of his Kindred, will not only be allowed to defend in his process for
his Interest but also may during the Year of Deliberation plead in
process, that he may have time to Deliberate and Enter Stair lib. 3
3 § 47 in fin. lib. 4 Tit. 12 § 3. This Declarator is Equivolent to a
Service.

A Person born in Lawfull Wedlock having no heir of Blood, may
Exclude the Ultimus Hæres not only by a disposition of his Estate in
vivos, but even by a testament in favour of any person.

Sect. 2.
of Bastardy.

Bastardy is a right the King hath to succeed to the Estate of a
personal of a bastard dying without issue of his own body, having
in another place (vid. supra pag. 311 & seqq.) Explained the Etymo
of the word Bastard, and what calls Bastardize or make a bastard
and where Bastardy is to be tried, and also set forth the effe
of Bastardy: I shall now only show in what manner that Ca
is made effectual to the Sovereign by process after the Bastard
Decease.

Bastardy is also Effectual by a Declarator at the Instance
of the King or his Donatary. If a Bastard die within a Regality
the Lord hath right to the Custody of Bastardy by his Charter
the Declarator must proceed at the Instance of the Lord or his
of Regality, or his Donatary, with the Concourse of the King's
vocate: because in that Case the Lord or Baillie of Regal
claims under his Majesty Stair lib. 4 Tit. 12 § 8. Such action proceed
upon a General Citation at the Market Cross, in the same way as
Declarator of Ultimus hæres: Wherein the Body must be
cially Cited, any person Concerned may appear and defend upon
General Citation Stair ibid. § 9. But the Child or any person
who might Succeed to the Deceast if the Bastardy were not proved
must be particularly Cited 11 Decemb. 1679 Somervel contra Stay
Stair lib. 3 Tit. 3 § 43. A person having Entred to Lands and
leaving issue without disturbance in his life time, his Sons
to these Lands cannot be quarrelled upon the account of
fathers being Bastard Coke 8 Rep. 101 1 Inst 244. Craig Jus
2 Tit. 18 § 12. Because non est Justum aliquem post mortem
Bastardum qui toto tempore Vitæ pro Legitimo habebatur. Nor
would the Lords grant process de Statu 20 Years after the
Lords Decease, who died betwixt 40 and 50 Years of age, and
Repute Lawfull in his life time 25 Feb. 1642 Crawford con
Parsels. Because the Marriage and Cohabitation of such

parents, was beyond Memory of any men Living, and could not be
proved by Witnesses.

Bastardy is not to be Strictly presumpt upon by setting
that the parties Father and Mother were not Married, which is a Ne
gative, nor Inferred from his being unable to prove their Marriages
but it must be Instructed in Libell, that such a person was Cited and Re
pelled Feb. 19 Jan. 1669 Kings Advocat contra Evan 15 June 1670 Li
vingston contra Burns 6 January 1680 Somervel contra Staines.
For otherwise most of persons might be Declared Bastards, it being
Impossible after a Marriage of Years Continuance to prove the
Marriage, unless a Testimonial or Authentick Record. Since upon
the Lawfulness of a Marriage is so strong, that it would be Instructed to
support the Children as Legitimate, tho' no other Evidence were but the
which will be a Presumption that no other man got the Child
that the Father Married Servants are Witnesses to the Marriage.
persons Dying [illegible] are Witnesses to Marriages, and Copies
to other from a Principal or Witness by Testimonies
in their Stead. But the Presumption of Legitimacy, not being Juris
et de jure, doth admit Proof Contrary
proof Craig Feud. lib. 2 Tit. 18 § 13. Mackenzie Observ. on Act 77 Par. 6
L. 7. Stair lib. 3 Tit. 3 § 43. [illegible] Witnesses to prove
sents, that [illegible] Bastardy
is Dispatched [illegible] Bastardy
Husband to another person at the time, Hope Major Prac. tit. Bastardy
Clerk Register contra Grieve & Williamson. Decerned Repelled Bastard
Instructed by the Parties [illegible] Lyllim the Lord [illegible] in the 6 Kings
Advocat contra Evan.

The proper Exception against this process, that the person
is to be a Bastard is always Negative, and Relevant, if proponed
least within Year and Day of the Decease, for [illegible]
such as the Dispositions of Heritage or Bonds [illegible]
by the King before the gift of Bastardy. Concerning the effect of Bastar
gillima Howard de Super Junge

Sect. 3.
Of what things the Royal Prerogatives of Ultimus hæres and Bastardy agree.

A gift of Bastardy and Ultimus hæres Pol. De Land was not Reme
to be so much as a title bona fide quo ad Creditores per Actos 16 July
1685 Baillie contra Executors. Both these Cases of Ultimus hæres
and Bastardy, are Excluded by a Disposition made by the Deceased of
his Estate in favour of any person, and when they are burdened with
his Debts so far as the Estate goes. For the King by his right of
last Heir or Bastardy, or his Donatary is not personally Liable.
The Donatary give up Inventory and Intromet, he may be pursu
shed by the Creditors to make the Estate forthcoming to them be