

1663. *December 3.* JAMES GRANT *against* WILLIAM PHILP, MARGARET MACLAUHLANE, and ——— BROWN.

DUNCAN PHILP in Comrie parish in Pearthshire, begets on Margaret Maclauchlane a child, called William Philp, whose name he puts in a bond of 400 merks, addebted to him by James Brown in Balichargie. This William dying, the said sum was found to pertain to the king, as being fallen in his hands by reason of bastardy, escheat, or last heir; the said William having been born a bastard, and so deceasing without bairns lawfully procreated of his own body, or any lawful assignation or disposition of the said sum made by him to any, during his lifetime, or at least because the said William has none to succeed to him within the tenth degree of his generation. James Grant, servitor to William, Duke of Hamilton, *in anno* 1663, gets the gift of the said bastardy from the king, under his Highness' privy seal, and so with concurrence of the king's advocate, raises summons of declarator against the said bastard's mother, as nearest of kin, and against the son and heir of the said James Browne, granter of the bond: summoning them to compear and hear it found and declared by the Lords, that the said bond is fallen in the king's hands, gift, and disposition, by reason of bastardy; and so that it appertains now to James Grant, this pursuer, as his majesty's donator; and that he ought to be answered, paid, and obeyed thereof.

The Lords decerned and ordained the same to belong and appertain to this pursuer, conform to the desire of the summons, because of the letter of gift under the privy seal produced.

And albeit, it was alleged by the defender's procurators, that no process could be sustained upon the foresaid gift of bastardy, because he offered him to prove that Margaret Malauchlane, the alleged bastard's mother, was married to his father; at least, that he cohabited with her many years as his wife, and were *habiti et reputati* as married folks; and so the said William cannot be held a bastard:—Whereto it was REPLIED by the pursuer's procurator, that the said allegiance was noways relevant, unless he would offer to prove that they were married, and that they cohabited and dwelt together as married:—

Notwithstanding of which reply, the Lords found the allegiance made by the defender relevant, and therefore assigned him a day for proving the same; also granted him letters for summoning witnesses, or leading any such like probation, or documents to that effect; which he failyieing to do at the day assigned, the term was circumduced against him, and decret given furth in manner above written.

Sir John Fletcher compears personally. *Act.* James Abernethy. *Alt.* Mr. Jo. Rollo. *Signet MS. No. 18, folio 6.*

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1663. *December 3.* THOMAS FALCONER younger of Kincorth, and ALISONE KELLIE his Spouse, *against* PATRICK HOME of Coldinghamelaw.

BY a minute of contract and agreement betwixt Patrick Home of Coldinghamelaw, and Margaret Greirson, his spouse, on the one part, and Thomas Falconer,