

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.

Page 80.

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 intended.

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

Page 82.

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 comprising of the same lands, led at the instance of Sir David Cunninghame of Auchinharvie, and Robertland, their creditors; and whereupon the comprisingers were infest. Doctor Cassie being now deceased, Charles Cassie, his