

No 20. butnot, until the price is actually paid to the creditors ; and, therefore, the price cannot be said to be a burden on his estate. The decree of sale does not give a right to the purchaser ; it gives no more than a conditional right, viz. on payment of the price to the creditors, as ranked ; and on James Arbuthnot's death, it was incumbent on his executors to purify that condition.

' THE LORDS adhered to the Lord Ordinary's interlocutors, and found Mrs Ann Arbuthnot only liable to the extent of the inventory.'

Act. *M^cQueen.*

Alt. *Dean of Faculty.*

Clerk, *Gibson.*

Fol. Dic. v. 3. p. 257. Fac. Col. No 74. p. 180.

1782. November 19. SAMUEL BROWN *against* PATRICK BROWN.

No 21.
Found, that
the heir-
general is
liable to re-
lieve the heir
of conquest.

* * See, as explanatory of this case, a prior question between Samuel Brown and Peter Blackburn, *voce* PASSIVE TITLE.

THE pursuer having failed in obtaining relief from Mr Blackburn, as intruder with the personal estate, insisted against Mr Patrick Brown, as heir-general to the deceased, and consequently liable to relieve the heir of conquest from all obligations not immediately affecting the subjects falling under the succession of the latter.

Pleaded in defence ; The grandfather of the deceased left four sons. The defender represents the eldest ; the pursuer the second ; the defunct was the son of the third ; and there was likewise a fourth son, who had issue. As by the law of Scotland the heritage or general representation of the deceased brother or uncle descends to the next younger brother or uncle ; the representative of the fourth son, and not the defender, who is the descendent of the eldest brother, is heir of line to the deceased. In England again, the law of which regulates the succession in the island of Jamaica, as the real estate of every denomination goes to the eldest brother, the defender, in place of being obliged to relieve any other heir, would be entitled himself to the succession.

Hence, as matters stood at the predecessor's death, the period when rights of succession are finally ascertained, the present claim was altogether incompetent ; nor ought the extraneous circumstance, of the defender's having a residence in Scotland, to subject him to that right of relief, which the peculiarity of the law of this country indulges to heirs of conquest.

Answered ; In whomsoever the general representation of the deceased is vested, that person must be liable primarily to all his debts. Heirs of a particular denomination, such as conquest, provision, marriage, or heirs-male, who succeed to the subjects specially devised to them, either by provision of law, or the destination of the proprietor, are considered, with regard to him, as singular successors, and their several interests admit no defalcation, while he who is held to be *eadem persona cum defuncto* is possessed of effects sufficient for their relief.

Nor is it of importance in the present question, that by the law of England, the defender is entitled to the whole real estate; nor that, by the law of Scotland, the descendants of a younger brother would have excluded them from the succession. As of all those who enjoy any part of the predecessor's estate, he alone is entitled to the character of heir-general, every burden which is not of its nature applicable to the estate falling to the particular heirs, must affect him only,

THE LORDS repelled the defences.

Lord Reporter, *Halles*. Act. *Rae*. Alt. *David Armstrong*. Clerk, *Home*.
C. *Fol. Dic. v. 3. p. 256. Fac. Col. No 67. p. 105.*

1786. January 17. MRS ELIZABETH ROSE *against* JAMES ROSE.

THE estate of Kilravock descended in part to Mrs Rose, the heir of line; and in part likewise to James Rose, the heir-male. Certain debts of the family were contained in heritable securities, affecting indiscriminately both these portions of the estate. In an action, therefore, at the instance of the heir of line, against the heir-male, the question came to be agitated, Whether she ought to be relieved of a part of the debts corresponding to the proportion that the heir-male's succession bore to the whole lands burdened. In defence it was

Pleaded for the heir-male; The heir-general, or of line, as the proper and primary representative of the deceased in heritage, is alone liable for his heritable debts; while heirs of tailzie and of provision, who in the first instance are deemed singular successors, are never subjected, except *subsidiarie* on the failure of the former. Nor in any case is a deviation from this rule of law to be admitted, without the most unequivocal expression of will by the predecessor; and then, no doubt, a man may burden with the payment of his debts any of his successors whom he chuses. *Russell contra Russell*, No 15. p. 5211; and *Campbells contra Campbell*, No 16. p. 5213.

Our more ancient lawyers, Hope, for example, and Craig, agree in the doctrine, and the latter quotes a decision*, by which it was directly found, That the heir of line is bound to relieve even an heir of tailzie from an obligation on the ancestor to convey to another party the very tailzied subjects themselves. *Jus Feud. lib. 2. diæg. 17. § 19.*; *Maj. Pract, voce TAILZIE*. Dirleton and Stewart likewise seem to entertain similar sentiments; *Doubts, voce HEIR OF TAILZIE*.

The opinion of Stair is, That where a burden has been laid on particular lands or rights, *and no other*, in that single case, the heir of the special subjects is obliged to relieve the heir-general, b. 3. tit. 5. § 17.; an opinion which, though perhaps not quite conformable to the above, is equally favourable to

No 21,

No 22.

An heir-male found entitled to relief, from the heir of line, of heritable debts secured on the succession of both indiscriminately.—Reversed on appeal.

* See TAILZIE.