

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.

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

No 103.

No 104.

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.

No 104. might more properly have been considered as improper wadsets, yet to prevent the confusion which an alteration of practice in that particular would have occasioned, the same legal effects have been attributed to them. But an adjudication like the present has no resemblance to either. It has no legal as other adjudications, and it cannot be redeemed on payment of any known specific sum. It cannot therefore be considered as a sale, as no price is either paid or fixed on. In short, the adjudication in question is precisely of the same nature with a voluntary infestment of annualrent, and there is no reason that arrears on the one should be in a different situation from those on the other.

The Lord Ordinary reported the cause on informations.

Observed on the Bench, An adjudication for future annuities is a security for a conditional debt; but so soon as they are due, it becomes a security for a pure one. The lands are then adjudged *in solutum* of the arrears, payment of which becomes a condition of the reversion. The interest due upon these termly payments, is likewise heritable, upon the principle which has uniformly been considered as settled by the case of Ramsay against Brownlee, No 99. p. 5538.

THE LORDS unanimously found, 'That in virtue of the decret of adjudication obtained by the deceased Mrs Elizabeth Ross, the annuities in question were rendered heritable property, and now descend to the heir.'

Lord Reporter, *Swinton*. For the Executor, *Hope*. Alt. *Honyman*. Clerk, *Sinclair*.
D. D. *Fol. Dic. v. 3. p. 270. Fac. Col. No 127. p. 285.*

S E C T. XVIII.

Accessory Security.

1628. *March 12.* CRAW *against* EARL OF KELLIE.

No 105. A BOND of corroboration of a former contract, which was heritable, is likewise found heritable, and does not alter the nature of the debt.

Fol. Dic. v. 1. p. 372. Auchinleck, MS. p. 145.

1664. *June 15.* EARL OF MARR *against* HAMILTON.

No 106. A BOND being granted before the act of Parliament 1641, by the decest Earl of Marr, to the decest John Hamilton of Clatto, bearing annualrent;