

In England when a Suit is commenced in a temporal Court for an Inher-
 -itance, and the Defendant pleads in Disability, that that the Plaintiff is a ba-
 -stard, or that no Process can be sustained at his Instance upon that Head, which
 they call general Bastardy Issue being thereupon joined, the Case is to be trans-
 -mitted by the Kings Writ to the Bishop, who is to try it in his consistorial
 Court, and certify it to the Justices. Which Certificate is conclusive to the
 for they are to give judgment accordingly. But where the principal Matter
 of the Suit is concerning Bastardy itself, called special Bastardy, as if an
 Action of Slander is brought for calling the Plaintiff Bastard, and the Defen-
 -dant justifies that he is a Bastard, it must be tried in the temporal Court
 by the Country. Nelson's Rights of the Clergy of England tit. Bastardy.

In Scotland Bastardy can be only tried before the Commissaries of Edin-
 -burgh, who are the established Judges to cognosce Marriage in the first In-
 -stances. This Proceed of Miment at the Suit of a Wife against one as repu-
 -ted her Husband, who denied her to be his Wife, was stopped before the
 Lords of Session, till the Partys Marriage was tried before the Commissaries
 of Edinburgh 25 January 1711 Cameron contra James. But the Party
 of a Declarator of Bastardy, is not put to prove it in a prejudicial Suit be-
 fore the Commissaries. vid. infra pag.

The Effects of Bastardy are so It disables a Bastard wanting lawful
 Children of his own Body to make a Testament, or to grant Legacies, unless
 he be legitimated by a Letter from the King 10 June 1670 Commissioners
 of Berwickshire contra Crow or obtain from his Majesty testamenti facti
 -nem a Power of making a Testament 7 July 1629 Wallace contra Murr. No
 -yet can a childless Bastard not legitimated do any effectual Deed on Death-
 -bed, which may not be reduced by the King ex capite lecti Shene de vert.
 Signif. v. Bastardus Stair lib. 4. tit. 12. §. 3. A Letter of Legitimation pass
 upon a Signature under the privy Seal as appears from the Title of the
 Signature in Mr Dallas Collection pag. 161. So that Sir George Mackenzie
 inst. lib. 3. tit. 10. §. 3) ~~is in the wrong to~~ is in the wrong to
 insinuate, that such a Letter must pass under the great Seal. A signature
 of Legitimation, tho it contain many Clauses, is mainly calculated to impair
 a Bastard who is Childless to make a Testament 10 June 1670 Commissioners
 of Berwickshire contra Crow, and hath no Effect as to the Bastard's heretab-
 -Rights which cannot be conveyed by Testament. Shene ibid. Stair lib. 3. tit. 3
 §. 45. The King is excluded by the Testament of a legitimated Bastard from
 -ment, or make no Testament at all, the King by Reason of Bastardy succeeds
 to his whole Estate heretab- and moveable Shene ibid. For in that Case the Le-
 -gitimation hath no Effect. A Bastard having no lawful Children of his own
 -Body

Body and not being legitimated is disabled to succeed to his natural Father,
 or to any Kinsman on the Fathers Side, nor can they succeed to him as Heir, or
 Heir of Line, or as Executor or Executors qua nearest of kin Shene ibid.
 Reg. majest. lib. 2. cap. 50. The Reason of this, because the Relation of one
 who dies intestate, is conveyed by the Proximity of Blood that is between
 the Heir and the Person to whom he succeeds, and we do not own any other
 Relation, besides that which one has by being born in lawful Wedlock, for
 is est pater quem nuptiae demonstrant. A Child procreant without Decorum
 not married, or unlawfully married (tho the Mother of it be certain) being
 understood to have had no Father, can have no Kinred by the Fathers
 Side, to whom only, and not to Relations by the Mother, Succession goes by
 our Law. Hence it is, that such a Bastard's real and personal Estate goes to
 the King as bona vacantia and caducary, under the Title of Bastardy. The Lands
 of a Bastard holden immediately of the King, so after the Bastard's Decease,
 fall to the Crown, and are consolidated with the Supremacy in the same Manner,
 as if the Vassal had in his Lifetime made Resignation thereof in the
 Kings Hands ad perpetuam remanentiam Shene ibid. But where the Bas-
 -tard's Lands are holden of a Superior who is a Subject, the King has
 Right to present any Person he pleases, by his Letter under the privy Seal,
 as Vassal to the Bastard's immediate Superior (tho the Superior be a Subject
 -of the same Lord) and the Bastard shall not be bound to receive him, unless he be
 -of the same Lord, or that the Bastard be legitimated by the same Lord.
 It hath been a Question, if a Bastard
 may succeed to his Mother or to his Mother's Relations. By the general Usage
 of France, he cannot nor can ~~the~~ the Mother's Relations succeed to him
 (Lid.) seems to be of Opinion, that a Mother cannot succeed to her Bastard
 Child, when he says, that if the lawful Child of a Bastard having no Issue
 of his own Body, nor lawful Brother or Sister, die without disposing of
 his Estate, the King will have Right to it, because with us there is no
 Right of Succession by the Mother's Side. Craig (Feud. lib. 2. tit. 18. §. 6.
 2. 10) holds, that by our Law no Bastard can succeed to his Mother. The
 Lord Stair (Inst. lib. 4. tit. 12.) tells us, he had not observed it controverted,
 whether Bastards may succeed to their Mothers or to those of her Line:
 but that unless Statute or Custom hath otherwise determined in Favour
 of lawful Marriage, there is no ground to exclude them from Succession
 to their Mothers, or to those of the maternal Line.

A Bastard having no lawful Issue of his own Body, may in Liege-
 -point, with the same Liberty as any other Person, dispose of his Estate
 heretab- and moveable by Deeds inter vivos Shene ibid. Spotswood Pratt.
 tit.