

to the said age, and being married; with interest after his death; and, in case of the death of any of the children, before the term of payment of their proportion of the sum, declared the portion of the children, so deceasing, should fall and be divided, as two Gentlemen by him named should appoint; 'With power to the said James Stewart to uplift and receive the annualrent of the said principal sum, during the minority of the said children; he always employing the said annualrents for their use and behoof allennarly.' And, in case any part of the principal sum should be thought necessary to be raised, for putting the sons to apprenticeships, with power to James Stewart to uplift such part thereof, as the said Gentlemen should appoint; which his heirs, &c. should be obliged to pay, albeit the term of payment were not then come; and excluded James Stewart's title, as administrator-in-law to his children in the said sum, or any other title to uplift any part of it, otherwise than in manner above provided. And, by a subsequent bond, on the same paper, gave them the sum of 9000 merks, 'and appointed it to be paid and divided amongst them, in the same way and manner, and with the same conditions and restrictions as was provided by the within bond, that the 36,000 merks should be paid and divided, at the sight of, and by the direction of the said two Gentlemen;' reserving to himself power of revocation and alteration over both bonds.

The children of James Stewart pursued Sir Patrick Hepburn Murray, Mr Murray's representative, for the contents of both bonds, with interest from the granter's death.

Answered, There is no interest due on the second bond.

Pleaded for the pursuers, The sum in the second bond is appointed to be paid and divided, in the same manner, and with the same conditions and restrictions as is provided by the other bond; and the condition of the other bond is, That the pursuer's father should uplift the annualrent thereof, for their aliment; as also, in certain circumstances, part of the principal, under the restrictions to which he is made subject.

Pleaded for the defender, Interest is due *ex pacto*, and there is none here made payable: It is not the interest of the first sum, but the principal, the manner of division whereof is determined; and the second is to be divided in the same way.

THE LORDS found interest due.

Reporter, *Drummore.*

Act. R. *Dundas.*

Alt. R. *Craigie.*

Clerk, *Pringle.*

Fol. Dic. v. 3. p. 305. D. Fal. v. 2. No 164. p. 186.

1754. *July 2.*

MACDONELL *against* MACPHERSON.

MACDONELL of Shian, in the year 1739, was debtor in a bill to the deceased Fraser of Belnain.

No 18.

to the same creditors. In one of these bonds, interest was allowed from the death of the granter; but, in the other, there was no mention of interest. Found, that interest was due upon both from the granter's death.

No 19.

A purchaser became bound to pay to a

No 19.
 creditor on
 the estate pur-
 chased, a cer-
 tain sum, up-
 on his grant-
 ing a convey-
 ance of his
 debts. One
 of these debts
 was an adju-
 dication, led
 by a third
 party, which
 had been paid
 by this credi-
 tor, who, in
 place of tak-
 ing a convey-
 ance, had
 granted a dis-
 charge. The
 adjudication,
 grounds there-
 of, and dis-
 charge hav-
 ing been lost,
 the creditor
 was ordained
 to raise an im-
 probation of
 the adjudica-
 tion, in name
 of the purcha-
 ser, to disbur-
 den the estate
 thereof.

In the year 1740, Belnain adjudged the lands of Shian for that sum, and charged the superior ; but no infeftment followed.

Macdonell of Glengary paid the debt for Shian ; but, instead of a conveyance being given to him to the debt and adjudication, a discharge was given by Belnain to Shian ; and Shian granted an heritable bond to Glengary, in which, among others, this sum was comprehended.

In the year 1751, Shian sold his estate to Macpherson of Killichuntly ; at the same time, by contract of agreement, Killichuntly bound himself to pay to Glengary a certain sum, upon Glengary his granting to Killichuntly a sufficient conveyance of the said debts.

Glengary pursued for the sum ; Killichuntly refused to pay till Shian's bill to the deceased Belnain, and the adjudication, were conveyed to him, in terms of his obligation, which did not bind him till he had a conveyance of the debts.

The bill, and discharge, and adjudication, had all been lost ; and Belnain's son, not entering heir to his father, refused to grant a conveyance of the adjudication, lest he should involve himself in a passive title ; but Glengary offered caution to Killichuntly, that the bill or adjudication should not affect the estate : Killichuntly *answered*, That caution would not protect the estate against an expired legal.

The precise meaning of parties, as to the necessity of the conveyance in question, was not clear from the terms of the agreement ; neither was a parole proof offered, with precision to fix it.

Observed on the Bench, That Killichuntly was in no danger from the expired legal, as no infeftment had followed on the adjudication ; his danger, too, was the less, especially after so long delay.

But it being likewise *observed*, That the charge against the superior might be considered as equal to an inhibition, and thereby render the adjudication effectual even against a purchaser ; the LORDS took a middle course, and

' ORDAINED Glengary to raise an improbation, in name of Killichuntly, against the adjudication in question ; and, in the mean time, ordained Killichuntly to pay the annualrents of the debt to the pursuer.'

For Glengary, *Lockhart, J. Dalrymple*. For Killichuntly, *Macdowal, Hamilton Gordon*.
 Clerk, *Forbes*.

J. D.

Fac. Coll. No 110. p. 161.

No 20.
 An heir of
 provision,
 who succeed-
 ed as nearest

1756. *June 16.* JOHN M'KINNON against CHARLES M'KINNON.

NEIL M'KINNON had, in the year 1731, disposed the estate of M'Kinnon to John M'Kinnon younger, and the heirs-male of his body ; whom failing, to the