

Pleaded by the Respondents.—The appellant is barred by personal exception from maintaining this suit, as well from his actually holding part of the lands of Drum by conveyance from the respondents, whose title, therefore, he cannot challenge, as well by his actual enjoying likewise a sum of money under the agreement, whereon his title is founded. Nor can this objection be removed but by giving up those lands, refunding all the rents, and repaying the 20,000 merks, with interest. Besides, the warranty in the disposition under which the appellant holds, renders the legal bar more conclusive. So does his special service to John Irvine, and to his grandfather and father, who were all barred from challenging the respondents' title by acts of agreement. By his positive ratification also, in 1733, of the disposition in favour of the purchaser, and his discharge of all claims. But more particularly, the decree of sale itself is a sufficient bar to this demand; and is a complete title to the respondents, necessarily precluding any further right of production, as long as the decree remains unreduced, the act 1695 making the title under a judicial sale the most perfect and absolute that can be had.

1770.

HASTIE, &c.
v.
ARTHUR.

After hearing counsel, it was

Ordered and declared that the matter pleaded by the respondents is not a bar to this action, or to the appellants' insisting therein, saving the benefit thereof to the hearing of the cause; and it is therefore ordered and adjudged that the interlocutors appealed from, so far as they are complained of by the appellants, be reversed. And it is further ordered that the respondents do produce the writs specially called for."

For Appellants, *Al. Wedderburn, Dav. Rae.*

For Respondents, *Ja. Montgomery, Al. Forrester, Tho. Lockhart.*

(M. 14,209 et F. C.)

Messrs. HASTIE & JAMIESON, Merchants in	}	<i>Appellants;</i>
Glasgow, - - - - -		
ROBERT ARTHUR, Merchant in Irvine, -		<i>Respondent.</i>

House of Lords, 10th *April* 1770.

SALE—BILL OF LADING.—Its effect in transferring the property of the goods.

For a full report of this case, *vide* M. 14,209, along with the subsequent part of it, after its return from the House of Lords.

1771.

MACKINNON,
&c.

v.

MACDONALD,
&c.

The circumstances were shortly these :—A consignment of tobacco and goods was made by Archibald Dunlop, a merchant in Virginia, to the appellants, Hastie and Jamieson, merchants in Glasgow, with whom there was a contract to furnish and ship Glasgow goods to Virginia to Dunlop, the latter binding himself to ship tobacco, and make remittances in return.

In August 1765, Dunlop shipped a cargo of tobacco, &c. The bill of lading bore that they were shipped on account and risk of the Virginia merchant, but “to be delivered unto Messrs. Hastie and Jamieson, merchants in Glasgow, or *their assigns*; he or they paying freight,” &c.

A few hours after the ship’s arrival in Port-Glasgow, the respondent, a creditor of Dunlop, arrested the ship and cargo for a debt due by him to the arrester.

Feb. 17, 2d &
19th July,
Nov. 29, 1768.
Aug. 4, 1769.
Mar. 2, 1770.

The Court of Session held that Archibald Dunlop was not divested of the ship and cargo, and therefore that the arrestment attached. And, on appeal to the House of Lords, it was

Ordered and adjudged that the interlocutors of the 17th February, 19th July, and 29th November 1768, and 2d March 1770, so far as they relate to the cargo, be reversed: And it is hereby declared that the appellants have a special property therein, preferable to the respondent’s arrestment: And it is further ordered and adjudged that the said interlocutors, so far as they relate to the ship, and all the other interlocutors complained of, be affirmed.

For Appellants, *J. Dunning, Tho. Lockhart.*

For Respondent, *Ja. Montgomery, Dav. Rae.*

(M. 5279; Brown’s Sup. 848, et 904.)

CHARLES M’KINNON, Esq. and his Guardians, *Appellants*;

SIR ALEXANDER MACDONALD, Bart., JOHN MAC-

KENZIE, his Trustee, and Lieutenant JOHN

MACKINNON,

} *Respondents.*

House of Lords, 25th February 1771.

SUCCESSION—SUBSTITUTE—RIGHTS OF Do.—A Sale by an heir-substitute coming into possession as nearest heir at the time of the succession opening, cannot be set aside by a nearer heir born sometime afterwards, of a second marriage.

For full report of this case, see Morison, p. 5279.

The question arose in the following circumstances :—An estate was conveyed to the *eldest son* of John Mackinnon,