

as to himself, upon these reasons: *first*, That he was minor the time of his granting the bond. *2do*. That all bonds granted by pupils *in familia*, who have their father allowed to them by the law to be administrators, are null, if they be granted without their consent; or granted as caution for their administrator; who cannot authorize his own son *in rem suam*: and subsumes, that he subscribed the said bond, without his father's consent, as administrator to him.

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1666. July 31. THOMAS CRAWFORD *against* The TOWN of EDINBURGH.

THOMAS Crawford, having obtained a gift of *ultimus hæres* of one Oliphant, pursues the Town of Edinburgh, as they who were debtor to the defunct in the sum of 2400 merks, for payment thereof.

It was ALLEGED for the Town, No process for payment of the money to the pursuer upon this gift, because it was not declared.

To this it was ANSWERED, No necessity of a declarator of a gift of *ultimus hæres quoad mobilia*, and sums of money:—*1mo*. Because the King's right, as last heir, is founded *super jure coronæ*; and that the King, upon the decease of any person dying without agnate or cognate, may, *brevi manu*, intromit with the moveables belonging to the defunct; and is only liable to restore, *si verus hæres appareat*. *2do*. Such gifts cannot be declared otherwise nor by pursuits against the defunct's [debtors, for] payment; for the defunct, having no relations of blood, there can be no person competent to be called, against whom the declarator can be inteded.

The Lords found there was a necessity of a declarator; and therefore found no process.

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1666. November 8. CHARLES CASSIE *against* COCKPEN and ADAM WATT.

COCKPEN, and the deceased Adam Watt, being infest in a yearly annualrent, effeiring to the sum of 4000 merks, forth of the lands of Auchinharvie, and others; by their back-bond, did declare the right of this infestment, in their favours, to be in trust, and to the behoof of Doctor Cassie. This infestment being dated *in anno* 1647, the trustees, for the arrears of the said annualrent, did not only comprise the lands of Auchinharvie, which were affected with the said annualrent; but also the lands of Fairherrivo, belonging to Sir David Cunninghame, the principal debtor; and the estate of Robertland, belonging to his cautioner; and whereupon they were infest. The haill lands of Auchinharvie and others, out of which the annualrent was [payable,] were holden feu or blench of the king, or prince; but the lands comprised for the byrun annualrents were holden ward of the prince; and, before the leading of the said comprising, there were three other comprisings of the same lands, led at the instance of Sir David Cunninghame of Auchinharvie, and Robertland, their creditors; and whereupon the comprisers were infest. Doctor Cassie being now deceased, Charles Cassie, his

son and heir, being about to dispohe his right to Doctor Cunninghame, does, in order to the perfecting of his bargain with the doctor, pursue the trustees, upon their backbond and comprising, for the arrears of the same. The trustees, pretending that their name being only made use of to Doctor Cassie's behoof, they ought to be relieved of all hazards they may suffer upon that account; do therefore, in the draught of the disposition which they make offer of, assert the same, with this quality, *viz.* that the right dispoed shall be burdened with the reliefs of all wards and marriages, and public assessments, ministers' stipends, or other incumbrances, in all time coming.

The Lords found, That Cockpen, and Mr John Watt, ought to denude themselves with the burden of the relief of all wards and other incumbrances; or else that Charles Cassie give them bond and caution, or other real security, to warrant them of the ward and other incumbrances: and found, that Charles Cassie, upon the defenders' resignation, should purchase himself infest, for freeing the defenders of the ward and marriage: and the Lords had no respect to that allegiance, that the comprising of the ward-lands, was but a fourth comprising, and that there was no necessity of being infest thereon.

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1666. *November 9.* JAMES POLLOCK *against* The RELICT of his Deceased FATHER.

UMQUHILE John Pollock, having granted a bond of 5000 merks to James Pollock, his second son, payable after the granter's decease; John being deceased, his son James pursues the relict, who was executrix to her husband, for payment of the sum.

The Lords sustained process, and *hoc loco* repelled all the defences proponed for the executrix; *viz.* that the inventory of the testament was exhausted, by sentences, recovered at the instances of other lawful creditors, and payment made conform: and that the bond is a legacy, granted by a father to his own son, to be paid after his decease; and so cannot take effect so long as there are any debts due by the defunct: and that the bond is null, by Act of Parliament 1621, as being granted by a father to his own son; without any onerous cause, in prejudice of his anterior lawful creditors, who concur with the executrix. Notwithstanding of all which, the Lords repelled the whole defences, *hoc loco*, as said is; but ordained the defender to have suspension without caution or consignation.

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1666. *November 14.* BARCKLAY *against* FOORD.

IN a suspension, the reason being founded upon a decreet-arbitral for eliding the ground of the discharge,—

The Lords repelled the same, and found the letters orderly proceeded; and