

No 7.

The Lord Ordinary repelled the defender's claim to a bull, and found in respect of Balfour's Practics, p. 234.\* that in virtue of his right to heirship moveables, he can claim only one horse.

A reclaiming petition against this interlocutor was refused, as to the defender's right to a bull, and ordered to be answered respecting the claim to a plough of horses. At advising the cause, it was

*Observed* on the Bench: Although the heir is entitled to two oxen, it does not follow, that he can also claim two horses. When heirship moveables were first introduced, oxen were used only for draught, and a single ox therefore would have been of little service. But a single horse must have been always useful for many purposes.

The COURT, with only one dissenting voice, adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Dreghorn.* Act. *Hay.* Alt. *Bell.* Clerk, *Sir Ja. Colquhoun.*  
R. D. *Fol. Dic. v. 3. p. 264.* *Fac. Col. No 64. p. 141.*

## S E C T. II.

## Who entitled to have Heirship Moveables.

1510. February 21. A. against B.

No 8.

ONY man deceissand quha hes had twa wives, or ma, with bairnis and successioun with thame, the first wife's eldest sone sall have his hail airschip of all movabill gudis quhilk pertenit to his father, and was in his possessioun the time of his deceis.

*Balfour, (AIRSCHIP GUDIS.) No 3, p. 236.*

1542. May 23. KINCRAIGS against AYTON.

No 9.

No heirship found due to the heir of a dignified clergyman who was not a prelate.

IN ane cause of airschip, movit be ane father, brother of Mr James Kincraigs, umquhil dean of Aberdeen, and Provost of the Kirkheugh of St Andrew's, against Mr John Ayton and his colleague, executors to the said Mr James, the LORDS *definitive* decernit the pretendit air aught na airschip goods, because of the practique of Scotland na kirkman's (*licet sit dignitate ecclesiastica*) air

\* At this place in Balfour, there is a long list of the particular articles which had been decided to be heirship moveables, which it would be superfluous to insert here.

ought airship goods, but if the said air be servit air to him of some landis or rents; and the said Mr James's air was not air of any such lands, whilk the said Mr James had none when he deceist.

*Fol. Dic. v. 1. p. 365. Sinclair, MS. p. 29.*

No 9.

1543. July 2. CRAWFORD and SEMPLE *against* CRAWFORD.

MARGARET SEMPLE, and Robert Crawford her spouse, for his interest, askit airship goods of her goodsir the Laird of —, and Thomas Crawford, now the Laird thereof, and intromitter therewith.—It was *excepted*, because she was not air to him of any lands, she ought to have none of his guidis, and also *ipse non obiit vestitus de ullis terris ut de fædo*. Nevertheless the LORDS decernit her to have action *quia erat deservita hæres, non de terris, et hoc eo magis pater dictæ Margaretæ obiit dominus liberi tenementi in — et erat nobilis, et baro*, and therefore to have ane air, and the air to have airship guidis.

*Fol. Dic. v. 1. p. 365. Sinclair, MS. p. 53.*

No 10.

Heirship due to the heir of a baron who died infest in lands, though they had been otherwise disposed of than to the heir.

\* \* \* Balfour reports the same case :

GIF ony gentleman or baron beand frank-tenementar allendarlie of ony landis, deceissis, his air aucht and sould have airship gudis, albeit he be not servit air to him in special of ony landis, bot air general allendarlie.

*Balfour, (AIRSHIP GUDIS.) No 5. p. 236.*

1562. March 12. The LAIRD of TRAQUAIR *against* PATRICK HOME.

GIF ony ladie of heritage, lauchfullie maryit with ane husband, deceissis leiv- and behind hir na lauchful bairnis gottin of hir bodie, the nearest of hir kin sould have ane just airship of all gudis and geir pertening to hir the time of hir deceis; and scho in hir testament or latter-will may not dispoise the samin to hir husband, or ony uther, be way of executorie, or be reason of legacie.

*Balfour, (AIRSHIP GUDIS.) No 4. p. 236.*

\* \* \* Maitland reports the same case:

ANENT the action persewed be the L. of Traquair, as nearest air to Agnes Rutherford, heretrix of the land, spouse to Patrick Home of Broomhouse, against the said Patrick, before certain Sheriffs in that part, be deliverance of the Lords under the white wax, it was *alleged* be the said persewar, That he should have ane airship, and the best of everie thing that pertained to the said Rutherford, to whom he was air, and also should have the half of the haill gear, guidis, and debts, pertaining to the said Patrick and the said Rutherford the time of

No 11.

An heiress having no children, conveyed, by testament, her property away from her nearest of kin. They notwithstanding claimed heirship, and were found entitled to it.