

in steelbow with a room, became the tenant's in such set, as he was not obliged to render the same oxen again, but as many as good, or the price thereof, and had power to sell or dispoise upon the steelbow oxen at his pleasure; whereby it would appear that they were not the master's goods, but that he had only right to the price thereof after the expiring of the set. Others thought, that the tenant had only the use of them, and not the property; in so far as, if the tenant went to the horn, the steelbow goods would not pertain to the donatar of his escheat, but, on the contrary, they would belong to the donatar of the master's escheat going to the horn; likeas they would fall under the master's testament. And albeit it was *alleged* by this defender, That they were confirmed in the defunct's testament, yet the LORDS found that the heir should have a yoke of them as heirship.

No 5.

Fol. Dic. v. 1. p. 364. Haddington, MS. No 1636.

1611. *January 19.*REID *against* THOMSON.

THE shell of a salt-pan found not to be heirship, but to appertain to the executors by a decreet of the Commissaries of Edinburgh, produced before the Lords by Mr Humphry Blenshiel.

No 6.

Fol. Dic. v. 1. p. 365. Haddington, MS. No 2106.

1793. *June 19.*DAVID HEPBURN *against* WILLIAM SKIRVING.

WILLIAM SKIRVING, as heir of James Skirving his brother, intromitted with part of his moveable effects. David Hepburn, in right of his wife, who was sister of James, and one of his nearest in kin, brought an action against William, to make him account for her share of the executry of her deceased brother.

In accounting the defender *insisted*, that he was entitled to retain, as heirship moveables, a plough of horses, and an ox, a cow and a bull.

The pursuer denied his right to a bull, and quoted the following authorities, in order to show that he was only entitled to one horse; Balfour's Practics, p. 234; 1474, c. 53.; 10th November 1575, Lord Drummond, No 4. p. 5386.; Erskine, b. 3. tit. 8. § 17.

The defender, on the other hand, *argued*, *imo*, That the heir was entitled to a yoke of oxen; Stair, b. 3. tit. 5. § 9.; Bankt. b. 3. tit. 4. § 6.; and that Erskine, b. 3. tit. 8. § 18. considers a yoke to be 'as many as make a plough,' and that therefore, from analogy, he was also entitled to a plough of horses; Stewart's Answers to Dirleton, p. 214.

2do, That he was entitled to the 'best of ilka thing,' and consequently to a bull, as being essentially different from an ox.

No 7.

The heir has right only to a single horse, and having got an ox and a cow, he is not entitled to a bull.

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.