

suer before he was heir, was sustained by his subsequent service, which was drawn back to the time of the charge. In that cause, the LORDS inclined that the burdens lying upon the tailzied lands, and the bonds to infest men in the property thereof, or annualrents furth of the same, should be born by the heir of tailzie succeeding to these lands. SERVICE OF HEIRS.—TAILZIE.

*Fol. Dic. v. 1. p. 176. Haddington, v. 2. p. 2162.*

No 83.  
other ques-  
tions *contra*  
*executionem*.

1629. *January 15.*

L. CORSBIE *against* SHAW.

BRIEVES being impetrate by the Laird of Crosbie, for serving him heir to one of his predecessors, before the four macers, and the LORDS having joined four advocates with them, two nominated for the Laird of Corsbie, and two for Shaw, who compeared, and opposed the service; and being admitted for his interest therein, he being heritably infest in the lands, whereunto Corsbie craved to be served heir to that of his predecessor, who was infest therein; and he *alleging*, that that predecessor was a bastard, and so *she* could not have an heir, nor he be served as heir to him; and the assessors differing in judgment, and being of contrary opinions, and craving the Lords' advice therein, by their supplication given in for that effect, whereupon they being heard in presence of the Lords, the LORDS gave advice, that that allegiance should not stay the service; for they thought all that the exception of bastardy, by the 94th act of Parliament 6th Ja. IV, is ordained to be received against the service, ought to be understood of the bastardy of him, who impetrates the brief, and not of the predecessor, to whom the party desires to be served heir; specially in this case, and cases of antiquity, where the predecessor was deceast many years before, as in this case where he was dead fifty years before; for, if this exception of the predecessor's being bastard were received, it would be a way to stop all services.

No 84.  
An exception  
of the bas-  
tardy of a  
remote pre-  
decessor, was  
not received  
to interrupt a  
service.

*Act. Craig.*

*Alt. Neilson.*

*Fol. Dic. v. 1. p. 177. Durie, p. 415.*

1633. *July 16.*

LAWSON *against* SCOTT.

IN a transferring of a bond pursued by Mr John Lawson against Scott of Whitsleid, as heir to his father, it being *alleged*, That the pursuer had comprised certain lands and teinds for the same debt, and was in possession of some of the teinds comprised; the allegiance against the transferring was sustained, albeit it was *answered*, that it was only competent against the execution, but not in a transferring.

*Fol. Dic. v. 1. p. 176. Spottiswood, (TRANSFERRING.) p. 342.*

16 A 2

No 85.