

## S E C T. II.

Gift of *Ultimus Hæres*, and of Bastardy.1662. July 30. LAIRD BALNAGOUN *against* DINGWALL.

THE Laird of Balnagoun having obtained a gift of *ultimus hæres*, of Thomas \_\_\_\_\_, from the exchequer, in anno 1661, and being thereupon infest, pursues removing against Rorie Dingwall. The defender *alleged* absolutor, because the defender stands infest, and by virtue of his infestment in possession seven years before the warning, by virtue of a gift of *ultimus hæres*, granted by the English Exchequer. The pursued *answered*, ought to be repelled, because the foresaid gift is null, *ipso jure*, in so far as it is not confirmed by the late act of Parliament, anent judicial proceedings in the usurper's time, wherein gifts of bastardy and *ultimus hæres* were excepted. The defender *answered*, *imo*, That his infestment being clad with seven years possession, cannot be taken away by exception, neither is he obliged *in hoc judicio possessorio*, to dispute the validity thereof. *2do*, The said act of Parliament doth not declare null, much less null by exception, such gifts, but doth only not confirm them.

THE LORDS repelled this defence, and found the infestment null in itself, seeing it was not confirmed.

The defender further *alleged* absolutor from this warning, because the pursuer's gift is not yet declared. It was *answered* for the pursuer, no necessity of declarator, because it cannot be ever made appear that any such thing was required, or was in custom and use, more than in the case of a gift of ward, or a gift of forefaultry.

'THE LORDS found that this gift behoved to be declared in the same way as a gift of bastardy.'

*Fol. Dic. v. 1. p. 228. Stair, v. 1. p. 139.*

\* \* \* Gilmour reports the same case :

IN an action of removing, pursued at Balnagoun's instance against Rorie Dingwall, upon a gift of *ultimus hæres*, and infestment following thereupon, THE LORDS found no process could be sustained, unless the gift were declared; for though the defunct had neither heir, nor apparent heir; yet of necessity there should be a declarator, whereunto, at least, all parties having interest should be cited at the market cross in general; just as to a service as heir, the brieve is so executed by law.

*Gilmour, No 49. p. 36.*

No 6.

A gift of *ultimus hæres* must be declared the same way as a gift of bastardy.