

1786. January 16. BARBARA BAIKIE against ARTHUR SINCLAIR.

THE same competition here occurred as in the case of Ramsay *contra* Brownlie, No 99. p. 5538. where it was determined, 'That the whole sums contained in a decret of adjudication, whether principal, annualrents, or penalties, belonged to the heir, and not to the executor of the adjudging creditor.'

On this occasion, the Court declined entering into a discussion of the question, as a departure from a general rule, so solemnly established, might be attended with bad consequences.

THE LORDS preferred the heir.

Lord Ordinary, Gardenston. Act. David Smyth. Alt. Tait. Clerk, Menzies.

N. B. The case of Willoch's *contra* Auchterloney, decided in the House of Lords, 30th March 1772, No 100. p. 5539. was much insisted on in behalf of the executor, as a determination contrary to the principles formerly adopted. The Lords, however, considered that decision to have arisen from a destination made by the adjudging creditor, which had the effect of altering the course of the legal succession.

*Fil. Dic. v. 3. p. 269. Fac. Col. No 245. p. 377.*

1793. January 31.

Mrs ELIZABETH ROSS against THE TRUSTEES OF HUGH ROSS.

HUGH ROSS died in London in the year 1775, leaving a widow and two sons, Hugh and Andrew-William. Hugh the eldest succeeded to the whole of his father's landed property. As a provision for Andrew-William, his father granted a bond for L. 10,000 to certain trustees, for his behoof, payable at his majority.

Mr. Ross left his affairs in considerable disorder, and his eldest son having contracted large debts, the trustees of Andrew-William in 1776 thought it necessary to raise an inhibition against him.

Andrew-William attained the age of majority in 1777; but having soon after become insane, the Court of Session named a factor *loco tutoris*, to take charge of his interest.

In 1786, the Creditors of Hugh Ross the son brought an action of ranking and sale of his whole landed property. And in 1789, the factor *loco tutoris* of Andrew-William obtained an adjudication over it, in security of the sums contained in the above-mentioned bond of provision.

Andrew-William died in 1791, leaving no issue.

Hugh Ross served heir in general to his brother, and on that title executed a conveyance of the bond of provision and adjudication in favour of certain trustees, for behoof of himself and his creditors.

These trustees applied for an interim warrant of L. 10,000 on the purchasers of part of Hugh's landed property, to account of this debt.

No 101.

The annualrents due on a decree of adjudication, go to the heir, and not to the executor, of the adjudger.

No 102.

When an adjudication is led on a moveable debt by a factor *loco tutoris*, the debt remains moveable as to succession.