

to which he would have ascribed his intromission; the LORDS found that he could not by any subsequent title *ex post facto* acquired, prejudge the creditors, but was liable to them for their debts; and albeit, in that case, the creditors had obtained a decreet against the donatar of bastardy, before he had obtained the gift of escheat, yet that did not alter the case, seeing the decreet was only in absence, and there was no diligence done thereupon before the donatar to the bastardy obtained the gift of escheat; and there was no necessity for a sentence in this case, seeing the debt was sufficiently constituted by bond under the Earl of Dundee's hand, upon whose decease, the Earl of Lauderdale did obtain the gift of *ultimus hæres* some years before he obtained the gift of recognition and other rights; as also, there were several lands that did fall under the gift of *ultimus hæres* that did not fall under the recognition; the LORDS, as to the first allegiance, adhered to their former interlocutor, whereby they repelled the allegiance founded upon the Earl of Lauderdale's gift of *ultimus hæres*; and, as to these points, how far the Earl of Lauderdale's donatar should be liable to the creditors for any intromissions he had before he acquired other titles than that of *ultimus hæres*, and for his intromissions with the rents of these lands of the estate of Dundee which did not hold ward, the LORDS reserved the same to be considered in any other process that shall be raised by the creditors upon these grounds; and as to the second allegiance, the LORDS allowed a conjunct probation to both parties anent the rental, not only of any lands omitted formerly, but of the whole lands of the estate of Dundee and Didup. See RECOGNITION.—ULTIMUS HÆRES.

No 63.

*Sir Pat. Home, MS. v. 2. No 753.*

1687. *January.* DUKE of QUEENSBERRY *against* GORDON of Spadoch.

No 64.

IN a pursuit for ward-duties at the instance of the superior;

*Alleged* for one who had an infeftment out of the lands, That the superior had consented to the heritable bond, upon which the infeftment proceeded, which imports a confirmation.

*Answered*; The consent saves only from recognition, and is at most but a confirmation *de me*, not *à me*, to denude the disponent, and to make the annual-renter the superior's vassal, seeing the bond contains not an obligation for double infeftments.

THE LORDS sustained the answer.

*Evl. Dic. v. 1. p. 435 Harcarse, (WARDS & MARRIAGES.) No 1010. p. 285.*