

1. That as the nature of his officé did not impose upon him a mere individual duty as a single servant of the Court, but created him the head of a general department, having the controul of all the subordinate officers who were necessary to perform the services of the Court, the appointment of the respondents was an encroachment upon his rights; and that the statute expressly declared, that the 'officers in that Court who have grants of their offices during life, or of inheritance, shall enjoy their offices according to the nature of their gifts.' And,

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2. That he was ready to establish, that there was the most complete and perfect identity between the functions performed by the respondents, and those which he and his deputies were entitled to discharge, and had been in the practice of doing:

The House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed.'

J. CAMPBELL—A. MUNDELL,—Solicitors.

(*Ap. Ca. No. 21.*)

GEORGE DUNLOP, Writer to the Signet, Trust-Disponce of Dr DAVID RAMSAY, Appellant.—*Fullerton—Murray.* No. 17.

Admiral Sir ALEXANDER INGLIS COCHRANE, Respondent.—*Shadwell—Menzies.*

Adjudication—Trust-Disposition—Title to Object.—A party being in possession of an estate under an ex facie good title, but not infest, and another party, with a view to make up a tentative title to the estate, having executed a disposition of it in favour of his agent ex facie absolute, but qualified with a back-bond declaring that it was in trust; and the trustee having brought an adjudication of the estate, founding on the disposition;—Held, (affirming the judgment of the Court of Session), 1. That the party in possession was entitled to object to the adjudication; and, 2. That it was not competent to adjudge the estate on such a disposition.

IN 1719, Alexander Inglis executed an entail of his estate of Murdiestoun, in the county of Lanark, in favour of Alexander Hamilton, and a series of substitutes, who were bound to assume the name of Inglis. In virtue of this deed, Alexander Hamilton acquired right to the estate, and possessed it till 1783, when he died, and was succeeded by his younger brother, Gavin. On the death of Gavin, in 1798, he was succeeded by his youngest

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March 31. 1824. brother, General James Inglis Hamilton, who being advised that the entail was ineffectual, executed a new deed of entail in favour of Colonel James Inglis Hamilton, and his heirs; whom failing, the respondent, Admiral Sir Alexander Cochrane. General Inglis Hamilton died in July 1803, and was succeeded, under the new entail, by Colonel James Inglis Hamilton, who fell at Waterloo in June 1815, leaving no issue. The respondent then took possession of the lands, and obtained himself served and retoured heir of tailzie and provision to Colonel James Inglis Hamilton, under the new entail. Soon thereafter, and before the respondent was infest, Dr David Ramsay, alleging that he was heir of line in general of Alexander Inglis, (who had executed the original entail), granted, on the 22d December 1818, an ex facie unqualified disposition of the estate of Murdiestoun, in favour of the appellant Mr George Dunlop, writer to the signet, his law-agent, and at the same time obtained from him a back-bond, declaring that he held the estate in trust for his behoof. Dr Ramsay then took out a brief, and obtained himself served in the above character before the Magistrates of Culross, on the 9th January 1819. In the month of May following, Mr Dunlop, after having charged Dr Ramsay in usual form, brought an adjudication in implement of the estate, in which the Lord Ordinary decerned in absence. Appearance was then made by the respondent, who lodged a representation, in which he contended, that as he was in possession of the estate under an ex facie good title, it was not competent for Dr Ramsay to grant a disposition of it, and therefore he was entitled to resist the adjudication. On the other hand, Mr Dunlop contended, that, as the respondent had no feudal title to the estate, he had no right to appear; and that even although he had such a title, a disposition with a trust-bond was a proper form for trying the question of right to the estate, and accordingly was daily made use of for that purpose.

The Lord Ordinary, on advising the representation, with answers, appointed them to be printed, in order to be reported to the Inner-House, and at the same time issued this note:—‘ The Lord Ordinary has appointed this cause to be reported, not from considering that, after the numerous decisions of this Court, the case is attended with difficulty; but because wherever there is any question with regard to a tentative or vesting title, it requires the most summary dispatch that the forms of the Court can admit of.’

The case having accordingly come before the Court, their

'Lordships refused the representation, and of new decerned and adjudged in terms of the libel. The respondent having reclaimed, the Court, on the 29th of February 1820, altered and dismissed the process of adjudication; and to this interlocutor they adhered on the 12th of May 1820, by refusing a petition for the appellant, without answers.* Thereafter, the respondent obtained a decree of reduction of the service of Dr Ramsay, and got himself infest in the estate. March 31. 1824.

Against the above judgments of the Inner-House the appellant entered an appeal, and contended that they ought to be reversed, for these reasons:—

1. Because, as the respondent had not been infest in the estate of Murdiestoun, he had no right to appear as a party in the adjudication.

2. Because, even although he had made up a title to the estate, still he was not entitled to appear in the process, as the object of the adjudication in implement was merely to attach any right which Dr Ramsay might have to the estate, *tantum et tale* as it stood in his person, and was not intended to affect, nor could it injure, the right of the respondent to that estate. And,

3. Because an adjudication in implement, upon a disposition to an estate, with a trust back-bond, was a mode of making up a tentative title, laid down by institutional writers on the law of Scotland, and recognized by various decisions of the Court of Session: that if the respondent had a right to the estate, it could do him no injury, while, if the adjudication were not permitted to proceed during the life of Dr Ramsay, and if he had the best right to it, he would be deprived of the power of executing any settlement in relation to the estate.

To this it was answered,—

1. That as the respondent was in possession under an *ex facie* good title, he had a right to maintain and defend that possession, by resisting every encroachment upon it. And,

2. That an adjudication in implement of an estate not proved to belong to the disponent, but of which another party stood possessed, was contrary to the principles of law, and not sanctioned by any authority. In support of this it was maintained, that as a decree of adjudication in implement of such a disposition, im-

* See Fac. Coll. 4th July 1820, where it is stated, that 'a majority of the Court were of opinion, that it would be harsh to allow infestment to proceed upon this adjudication. With regard to the alleged practice, they thought that, if it existed, it was improper, and the sooner it were checked the better.'

March 31. 1824. plied that the lands belonged to the disponent, and that they had been conveyed by him to the pursuer of the adjudication; and as the decree formed the warrant on which a charter and sasine from the superior might be obtained, the adjudger might thereby be enabled to make up an *ex facie* valid and effectual title to the property, and put it upon record, so that the party in possession of the estate would appear to be entirely divested, and on his death it would be impossible for his heir to serve to him as *ultimo vestitus et sasitus ut de feodo*. That it was true that, by the practice and law of Scotland, adjudications were allowed upon trust-bonds for sums of money, but such a proceeding was entirely different from that of an absolute conveyance of the property, seeing that it merely created a burden on the estate, and did not divest the person in possession of the fee; and although it was also true, that in some instances titles had been made up on adjudications proceeding on dispositions qualified with a back-bond, yet this had always taken place where the disponent was the true proprietor, and no other party was in possession.

The House of Lords 'ordered and adjudged, that the appeal 'be dismissed, and the interlocutors complained of affirmed; 'and it is further ordered, that the appellant do pay to the respondent, Sir Alexander Inglis Cochrane, L. 100 for his costs.'

Appellant's Authorities.—4. Stair, 51. 9.; 3. Bank. 5. 101.; Tod, December 16. 1707, (190.); 3. Stair, 3. 47.; Govan, March 10. 1813, (not rep.); Beveridge, July 10. 1793, (5296.); Kerr, January 19. 1808, (No. 6. App. Adjud.)

Respondent's Authorities.—3. Stair, 2. 53.; 3. Bank. 2. 83.

J. RICHARDSON—SPOTTISWOODE and ROBERTSON,—Solicitors.

(*Ap. Ca. No. 22.*)

No. 18. Sir C. B. CODRINGTON, Executor of the Countess of Bath,
Appellant.—*Fullerton—Stephen.*

Sir GEORGE F. JOHNSTONE, and Others, Trustees of Sir JOHN
JOHNSTONE, Respondents.—*Warren—Murray.*

Passive Tillc—Confusion.—A party having obtained himself served heir-male and heir of line of another, and having intromitted with the rents of an estate to which he had