

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,

an attainted party, whom failing, “ to any other son or sons
 “ of the body of the said John Mackinnon, the father, (at-
 “ tainted person,) according to their seniorities; *whom fail-*
 “ *ing*, to John Mackinnon of Missinish.” The eldest son
 died without issue, and the attainted person, although then
 alive, having then no other sons in existence to take the estate
 in virtue of the above destination, Mackinnon of Missinish,
 as specially substituted therein, served heir, was infeft, and
 took possession. Some time thereafter, the attainted father
 married a young lady, and had two sons by the marriage,
 who were nearer heirs; but, in the interval, Mackinnon of
 Missinish had sold the estate. The question of law, in these
 circumstances, for the decision of the Court was, Whether
 an heir-substitute in possession of, and infeft in, the estate,
 but whose title was defeasible or determinable by the birth
 of a nearer heir, could sell the estate, and so disappoint his
 succession? Held, by the whole Court of Session, that as
 he was the nearest heir in existence at the time of the suc-
 cession opening, he was entitled to be served heir of provi-
 sion, and to take possession of the estate, and this absolute-
 ly, without any restraint against selling, unless such restraint
 were imposed by the deed; and sustained the defences
 against reducing the sale.

1771.

SINCLAIR, &c.
 v.
 FRASER, &c.

Against this judgment appeal was taken to the House of
 Lords.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and
 that the interlocutors therein complained of be, and the
 same are hereby affirmed.

For Appellants, *Ja. Montgomery, Al. Forrester.*

For Respondents, *Al. Wedderburn, Tho. Lockhart, Ar.
 Macdonald.*

(M. 4542.)

ARCHIBALD SINCLAIR, Esq. and WILLIAM SUTHERLAND, his Attorney, } *Appellants;*
 ALEXANDER FRASER, Esq. and JANE, his Wife, } *Respondents.*

House of Lords, 4th March 1771.

FOREIGN DECREE.—Effect of a Foreign decree, when founded on in
 the Courts of Scotland.

For Report of this Case, *Vide Morison, 4542.*

The appellant Sinclair having, as attorney in Jamaica,