

ought airship goods, but if the said air be servit air to him of some landis or rents; and the said Mr James's air was not air of any such lands, whilk the said Mr James had none when he deceist.

*Fol. Dic. v. 1. p. 365. Sinclair, MS. p. 29.*

No 9.

1543. July 2. CRAWFORD and SEMPLE against CRAWFORD.

MARGARET SEMPLE, and Robert Crawford her spouse, for his interest, askit airship goods of her goodsir the Laird of —, and Thomas Crawford, now the Laird thereof, and intromitter therewith.—It was *excepted*, because she was not air to him of any lands, she ought to have none of his guidis, and also *ipse non obiit vestitus de ullis terris ut de fædo*. Nevertheless the LORDS decernit her to have action *quia erat deservita hæres, non de terris, et hoc eo magis pater dictæ Margaretæ obiit dominus liberi tenementi in — et erat nobilis, et baro*, and therefore to have ane air, and the air to have airship guidis.

*Fol. Dic. v. 1. p. 365. Sinclair, MS. p. 53.*

No 10.

Heirship due to the heir of a baron who died infest in lands, though they had been otherwise disposed of than to the heir.

\* \* \* Balfour reports the same case :

GIF ony gentleman or baron beand frank-tenementar allendarlie of ony landis, deceissis, his air aucht and sould have airship gudis, albeit he be not servit air to him in special of ony landis, bot air general allendarlie.

*Balfour, (AIRSHIP GUDIS.) No 5. p. 236.*

1562. March 12. The LAIRD of TRAQUAIR against PATRICK HOME.

GIF ony ladie of heritage, lauchfullie maryit with ane husband, deceissis leiv- and behind hir na lauchful bairnis gottin of hir bodie, the nearest of hir kin sould have ane just airship of all gudis and geir pertening to hir the time of hir deceis; and scho in hir testament or latter-will may not dispone the samin to hir husband, or ony uther, be way of executorie, or be reason of legacie.

*Balfour, (AIRSHIP GUDIS.) No 4. p. 236.*

\* \* \* Maitland reports the same case:

ANENT the action persewed be the L. of Traquair, as nearest air to Agnes Rutherford, heretrix of the land, spouse to Patrick Home of Broomhouse, against the said Patrick, before certain Sheriffs in that part, be deliverance of the Lords under the white wax, it was *alleged* be the said persewar, That he should have ane airship, and the best of everie thing that pertained to the said Rutherford, to whom he was air, and also should have the half of the haill gear, guidis, and debts, pertaining to the said Patrick and the said Rutherford the time of

No 11.

An heiress having no children, conveyed, by testament, her property away from her nearest of kin. They notwithstanding claimed heirship, and were found entitled to it.

No 11.

his decease that was free.—It was *alleged* be the defender, That the said persewar had na right to airship, nor half guidis foresaid, because she was but ane woman, and spousit the said defender, and could have no gear, because he being her husband, was *dominus omnium bonorum*; and also had no right to the half of the gear, as said is, in case she had any, because the said Rutherford made ane testament, and left certain legacies, and her husband only executor and intromitter, to dispone upon the rest of her gear be the legatars, as he would answer to the High Judge.—It was *replyit* be the said persewar, That he had gude right to the said airship, because she was ane lady of heritage, and sua differed fra another woman, being no heretrix; and also, howbeit she made ane testament, as said is, she might not leave in legacy the airship pertaining to the air; and albeit she made ane testament, in the whilk she made her husband executor, to dispone upon the remanent gear by her legacy, as he would answer to the High Judge, yet that takes na right fra the persewar to the half of the gear; because there were na bairns, and he was nearest of her kin; and the executor had no power to dispone be reason of his office at his pleasure, but conform to the law of God and man, whilk will that the nearest of kin to any person that is deceast, should have the haille gear, and not to be disponit at the pleasure of the executor, notwithstanding the words of the testament bearing in effect, I left my gudes to be disponed be my executors, as they will answer to the High Judge.—It was *alleged* be the defender, That albeit the said persewar should have right to the said gear, lang or he persewed the same, and soon after the decease of the said lady, it being war with England, because he dwelt near to the border, and had na strength, he put the said gudes and gear in keeping with his ain, in the Laird of Cranshaw's house, with the Laird of Swinton, where the Englishmen, be invasion with a great army, came to the said house, where the said gudes and gear were, and *per vim majorem*, spulziet and taik away the haille gear foresaid, together with the defender's ain gear libellit, be reason foresaid. This matter depending before the said Sheriffs, and the Sheriffs, be their request, desired the Lords to give their counsel to them in the said matter, because it was ane noveltie; and to that effect the Sheriffs and the party persewar purchesit ane writing direct fra the Queen's grace, desiring the Lords to give counsel in the said matter, to the whilk the said Lords grantit; whilk Lords fand be interlocutor, that the said persewar should have ane airship of the best of all things that pertained to the said Lady; and as to the remanent gear, and exceptions made thereupon, the parties agreed or the said exception was discussit, and sua the matter endit.

*Maitland, MS. p. 140.*

No 12.

1615. *January 21. & 26.* TODRIG *against* PRIMROSE.

IN an action betwixt George Todrig, and Mr David Primrose and his spouse, the LORDS fand, That a woman who was infest in an annualrent by her father,