

was answered. That the debt being constituted against her by a sentence, and she having intromitted and possessed, as donatar, to the bastardy, she could not, by a subsequent title, *ex post facto* acquired; and after sentence was recovered against her, prejudice the creditors, who had *ius acquiritum*, seeing she, as donatar of bastardy, was liable to pay all her husband's debts, *quoad viros hereditatis*. — THE LORDS found, That the debt being constituted against her, as donatar to the bastardy, she could not, by a subsequent title of escheat, prejudice the charger: And therefore the LORDS ordained her to depone upon the quantity and species of her intromission; and allowed her retention, as to the privileged debts, such as house-mails, servant's fees, expences of both gifts of bastardy and escheat.

*Fol. Dic. v. 1. p. 93. Pres. Falconer, No. 193. p. 72.*

No 14.

1747. June 29.

REID against The OFFICERS of STATE.

REID being creditor to a bastard, who deceased without heirs of his body, raised a summons against the Officers of State, concluding for a decret of cognition for constituting his debt, and adjudication of the estate of the bastard.

No appearance was made for the Officers of State; but the Lords doubted how far this method was competent, thinking the proper way to affect the estate of a bastard, was to apply for a gift.

*Pleaded*, That this method was laid down by Stair, B. 3. tit. 3. § 46. who cited Craig, l. 2. D. 17. as of the same opinion, and a case where it was so found, No 3. p. 1346.

*Observed*, That Craig in the cited place did not come up to the opinion delivered by Stair, he only saying that the bastard's estate went to the King burdened with his debts; which was also the whole of the decision; but as adjudication was the only diligence by which the effects of bastardy could be affected, it ought to be granted.

THE LORDS found the bastardy proven, and the verity of the debt, and remitted to the Lord Ordinary to proceed accordingly.

*Act. Williamson.*

*Act. Abent.*

*Clerk, Forbes.*

*Fol. Dic. v. 1. p. 90. D. Falconer, v. 1. No. 190. p. 256.*

No 15.

A creditor of a bankrupt may take a decree of constitution against the Officers of State, and proceed to adjudge the estate of a bastard.

1789. July 29.

JAMES FALCONER against ALEXANDER HAY.

JAMES FALCONER having let out part of his lands to a person born out of wedlock, 'excluding his assignees and subtenants;' the question occurred, after the death of the lessee without children, Whether the tack could be assigned by the King to a donatar?

No 16.

A tack granted to a bastard, excluding his assignees and subtenants, does not pass to the Crown's donatar.