

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 qhā should have the half of the gear pertaining to the husband, should 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.

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

No 5.

1629. July 16.

\*\*\* Spottiswood reports the same case :

ROBERT WALLACE, donatar to the gift of bastardy of John Wallace, having obtained general declarator, pursued a special of the bastard's whole goods, and, in particular, of a bond of 1000 merks, addebted to the bastard.—*Alleged* for N. Muir, another donatar; *imo*, No process, but only for the half of the bastard's goods, because he had a wife unto whom belonged the half of the moveables by our law.—*Replied*, The whole appertained to the donatar, sickenlike as if he were donatar to a rebel's escheat.—THE LORDS found this allegiance relevant, for the cases were very unlike, as they thought.—*2do*, *Alleged*, The bond of 1000 merks could not fall under the general gift of bastardy, because it was heritable, and contained a provision of annualrent, as well infest as not infest; and so should have been gifted by presentation, as in other heritages, or else by a feveral gift which the defender had obtained *per expressum*.—*Replied*, This bond behoved to fall under the general gift, because there are only these two ways of disposing of a bastard's goods; by gift and presentation. As to the last, the King could not present this bond, because there had no infestment followed thereupon; and therefore it behoved to be included in the general gift of all the bastard's goods and gear.—THE LORDS found, That the bond, although heritable, by payment of annualrent, fell under the general gift, in respect there had no saine followed thereupon.

Spottiswood, (BASTARDY.) p. 28.

No 6.

If the lawful issue of the bastard at any time fail, their goods become caducuary, and return to the King as *ultimus heres*, with respect to such subjects as were established in their persons; and by the right of bastardy, with respect to subjects in which they died in the state of apparent heirs to the bastard.

## S E C T. IV.

## Consequences of the Failure of a Bastard's Issue.

1626. July 13.

L. HALERO against SOMERVEL.

A BASTARD marrying, and in marriage begetting a bairn, that bairn dying intestate and unmarried, and having neither lawful brother nor sister, nor children begotten by that bairn in lawful marriage; after the decease of that bairn, the king will have right to the goods and gear of the father of that bairn so deceased without succession, by virtue of the father's bastardy; but, under that bastardy will not be comprehended so much of the bastard's goods as might befall to that deceased bairn procreate in lawful marriage by the bastard, as said is; neither will the donatary of the bastardy of the father extend to that legitim, which pertains to the bairn, but only to the rest of the defunct bastard's goods; and not the less the king will have right also to the legitim, and whole goods and lands also pertaining to that lawful bairn, as *ultimus heres* to that bairn; but not