

said to be a creditor to the defunct; that therefore there is here no habile transmission of the right, as appears from Stair, p. 427. (446.); and the decision 28th November 1691, Stewart;* where it was found, That a bastard's wife having a general disposition from her husband, could claim no right in virtue thereof, but had only that share of her husband's effects that she would have been entitled to by the law, had no disposition been granted. *3do*, By the express words of the statute 179. James VI. the bond in question ought to be found null, since the writer is not at all designed before the inserting of the witnesses, as that law requires: And the defender is at a loss to understand how it can be said to be in disuetude; as he believes, from the date thereof, to this day, very few writs of consequence, written by men of knowledge, have omitted the formality there required. But supposing it might be dispensed with, still the writer should be designed with certainty; whereas here it is quite ambiguous, whether Adam Colquhoun or James Duncanson wrote it, the words, *writer hereof*, being immediately subjoined to his name and designation. Nor will the 5th act, 3d Parl. Charles II. allow this defect to be supplied by a condescence.

THE LORDS repelled the defences, in respect of the answers. See WRIT. G. Home, No 228. p. 213.

 S E C T. VI.

In what Cases a Bastard's Effects fall to the Lord of Regality.

1601. June.

BUCHANAN against CAMPBELL.

MR. JOHN DALZELL, and SUSANNA BUCHANAN, his spouse, havand be gift of our Sovereane Lord, the escheit of all guddis and dettis, whilk pertenit to umquhile _____ Campbell, dochter to the said Susanna and umquhile Colene Campbell, bastard son to Archibald Erle of Argyll, procreat betwixt the said Susanna and the said Colene, as *ultimus heres* to the said dochter deceis, and without ony lawful airs, pursuit the Laird of Caddell, as aire be provision to the said umquhile Colene, for the soume of ane thousand pundis, whilk the said Colene, be contract, had obligit him, his heirs and successors in his lands; to pay to the air's femell to be gottin betwixt him and the said Susanna, the soume of ane thousand pundis.—It was *alleged*, That his donator could have na action upone his Majestie's gift, becaus the lands to the whilk Caddell succedit, lay in the Regalitie of Argyll, and the persons dwelt thairin; and sua the gift appertenit to the Erle of Argyll be verteu of his regalitie.—It was *answerd*, That the gift of thingis falland be deceis of persons havand na lawful aires of thair awn blude as *ultimus heres*, could not pertene to the Lord of Regalitie be the general privilege of regalitie; unles he wer infest in that privilege *per expressum*, the sam being

No 12.

Lands or goods of a bastard, or person deceasing without heirs, pertain not to the Lord of Regality, unless specially expressed in his infestment.

* *Vide* HUSBAND and WIFE.

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