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the *parish*; and therefore the present augmentation being sought to augment the stipend of ministers within burgh, the Court of Teinds had no jurisdiction over the funds of such a corporation.

After hearing counsel, it was
Ordered and adjudged that the interlocutor complained of be, and the same is hereby affirmed.

For Appellants, *C. Yorke, Al. Wedderburn.*

For Respondents, *Tho. Miller, Al. Forrester.*

Note.—This case is reported in Morison's Dictionary, p. 7476; and Fac. Coll. p. 244. It is there stated that the objection to the jurisdiction of the Court of Teinds was *repelled*, without observing that, on further discussion, this judgment was altered: and the objection to the jurisdiction *sustained* by the Court; and no notice is taken of the affirmance of this last judgment in the House of Lords. *Vide* Ersk. b. i. tit. 5. § 23, who founds correctly on the latter judgment, and lays down the law in conformity with it.

ALEXANDER BURNET, Charge des Affaires at the Court of Berlin,	- - -	} <i>Appellant</i> ;
SIR THOMAS BURNET, Bart.	- - -	

House of Lords, 30th April 1766.

SUCCESSION—ADJUDICATIONS—DESTINATION—HEIRS WHATSOEVER
—CONFUSIO.—Adjudications were purchased up by the heir succeeding to an estate specially destined to “*heirs male*.” He took the conveyances of these adjudications to himself and his “*heirs whatsoever*.” Held, that when the estate descended to an heir male, different from the heir of line, or heir whatsoever, that the heirs of line were not entitled to succeed as such, to the adjudications; and that these, as collateral and accessory rights, had accrued to the family estate, and were not now a separated estate, but extinguished *confusione* in the person of the heir male.

In the year 1700 Sir Thomas Burnet settled his estate of Lees by a tailzie, upon Alexander, his eldest son, and the “*heirs male of his body, whom failing, to his other heirs male*,” reserving a power to himself to alter the tailzie, and to charge the estate at pleasure.

His eldest son being married to Miss Helen Burnet, only

daughter and heiress of Robert Burnet of Cawton, by their marriage contract, the lady's father conveyed his estate of Cawton to his daughter; and Sir Thomas Burnett, on his son's behalf, became bound, that if he should exercise the powers reserved to himself, of altering or burdening the estate entailed on his son, so as to defeat and disappoint his right and succession to the same, "to recompense and pay to the said Alexander Burnett, his heirs and assigns, the sum of £40,000 Scots (£3333. 6s. 8d.), at the first term after his using any such redemption, or doing any fact or deed to the exclusion of the said Alexander Burnett, and the heirs male of his body, from his succession to his said estate."

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On Sir Thomas Burnett's death, Alexander, his eldest son, now Sir Alexander, succeeded; and an agreement, or postnuptial contract, was entered into with his mother, and wife and self, having in view to diminish the burdens on the estate, in so far as the provisions affecting these were concerned; he became bound "to provide and settle his whole lands, pertaining to him at the time of his lady's death, upon himself for life, and their eldest son, and the heir's male of his body, whom failing, to the other heirs male procreate of the marriage; whom failing, to his other heirs male whatsoever in fee."

Feb. 5, 1714.

At this time the exact state of his father's affairs (Sir Thomas) were unknown; but these, being afterwards made known, turned out to be bankrupt. Sir Alexander was advised to repudiate, and enter heir *cum beneficio inventarii*.

Having thus been deprived of the estate entailed on him by his father, he took measures to secure himself in payment of the £40,000 Scots, provided to be paid to him in his marriage contract, on the event that had now happened, namely, of being deprived of the estate by the debts and incumbrances of his father. He assigned this obligation to a trustee, who brought an action upon it, obtained decree, and led adjudication against the estate upon this and other debts, which he had bought up. This adjudication, together with other two, were afterwards conveyed, together with the lands adjudged, to Sir Alexander Burnett, "his heirs and assignees whatsoever."

In an action brought in 1721, it had been decided by the Court that Sir Alexander Burnett, the son of the entailor, was not bound by the entail, as it might, in consequence of the reserved powers, be altered and cancelled at

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any time ; and as it could not be found at his death, it was to be presumed cancelled. But the estate otherwise stood by the investitures thereof destined to *heirs male*.

1759. Sir Alexander continued to possess the estate till his death in Dec. 1758, gradually paying off, by good management, the debts on the estate, and never altering the securities, or conveyances of the debts and adjudications, which were taken to his heirs of line, not to heirs male. On his death, he left an only son, Robert, and two daughters. The son, Sir Robert, in order to connect himself with the whole legal title then in his father, namely, that by *cum beneficio inventarii*, as well as that by purchase, under the adjudications, served himself in the two characters of heir male and heir of line, and was infeft. He died, of this date, without issue, being succeeded by his cousin, the respondent, as heir male.

The present question was then raised by the appellant, the son of Helen Burnett, Sir Alexander Burnett's eldest daughter, as one of the heirs portioners and heirs of line of Sir Alexander, in so far as the debts secured by adjudications, which bore to be in favour of his heirs whatsoever, were concerned. He therefore raised action concluding for payment of one half of the debts secured by the adjudications, contending that as these bore expressly to be conveyed "to Sir Alexander Burnett, and *his heirs whatsoever*," one half descended to him, as his heir whatsoever and of line, as a distinct and separate estate from the land estate, over which they were burdened. In defence, it was pleaded, 1st, That the words "heirs whatsoever," in the conveyance of the adjudications, must be understood to denote the heirs male succeeding in the estate ; and that the adjudications were extinguished *confusione* in the person of Sir Alexander and his son, who made up titles as heirs male, and thereby became debtors and creditors in the several debts ; 2d, That Sir Alexander, by taking the conveyances of the adjudications to himself and his heirs whatsoever, did not intend thereby to create a separate estate, descendible to his heirs of line, for this practically would be, to perpetuate the incumbrances on the estate ; but, as collateral rights, these adjudications accrued to the family estate, and were extinguished *confusione* in the person of the heir succeeding, or acquiring the same.

July 7, 1763. The Lord Ordinary, of this date, pronounced this interlocutor : " Found that the three adjudications, with the

“ grounds of debt libelled on, conveyed to the deceased Sir
 “ Alexander Burnett, his heirs and assignees whatsoever,
 “ are not now a separate estate belonging to the pursuer,
 “ and Robert Aberdeen, as heirs of line to the said Sir Alex-
 “ ander, but that the same are now descended, and proper-
 “ ly vested in the defender, as heir male and of investiture
 “ of the said lands contained in said adjudications.”

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On representation and reclaiming petition, the Court “una- Dec. 24, 1764.
 nimosly sustained the defences and adhered.” An appeal was
 taken to the House of Lords against these interlocutors.

Pleaded for the Appellant.—In the law of Scotland the
 words “ heirs whatsoever,” have a clear determined signifi-
 cation; they denote the heirs of line, or heirs at law, in
 contradistinction to heirs male, and carry every subject of
 succession falling under that title, as distinct from the suc-
 cession taken up as heir male. This is further strengthen-
 ed by the evidence of intention, from the terms in which
 these rights are conceived, and also in the origin of the
 £40,000 Scots bond, which was given to the lady, and was
 secured for the behoof of the issue of the marriage, whereas,
 if it had been intended to go to the heir male, it would have
 been so expressed, in accordance with the settlement of the
 estates then made. Therefore Sir Alexander, in settling it
 on heirs whatsoever, intended to secure the £40,000 Scots
 on the issue of the marriage, in preference to his collateral
 heirs male, who could have no title in law or equity to Lady
 Burnett’s own estate; to the exclusion of her own issue.

Pleaded for the Respondent.—That the words “ heirs
 whatsoever,” had no fixed or determined meaning, and
 were descriptive of all kinds of heirs, and applicable, ac-
 cording to circumstances, and the apparent intention of
 parties, to heirs of line, heirs male, heirs of conquest, of tail-
 zie, or of provision; and where the settlements of an estate
 are devised to heirs of any particular character, the acqui-
 sition of collateral rights, or incumbrances affecting that
 estate, though conceived in favour of *heirs whatsoever*, are
 carried as accessory, and must belong to the heir of the
 estate. If Sir Alexander intended to preserve the debts as
 a separate estate, descendible to his heirs of line, distinct
 from heirs male, he would have left some deed as evidence
 of this his intention; but the adjudications conceived in
 terms to him and his heirs whatsoever, are no evidence of
 such intention, but leave these debts to go as accessories of
 the estate to the heir male.

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After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors complained of be affirmed; and it is farther ordered that the appellant do pay to the respondent £80 costs, in respect of said appeal.

For Appellant, *Thomas Miller, Fl. Norton.*

For Respondent, *C. Yorke, Al. Wedderburn.*

Note.—This case is not reported, but a subsequent case between the same parties appears reported. *Vide* M. 14939; Fac. Coll. iv. p. 221; by mistake, it is stated that this last case was appealed; but the judgment in the House of Lords there affixed, does not apply to that case, (which was not appealed,) but to the present case, now for the first time reported.

BLAIR and Others,	-	-	-	<i>Appellants;</i>
SIR WILLIAM MONCRIEFF, Bart.	-	-	-	<i>Respondent.</i>

House of Lords, *5th May* 1766.

CONTRAVENTION OF MARRIAGE CONTRACT—SERVICE—MINORITY—PASSIVE TITLE—RATIFICATION.—1. Held that the heir of the marriage is entitled to reduce a deed executed in fraud of the marriage contract, without expeding a general service; 2. Held such heir is entitled to set aside a general service expedite in his name in minority, to his hurt and prejudice, in so far as it made him universally liable for his father's debts; 3. Also held, that as his ancestor died in apparenacy in regard to Moncrieff estate, he was entitled to pass him over and serve heir to his grandfather, without being liable for the debts; and as to the other provision, or estate of £5555. 11s. 1d., and 100,000 merks, he was not liable *passive*, he not having taken benefit from that estate, and that a sum of £2500 received to ratify these did not make him liable *passive*.

Sir Thomas Moncrieff having no issue, became a party to his nephew's marriage contract, and thereby conveyed his estates of Moncrieff and Fordell to him *and the heirs male of that marriage*. Provision was made by a jointure to the lady; and the nephew was strictly prohibited from executing any voluntary deed, to the prejudice of the heirs male of the marriage. Sir Thomas also bound himself to secure him and his said *heirs male of the marriage* in the sum of £5555. 11s. 5d., payable the Whitsunday after his death.