

No 21. in *spe*, and therefore alienation of ward-lands to brothers or other collaterals infers recognition, but to descendants it doth not.

THE LORDS found that the disposition by one brother to the other, did not infer him to be lucrative successor. See PASSIVE TITLE.

Fol. Dic. v. 1. p. 365. Stair, v. 2. p. 295.

* * * Dirleton reports the same case :

IT was found in the case, Sir Alexander Seaton of Pitmedden *contra* Seaton of Blair, that Pitmedden's brother, though he was apparent heir to a baron, he could not have a moveable heirship ; because he was not actually *baro*. Some were of opinion, that as to that advantage and privilege of having a moveable heirship, it was sufficient that the defunct was of that quality, that he was one of these estates ; seeing a person once *baro*, though he be denuded is *semper baro* as to the effect and interest foresaid ; and a prelate, though for age he should become unable to serve, and demit, yet is still a prelate as to that effect ; and the apparent heir of a baron, who has right and *in potentia proxima* to be a baron, and is peer to barons, and may be upon the assize of noblemen and barons, if he should be prevented with death before he be infeft, it were hard to deny him the privilege foresaid, that his heir should have his moveable heirship ; and if his heir would have the benefit as to a moveable heirship, his intromission with the same ought to import a behaviour.

Reporter, Lord Forret.

Dirleton, No 209. p. 96.

1678. November 21. DOCTOR JAMESON *against* THOMAS WAUGH.

No 22.

A MARRIAGE dissolving within year and day *sine prole*, the LORDS found the gift given by the wife's friends fell to her executors, and by the husband's friends fell to the husband's executors, and the rest in *unoquoque genere* belonged to the heir, because he died infeft in an annualrent, (though it was only a trust) which made him *baro*, he never being denuded.

Fol. Dic. v. 1. p. 365. Fountainball, MS.

1695. December 25. COCHRAN *against* The DUCHESS of HAMILTON.

No 23.
A lady who
was daughter
to an Earl
and wife to a
churchman,

ARBRUCHELL reported Cochran of Kilmarnock *against* the Duchess of Hamilton, in a reduction, the title whereof was an adjudication of the barony of Evandale, out of which Lady Margaret Kennedy had an heritable bond from the Duke for 50,000 merks, but was never actually infeft thereupon. *Alleged,*