

1666. July 31. THOMAS CRAWFORD against TOWN of EDINBURGH.

No 7.
Found as
above.

THOMAS CRAWFORD, having gift of *ultimus hæres* of a person, to whom the Town of Edinburgh was debtor, pursues for payment thereof. The defender *alleged* no process, till the gift were declared. The pursuer *answered*, no necessity of a declarator in this case, more than in a gift of recognition and ward, and that there was no person that could be particularly cited.

THE LORDS found the defence relevant, that this gift behoved to be declared albeit it were but upon a citation generally against all and sundry at the market cross.

Fol. Dic. v. 1. p. 228. Stair, v. 1. p. 403.

* * * Newbyth reports the same case :

THOMAS CRAWFORD having obtained a gift of *ultimus hæres* of one Oliphant, pursues the Town of Edinburgh, as they who were debtors to the defunct in the sum of 2400 merks, for payment thereof. It was *alleged* for the Town, no process for payment of the money to the pursuer upon this gift, because it was not declared. To this it was *answered*, no necessity of a declarator of a gift of *ultimus hæres quoad mobiles* and sums of money ; *imo*, Because the King's right, as last heir, is founded *super jura coronæ*, and that the King, upon the decease of any person, dying without agnate or cognate, may, *brevi manu*, intromit with the moveables belonging to the defunct, and is only liable to restore, *si verus hæres appareat* ; and such gift cannot be declared otherways nor by pursuits against the defunct's creditors by payment ; for the defunct having no relations of blood, there can be no person competent to be called, against whom the declarator can be intended. THE LORDS found there was a necessity of a declarator, and therefore found no process.

Newbyth, MS. p. 82.

* * * Dirleton also reports this case :

A DONATAR, by a gift of *ultimus hæres*, having pursued for a moveable debt due to the defunct, the pursuit was not sustained, because the gift was not declared.

Dirleton, No 38. p. 16.