

No 97. and particularly *Voet. cap. 7. de natura mobilium et immobilium*, that *actiones ad res immobiles tendentes pro immobilibus habentur, nam qui actionem habent, rem ipsam habere censentur, quia per eam non stat*; and *Stair, lib. 2. tit. 1. § 3.* shews that destination can *ipso facto* render a moveable sum heritable; and all know that a requisition or charge of horning makes an heritable debt moveable, and all because of the indication of the creditor's mind, even so here. *Answered*, Every incoherate act does not alter or change the nature of things, neither is it always the party's design to have his money when he raises an adjudication, but oft times it is rather to secure it: yea the declared intention of calling for a sum in a bond secluding executors by a charge of horning has been found not to make the sum moveable. See *M'Kenzie's Instit. book 2. cap. 1.* and the act 32d Parliament 1661 excepts no bonds from being moveable as to children's succeeding therein, save only bonds bearing clauses of infeftment, or expressly secluding executors. THE LORDS found the raising, executing and insisting in a process of adjudication, where the creditor died before he obtained sentence, did not alter the nature of the debt from what it was formerly, so as to render it heritable or make it fall to the heir.

Fol. Dic. v. 1. p. 372. Fountainball, v. 2. p. 81.

No 98.

1723. November 12. REIDS against CAMPBELL.

AN adjudication led upon a moveable bond, makes it become heritable so as not to be alienable upon death-bed. See APPENDIX.

Fol Dic. v. 1. p. 372.

No 99.

An apprising, and all annualrents due thereon, belong to the heir, and not to the executor.

1738. December 1. RAMSAY of Wyliccleugh against BROUNLIE.

FOUND that an apprising, and whole sums therein contained without distinction between principal sum and annualrents, accumulate sum and annualrents thereof, or accessories thereto, do belong to the heir, and no part thereof to the executor, notwithstanding the appriser died within the legal.

The question arose upon the allegation of the reverser, That the apprising was extinguished by the possession of the appriser's heir within the legal; which depended upon this, Whether the bygone annualrents at the appriser's death belonged to his executors or to his heir? If to his executors, the apprising was extinguished by the heir's possession within the legal.

It had been a received notion, that the bygone annualrents, at the appriser's death, fell to his executors, and there were several instances condescended on of confirmations of such bygones; and so much was the Court of that opinion,

that, when this question was first stirted, the President, and he only, spoke of it as a doubtful point. But when the matter came to be more maturely considered, the Court came unanimously into the above decision, as great inconveniencies must have arisen from a contrary judgment, and occasion been given to many questions not dreamed of, concerning estates possessed upon apprisings.

So, upon examining the nature of an apprising, it was judged to be a proper sale under redemption, whereby the land which descends to the heir comes in place of the debt, which no more exists as to either principal or annualrents: whereas, were it a *pignus prætorium* or legal disposition in security during the legal (which had been the common notion) then the debt still subsisting till expiry of the legal, the appriser dying within the legal, the bygone annualrents of it would fall to his executors.

Fol. Dic. v. 3. p. 269. Kilkerran, (ADJUDICATION AND APPRISING.) No 3. p. 3.

No 99.

1769. December 14.

ROBERT WILLOCH and Others, Trustees of the deceased George Auchterlony, Merchant in London, *against* JOHN AUCHTERLONY, Merchant in Montrose, Grand-nephew and Heir of Line of the said George Auchterlony.

THE funds and estate of George Auchterlony in the year 1762, his brother Alexander and nephew George being then both dead, consisted, besides others, of the following particulars:

1^{mo}, In virtue of his own original right he was possessed of the sum of L. 4517: 15s. part of the principal sum of an heritable bond over the estate of Stanhope, of date the 12th November 1737, and upon which an adjudication had been led 28th July 1738.

2^{do}, He had right to certain annuity bonds granted by the York Buildings Company, issued in 1730, and which had been secured by infestment and adjudication obtained upon the Company's estates in Scotland.

3^{tio}, The residue of the above heritable bond on Stanhope, amounting to L. 5500, was, by a proper deed in the Scottish form, dated 17th October 1753, vested, the *fee* thereof, in John the defender's uncle; and had accordingly, upon his death in 1762, devolved upon the defender himself as his heir. The liferent and annual interest of this sum had been settled upon George by his brother Alexander's settlement, of the above date; but as, owing to the involved situation of the estate of Stanhope, little of the interest had been paid, there was due to George, at the time of his death in 1764, an arrear of interest amounting to L. 4296.

George Auchterlony, on the 27th February 1762, executed, in the Scottish form, a disposition and assignation; whereby he disposed and conveyed his own proper share of the debt affecting the estate of Stanhope, being L. 4517: 15s.

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No 100.

Arrears of interest upon a debt secured by adjudication, found heritable and not transmissible by testament. Altered upon appeal.