

BASTARD.

SECTION I.

A Bastard's Children succeed to him.

1546. *March 24.* DUNCAN DUNDAS, Donatour, *against* JAMES MOFFET.

GIF ane born bastard deceiffis bastard, leivand behind him ane bairn lauchful-
lie gottin of his bodie, the famen bairn being male or female, may succede
as richteous and lauchful air in his landis, gudis, and geir; and thairfoir the King
hes na richt nor titill to the saidis landis, gudis, nor geir, be reffoun of bastardie:
And it is sufficient gif he that is deceift bastard, leive behind him, the time of his
deceis, ane air lauchfullie gottin of his bodie, albeit he left na landis or immova-
bill gudis; for, in this cais, it is enough he left sic ane lauchful air behind him,
quhilk might have succedit to landis, gif ony had been left, albeit thair be nane
to the quhilk he may succede. The same found, 7th December 1563, Johne
Auld against Guthrie Millar.

No 1.

Found that the King has no right to any of a deceaft bastard's effects, if he leave a lawful child who may succeed him as heir, although he leave no heritage.

Balfour, (BASTARD.) p. 238.

* * * The same case is reported by Sinclair:

DUNCANUS DUNDAS, Donatarius Reginæ, in et ad omnia bona quondam Johannis Moffat, bastardi, et ea ratione spectand. Reginæ eschætæ per bastardriam fecit per literas vocare omnes interesse habentes, ad videndum literas decerni ad officium Reginæ, ad inquirendum omnia bona dicti quondam Moffat, bastardi, et deliberandum eadem donatario prædicto; comparuit M. Tho. Majoribanks, procurator domini Thomæ Möffat, et uxoris dicti defuncti, et produxerunt testamentum ipsius defuncti, in quo erant executores ipsi confirmati, et opposuerunt contra ordinem literarum; dixerunt peremptoriam summonitionem 21 dierum esse dandam, et non esse procedendum per simplices literas mandatorias.—DOMINI interlocuti sunt ordinem esse bonum, et non esse necessariam 21 dierum summonitionem; præterea allegabit Duncanus eschætam decernendam, quia defunctus de corpore suo hæredem non habebat, et sic de practica hujus regni omnia bona ejus debentur Reginæ ratione eschætæ.—*Reddidit* Major, quod tempore decessus sui

No 1. habebat filiam unam ex legitimo matrimonio natam; et ubi bastardus natu habet heredem legitimam de corpore suo, cessat eschæta, et de bonis suis potest libere disponere; prout dicit Moffat ut supra fecit; et sic Regina eschætam pretendere non poterat. Et replicavit Dundas, quod defunctus hæredem non potuit habere, quia terras non habebat; et sic non baro, neq; burgenfis, nec sacerdos; præter quos de jure Scotiæ hæredem potest nullus habere.—*Triplicavit* Major, quod filia erat legitima hæres patri, et habilis ad succedendum ei, etsi possedisset immobilia; et quod sic cesserat eschæta, interlouti sunt Domini quod legitima et naturali prole existente bastardo de corpore suo procreata, et quæ posset ei hæres esse, si immobilia haberet hereditaria bastardus, cessat eschæta prius ratione bastardiæ.—Eandem DOMINI concilii assignaverunt terminum ad probandum plene legitimam existitisse defuncto, tempore sui decessus.

Sinclair, MS. p. 109.

S.E.C.T. II.

Strangers may succeed to a Bastard as Heirs of Provision.

No 2.

Lands being disposed to a man in life-tenant, and his bastard in fee, and failing of heirs-male of the bastard, to a third party; the Lords reduced a gift of bastardy made by the King to another; and found that the law, *Quod bastardus nota potest habere hæredem, nisi de corpore suo legitime procreatum*, is to be understood only of the legal heir, not of heirs of provision.

1584. *March.* INNES against HAY, Clerk-Register, and the King's Advocate.

THE Earl of Errol disposed a piece of land to one Innes, in life-tenant, and to Robert Innes, his natural son, in fee; and failing of heirs-male of Robert's body, to Alexander Innes of Coxtou: Robert having deceased without lawful issue of his body, the King presented Alexander Hay, Clerk-Register, to be tenant of these lands to the Earl, as vaking in his hands by reason of Robert's bastardy. Alexander Innes, who was substitute in the charter after Robert, pursued the Clerk-Register and the King's Advocate, to hear and see the same presentation reduced, as having the undoubted right to these lands, by virtue of his substitution.—*Alleged*, That the King's interest and commodity falling to him by the common law, whereby the whole goods, moveable and immoveable, pertaining to a bastard, who had died without lawful succession of his own body, pertain to the King, could not be prejudged by any private deed whatsoever; and this was *factum privatum, substitutio facta inter privatas personas, quæ nullo modo potuit derogare juri publico, cum fortior sit dispositio legis provisione hominis*.—*Replied*, That the King had no interest in respect of the substitution, because it being voluntary to the Earl to dispose of these lands, and being *dominus et moderator rei suæ*, as he could not be hindered to give it to a bastard, so he might substitute any other to him. And the law *quod Bastardus, non potest habere hæredem nisi de corpore suo legitime procreatum*, is to be understood, *in linea descendente et collateralis*;