

No 3.

William Christie and others, under the title of merchants, guild-brethren, and burgesses of the burgh of Stirling, for themselves, and as a committee empowered by the guildry of said burgh, in conjunction with Hugh M'Kail writer in Edinburgh, therein designed great-grand-nephew, and one of the heirs of line of the deceased John and Alexander Cowans, concurred in bringing an action, containing a variety of conclusions reductive and declaratory, against the patrons of Cowan's Hospital, the two Messrs Dundass, and others; and the first article insisted on was the reduction of the foresaid act of Council, dated 1st August 1772, and dispositions granted, in consequence thereof, of the liferent-superiorities in favour of the Messrs Dundass.

THE LORD ORDINARY 'sustained the reasons of reduction of the dispositions of the superiorities to Thomas Dundass and Charles Dundass; and, in particular, that, from the deeds under challenge, there is evidence of a gratuitous alienation, though under cover of a price stipulated; and that the patrons of Cowan's hospital have, as such, no power of gratuitous alienation.'

Upon a reclaiming petition and answers, the Court disregarded the objections stated to the title of the pursuers; that to M'Kail's being obviated by written evidence, of his relation to the original founders, flowing from the Magistrates and Council; and as to the title and interest of the other pursuers, it was *observed*, that this mortification was in 'favour of the guildry,' which gave them a sufficient title; and, upon the merits, the COURT viewed the case in the same light with the Lord Ordinary, that this was a gratuitous alienation, prejudicial to the hospital, and beyond the powers of the patrons; and therefore adhered to the Ordinary's judgment.

Act. Hay Campbell. Alt. D. of Faculty, Sol. General. Clerk, Pringle.
Fol. Dic. v. 3. p. 276. Fac. Col. No 123. p. 330.

1795. May 20.

No 4.

Hospital of PERTH *against* PATRONS of BUTLER'S and JACKSON'S Mortification.

WHERE an estate is mortified to an hospital for maintaining a certain number of people, and the rents encrease beyond what is necessary for that number, the LORDS found that the surplus did not accresce to the hospital, but to the heirs of the donor. *See APPENDIX.*

Fol. Dic. v. 3. p. 277.

See MORTIFICATION.

JURISDICTION.

PRIVILEGED DEBT.

APPENDIX.