

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.

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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,

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made large advances for his constituent, in Scotland, on being superseded in his office, raised action before the supreme court of Jamaica, and, after appearance made, obtained decree against him.

In an action brought against him in the courts of Scotland, founding upon the decree, the Court of Session held that the foreign decree was not conclusive evidence of the debt, and ordered him to produce the vouchers of his claim.

Against this judgment the present appeal was brought.

After hearing counsel, it was

Ordered and declared that the judgment of the supreme court of Jamaica ought to be received as evidence *prima facie* of the debt; and that it lies upon the defendant to impeach the justice thereof, or to show the same to have been irregularly obtained. It is therefore ordered and adjudged that the said several interlocutors complained of be, and the same are hereby reversed.

For Appellants, *Al. Wedderburn. H. Dalrymple.*

For Respondents, *Ja. Montgomery, John Dalrymple.*

HUGH ROSS, Esq. and Wife,	-	<i>Appellants ;</i>
DAVID ROSS, Esq.,	- .	<i>Respondent.</i>

House of Lords, 10th April 1771.

CLAUSE—Whether a certain clause in a deed carried heritable debts.

Vide Morison, 5019, for a full report of this case.

In a conveyance of an estate, particularly described in the deed, there was adjected the following clause: “All my goods, gear, *debts*, sums of money, corn, cattle, and all other effects, which shall belong to him at the time of his decease, of what nature or kind soever they are.” It was held by the Court of Session that this clause did not carry heritable debts secured by adjudication or heritable bonds; and that these fell to the heir at law, although he was expressly cut off from the succession by the deed with a shilling.

On appeal to the House of Lords the judgment was affirmed.

For Appellants, *J. Dunning, Al. Forrester.*

For Respondent, *Ja. Montgomery, Al. Wedderburn.*