed on the 30th of September, 1846, the fund being then and still under the control of the Court, expressly disaffirm the deed, and claim the fund in opposition to it. And it is and must be conceded, that George B. Stephenson, the surviving husband of Augusta, and father of her infant child, can have no claim to the money now in controversy, unless the deed in question is to be regarded as a valid and operative instrument. If it be not, then, as the estate descended to the infant child on the part of the mother, it must, upon her death,