

No 12.

fuia great ane richt, and fuia deulie belanging to the King's crowne, that it could not be comprehendit under ane general disposition of regalitie.—Which reply the LORDS fand relevant, and, in respect thair of, repellit the exception.—Next it it was *exceptit*, That this soume could not pertene to the donatour, becaus naither the King nor his donatour could be in ane better cais, as *ultimus hæres*, nor the defunct; and the defunct could never have had richt to the soume controverted, unles sche had been aire to hir father, becaus it wes providit to the aires-femell, and sche not being aire femell, had na richt; and consequentlie the King, as *ultimus hæres*, could have na richt.—It wes *ansvit*, That the proviſion wes confavit in favour of the bairns femell; and albeit sche wes not servit aire, yet the successeur to the lands wes ordanit, be contract, to pay that soume for her proviſion, and the King had succedit in her richt.—THE LORDS repellit the alledgeance, and fand that the donatour had richt.

Fol. Dic. v. 1. p. 93. Haddington, MS. No 649.

1612. February 18.

SIBBALD against GIBB.

No 13.
Found in conformity with the above.

THE Archbishop of St Andrews found to have no right to the escheats of bastards deceasing within the bounds of his regality, by his general infestment, unless he would offer to prove, that he was infest *per expressum* in his regality, *cum eschatis bastardorum*; notwithstanding that he *alleged*, That he and his predecessors had been in use many times, to decern upon the escheats of bastards deceasing within his regality, and give declarators thereupon; which was found unlawful.

Fol. Dic. v. 1. p. 93. Haddington, MS. No 2406.

S E C T. VII.

How far a Donatary of Bastardy is liable for the debts of the Bastard.
How a Debt against the Estate of a Bastard may be Constituted.
Do Tacks pass to the Donatary?

1685. November 24. GALBRAITH against DEANS.

No 14.
A donatary of bastardy found only liable *secundum vires hereditatis*.

GEORGE GALBRAITH being creditor to the deceased — Gib, obtained a sentence against Abigail Deans, as donatar to the bastardy of the said — Gib her husband, for payment of the debt. She suspended upon this reason, That the decret was against her in absence, and that she had since obtained the gift of her husband's escheat, which gave her a right to the whole moveables.—It

was answered. That the debt being constituted against her by a sentence, and she having intromitted and possessed, as donatar, to the bastardy, she could not, by a subsequent title, *ex post facto* acquired; and after sentence was recovered against her, prejudice the creditors, who had *ius acquiritum*, seeing she, as donatar of bastardy, was liable to pay all her husband's debts, *quoad viros hereditatis*.
 THE LORDS found, That the debt being constituted against her, as donatar to the bastardy, she could not, by a subsequent title of escheat, prejudice the charger: And therefore the LORDS ordained her to depone upon the quantity and species of her intromission; and allowed her retention, as to the privileged debts, such as house-mails, servant's fees, expences of both gifts of bastardy and escheat.

Fol. Dic. v. 1. p. 93. Pres. Falconer, No. 193. p. 72.

No 14.

1747. June 29.

REID against The OFFICERS of STATE.

REID being creditor to a bastard, who deceased without heirs of his body, raised a summons against the Officers of State, concluding for a decret of cognition for constituting his debt, and adjudication of the estate of the bastard.

No appearance was made for the Officers of State; but the Lords doubted how far this method was competent, thinking the proper way to affect the estate of a bastard, was to apply for a gift.

Pleaded, That this method was laid down by Stair, B. 3. tit. 3. § 46. who cited Craig, l. 2. D. 17. as of the same opinion, and a case where it was so found, No 3. p. 1346.

Observed, That Craig in the cited place did not come up to the opinion delivered by Stair, he only saying that the bastard's estate went to the King burdened with his debts; which was also the whole of the decision; but as adjudication was the only diligence by which the effects of bastardy could be affected, it ought to be granted.

THE LORDS found the bastardy proven, and the verity of the debt, and remitted to the Lord Ordinary to proceed accordingly.

Act. Williamson.

Act. Abent.

Clerk, Forbes.

Fol. Dic. v. 1. p. 90. D. Falconer, v. 1. No. 190. p. 256.

No 15.

A creditor of a bankrupt may take a decree of constitution against the Officers of State, and proceed to adjudge the estate of a bastard.

1789. July 29.

JAMES FALCONER against ALEXANDER HAY.

JAMES FALCONER having let out part of his lands to a person born out of wedlock, 'excluding his assignees and subtenants;' the question occurred, after the death of the lessee without children, Whether the tack could be assigned by the King to a donatar?

No 16.

A tack granted to a bastard, excluding his assignees and subtenants, does not pass to the Crown's donatar.