

No 2.

faid maister and Earl to dispone their lands as they pleased ; and if they had full liberty of the disposition of their own, they might make substitution of bastards, as well as they might give it to a bastard ; and as to the law, *quod bastardus non habet hæredem nisi ex suo corpore legitime procreatum, hoc intelligendum fuit in linea descendente, et linea collateralis* ; but the law secludet not but a bastard might be substitute, and be an heir by way of provision and tailzie ; and failing of his lawful succession, others to be substitute to succeed immediately to him, at the will and pleasure of the disponent, *quia unusquisque est Dominus et moderator rei sue* ; for a person may dispone his lands, and take them to his heirs-male, any of his surname, *præteritis filiabus et legitimis hæredibus* ; and yet the same is not agreeable to the common law.—THE LORDS, after long reasoning, pronounced *definitive*, That the reason of the summons was relevant, and so reduced the said presentation.

*Colvil, MS. p. 399. \**

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### S E C T. III.

A Bastard's Relict has right to a share of his effects.

1502. February 18.

MURRAY against KING'S ADVOCATE.

No 3.

A bastard leaving a wife, but no children, the King's donatary has right to the whole heritage and heirship moveables ; also to the half of the other moveables, under burden of the bastard's debts, funeral expences, &c. The relict has right to the remainder of the moveables.

GIF ony man beand bastard deceiffis, leivand behind him an lauchful wife, without ony succession, or bairnis, lauchfullie gottin of his bodie, the King, or his donatour, gif he ony makis and constitutis heir-ament, aucht and sould have the haill movabill airschip of the said bastard be itself ; and als wa all and haill the unmovabill airschip, gif ony be ; togidder with the ane half of the movabill gudis, quhilks pertinit to the said bastard at the time of his deceis, he findand sufficient caution to content and pay the debtis that wer awand by the said bastard, as accordis of the law, and as is efter specifyit ; and als allowand the haill debtis and expensis maid and payit for the kirk richt, and at the burial of the said bastard, according to his faculty.

*Balfour, (BASTARD) p. 237.*

\* \* Spottiswood reports a similar case without names, dated 29th July 1566.

A BASTARD deceasing, leaving behind him a wife, the King, or his donatar, will have the whole moveable heirship-goods of the bastard by itself, with the

\* This is taken from an old copy of Colvil's Decisions, which the Editor only lately discovered in the Library. See Note under page 329.

whole immoveables; and the one half of all the other moveables pertaining to the bastard at his decease; he finding caution to pay the bastard's debts, as accords of the law, and allowing the expences of burial, &c.; and the relict the other half: And likewise, the King, or his donatar, who getteth the half of the bastard's moveable goods, will be subject in payment of the half of his debts; but, if he intromit with the half of the moveables, and with the whole lands, he is obliged to pay the whole debts.

*Spottiswood, (BASTARDY.) p. 27.*

\* \* The same case, also dated 29th July 1566, and without names, is likewise reported by Sir Richard Maitland.

ANENT the action pursued by a donatar of the escheat of bastardy of unquhile B. it was *alleged* be the wife of the bastard, That the said donatar sude have na mair but the half of the gudes of her husband, and she to have the other half; whilk allegiance of the said wife was found relevant. And als it was *alleged* be the said wife, That the said donatar shouid have the half of the gear pertaining to the husband, shouid pay the half of the bastard's debts: Whilk allegiance of the said wife was also found relevant; and found, be interloquitor, that gif the King gat the half of the bastard's goods or lands, that the King shall pay the half of the debts awand be the bastard to whatsoever creditor.

*Maitland, MS. p. 79.*

1541. *March 3.* EARL OF ERROL against N.

THE LORDS decerned in a cause of a gift of bastardy, granted by the King to the Earl of Errol, of the escheat of N.; that the said gift could not extend but to part of the moveable gear that ought to pertain to the man, and he had not been bastard; and therefore decerned his wife M. to have the half of the goods, because the man died without bairns; and therefore, of the practiques, the one half of the gear ought to pertain to her: And so the King allowed but the one half that pertained the man.

*Sinclair, MS. p. 31.*

No 4.  
If the bastard was married, and died without children, the gift of bastardy carried only the one half of the goods; the other belonging to the wife.

1629. *July 7.* WALLACE against MUIR.

THE lawful wife of any bastard deceasing without bairns, has good right to the half of the husband's moveables against any gift of bastardy.

No 5.  
Found as above.

*July 9.* In the same action, the LORDS found, That heritable bonds, whereupon infestments follow, come under the general gift of bastardy, and need no particular gift as is required in lands pertaining to a bastard.

*Auchinneck, (BASTARDY.) MS. p. 20.*