1684. *February.* DR TAYLOR *against* BRUCE and STRANG.

No 8.
Found as above.

IT being *alleged* against a removing, at the instance of a donatar of *ultimus hæres;* That the gift is not declared, which ought to have been done: 2*do*, That the pursuer was infeft after the term of removing; and though he had been infeft before the term, and after the warning, the infeftment could not be drawn back in favours of him a singular successor:

Answered: It is absurd to require a declarator of a gift of *ultimus hæres*, the defunct having no heirs to be called in such a process; for if he had heirs, there would be no place for an *ultimus hæres.*

Replied: There ought to be a declarator, though proceeding but upon a general citation of all persons having interest, at the market cross, as was found the 31st of July 1666, in the case of Thomas Crawford *contra* Town of Edinburgh, No 7. p. 3410.; and Balnagown against Dingwall, No 6. p. 3409.

'THE LORDS found, That a gift of *ultimus hæres* ought to be declared as well as a gift of bastardy.'

Fol. Dic. v. 1. *p.* 228. *Harcarse*, (REMOVING.) *No* 840. *p.* 240.

1684. *February* 25. TAYLOR *against* ———.

No 9.
A gift of bastardy was found not to require a declarator.

THE LORDS, in the case of Doctor Taylor, servitor to the Dutchess of Portsmouth, 'found that he, as a donatar to the bastardy, and *ultimus hæres* of ———, had right, without a declarator.'——Though in Durie's time, and twice since the King's return, it is decided, that these gifts always need declarator, viz. 30th July 1662, Ross of Balnagoun, No 6. p. 3409.; and 31st July 1666, Crawford, No 7. p. 3410.

Fol. Dic. v. 1. *p.* 228. *Fountainhall, v.* 1. *p.* 274.

SECT. III.

Gift of single and liferent Escheat.

1610. *November* 28. WHITEBANK *against* HOME.

No 10.

DOUBLE-POINDING being raised by the debtor of him who was put to the horn, against the said creditor on the one part, and the donatar upon the other;

No 10. albeit the donatar have declarator depending,—yet so long as he has not decreet, the creditor being relaxed, will be ordained to be answered and obeyed, he finding caution to make it furthcoming to the donatar, in case he prevail in his declarator.

Fol. Dic. v. 1. p. 228. Haddington, MS. v. 2. No 2017.

1668. *December* 18. ROBERT SWINTOUN *against* JOHN BROWN.

No 11.
A gift of liferent escheat was not sustained without declarator, though proponed by way of exception.

MARGARET ADINSTOUN being infeft in liferent, in certain roods of land near Haddington, she and her second husband grant a tack to John Brown thereof for certain years, and thereafter till he were paid 400 merks, owing to him by the husband; after that husband's death, she being married to a third husband, there is a decret of removing purchased at her and that husband's instance, against John Brown, but the husband did not proceed to obtain possession by virtue thereof, but *brevi manu* ejected Brown; whereupon Brown obtained a decreet of re-possession: now the said Margaret Adinstoun having assigned the decreet of removing to Mr Robert Swintoun, he charges John Brown to remove, who suspends on this reason, that he having obtained decreet of re-possession, after the decreet of removing, upon the husband's violence, cannot now be removed without a new warning. The charger *answered*, that the decreet of re-possession, bearing to be ay and while this suspender was legally removed, and that in respect he had been put out summarily, and not by the preceding decreet of removing; which having now taken effect, he being in possession, the charger may very well insist, that he may now legally remove, by virtue of the decreet of removing.

THE LORDS repelled this reason, in respect of the answer, and found no need of a new warning.

The suspender further *alleged* that he cannot remove, because he bruiks by virtue of a tack granted by Margaret Adinstoun and her second husband. The charger *answered*; 1*st*, That the tack being only for four years specially, and an obligement not to remove the tenant while the four hundred merks were paid, which is not a tack, but a personal obligement, which cannot defend the suspender against Mr Robert Swintoun, the singular successor; 2*dly*, The tack is null, being subscribed but by one notary. The suspender *answered*, that a right of liferent not being transmissible by infeftment, but only by assignation, the assignee is in no better case than the cedent, except as to the probation by the cedent's oath. 3*dly*, The tack is ratified judicially by the wife, in the court of North Berwick, which is more than the concourse of any notary. 4*thly*, If need be, it is offered to be proven by the wife's oath, that the subscription was truly done by the notary, at her command. The charger *answered*, that the judicial ratification cannot supply the other notary; because the same no-