

## No 103.

Although only a small part of the debt for which an adjudication is led should be made effectual by it, and although the greater part of the debt should afterwards be recovered from personal effects of the debtor situated in a foreign country, it renders the whole debt heritable as to succession.

1794. May 21. GEORGE MUNRO *against* JAMES ALEXANDER.

JOHN ALEXANDER was creditor of William Macfarlane of Macfarlane, and of his sons, in a personal bond for L. 600.

In 1778, the Messrs Macfarlanes disposed their property in Jamaica, and the estate of Arrochar in Scotland, to trustees for behoof of their creditors.

John Alexander, and other personal creditors, afterwards led an adjudication against the estate of Arrochar, which was sold by judicial sale for L. 28,000.

The purchaser was allowed to retain L. 6000 to answer an annuity secured upon the estate. The remaining L. 22,000 were divided among the adjudging creditors, and Alexander received L. 92 : 14 : 11 as his proportion of it.

In 1787, he, along with the other creditors, granted a discharge and conveyance to the purchaser, whereby they ' sell, alienate, and dispone to him, ' the lands and barony of Arrochar, and further, make over and convey to ' him the said decret of adjudication, with the ground of debt, and that in so ' far as extends to the said sum received by us, and as tends to the said Wil- ' liam Ferguson, (the purchaser) and his foresaids, their further security of the ' said lands purchased by him, but reserving to us our interests in the reserved ' sum of L. 6000 remaining in the said William Ferguson's hands, for answer- ' ing Lady Colvill's annuity ; and we also reserve all right, title, and claim of ' right we have to the estate in Jamaica.'

In 1788 John Alexander died.

The trustees having, after his death, recovered part of the personal effects belonging to the Macfarlanes in Jamaica, the share which would have belonged to John Alexander was claimed by James Alexander as his heir, and by George Munro as his executor.

The trustees called both in a multiplepinding, in which Munro

*Pleaded*, The decree of ranking having precisely ascertained, in the lifetime of the original creditor, what part of the debt was secured by the adjudication, it can render the debt heritable only to that extent, especially as John Alexander himself was in fact denuded of the security by the discharge and conveyance granted to the purchaser.

Besides, the sums *in medio* arise from personal effects, which, both at the date of the adjudication and at the death of the creditor, were situated in a foreign country ; and therefore, as they were not subject to the law of Scotland, that diligence could not render them heritable.

*Answered*, John Alexander was not denuded of the adjudication at his death. He had only conveyed it to the purchaser to the extent of that part of the price paid by him ; and when a debt is secured by adjudication, however small the subject over which it extends, the whole sum is rendered heritable, every part of it being equally a burden upon land. The *jus exigendi* of course, at John Alexander's death, was in his heir, who consequently could have attach-

ed the whole property of his debtors, whether heritable or moveable, for his payment; and, on the same principle, he alone is now entitled to the dividends, from whatever quarter they may have been recovered.

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THE LORD ORDINARY found, 'That it is according to the situation of the debt as it stood at the time of the defunct's death, that the question is to be determined, whether a debt due to him is heritable or moveable. And in respect the debt in question, at the time of John Alexander's death, stood secured by an adjudication upon the estate of Arrochar, found, that the debt devolved upon James Alexander, as John Alexander's heir, and not upon his executor.'

On advising a reclaiming petition, with answers, the Court unanimously adhered.'

Lord Ordinary, *Justice-Clerk.* For Munro, *Solicitor-General Blair, C. Boswell.*  
*Alt. R. H. Cay.* Clerk, *Gordon.*

R. D. *Fol. Dic. v. 3. p. 270. Fac. Col. No 116. p. 258.*

1794. July 1.

THOMAS RYDER and his ATTORNEY, *against* The CREDITORS of HUGH ROSS.

MRS ELIZABETH ROSS obtained from her husband a bond of annuity, payable quarterly, in case of her surviving him. Each termly payment was enjoined under a penalty, and was to bear interest from the time it became due.

After her husband's death, she led an adjudication against the estate of her son Hugh Ross, 'in security and payment' of such termly annuities as should become due during her life.

Mrs Ross afterwards conveyed her personal property to Thomas Ryder, whom she appointed her executor and trustee.

Hugh Ross was her heir.

In the ranking of his creditors, it came to be a question, whether certain arrears of her annuity which had become due after the date of the adjudication, belonged to her heir or executor?

The creditors

*Pleaded,* It is a settled point, that interest falling due upon a debt secured by adjudication, goes to the heir; Ramsay against Brounlie, No 99. p. 5538.; Baikie against Sinclair, No 101. p. 5545. These decisions were given upon the principle, that an adjudication is a proper sale of the debtor's estate, burdened with a power of reversion, on payment of the principal, interest and expenses, which are thereby all consolidated into one indivisible sum.

The executor

*Answered,* The decisions of Ramsay and Baikie, and the principles on which they proceeded, are inapplicable to this case. Apprisings were originally sales under reversion; and although the modern adjudications for debts already due

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Where an adjudication has been obtained in security of such termly payments of an annuity as should afterwards become due, the arrears between the date of the decree and the death of the annuitant go to the heir.