

No. 9. *tio hereditatis*, that the mid-brother's oye had right, and not the descendants of the eldest brother, in regard they found that the heritage of a youngest brother's son did ascend and belong to the middle or immediate elder brother, and did not ascend *per saltum* to the eldest brother.

Fol. Dic. v. 2. p. 398. Pres. Falconer, No. 9. p. 4.

* * * Fountainhall reports this case :

The case William Watson and Johnstons, against Johnston and Doctor Hay, being this day advised, the Lords " found there were three brothers, and Patrick to be the eldest ; and found, what lands the youngest conquested became heritage when they once descended to his son ; and therefore, that the middle brother and his posterity, (because he was immediate elder,) succeeded to the said youngest brother's son, and that it did not go to the eldest of all the three, though he was the representative of the *communis stipes* their father."—Craig, Lib. 2. De Successione differs from this.

Fountainhall, v. 1. p. 167.

No. 10.

1686. *January.* JOHN STENHOUSE *against* ANDREW DEWAR.

In a competition betwixt a niece by a sister-german, and the uncle-consanguinean, brother to the defunct, the Lords found the niece heir of line, and reduced the uncle's service.

Fol. Dic. v. 2. p. 397. Harcarse, No. 72. p. 12.

No. 11.

1688. *January 17.* COLLISON *against* MOIR.

In Robert Collison and Moir's case, it was debated *in prasentia* between a sister-german to a defunct and his brother consanguinean, and their descendants, which of them was preferable in the succession to his heritage ; the succession was to Mr. Robert Petrie, Provost of Aberdeen. Hope, Minor. Pract. Tit. 2. brings them in equally in moveables, but prefers the sisters-german in land, because *ex utroque latere, et ob duplicitatem vinculi*. The President thought here, that the defunct not being infest, they were alike to the *communis stipes*, and was therefore for preferring a brother and his issue, who always *in pari casu* excludes sisters ; and search having been made in the records of the Chancery, it was alleged, that services and retours were found where he had been preferred ; and Novel. 118. favoured it, so that at last the descendants of the brother were allowed to serve, but prejudice to the other party to quarrel the same, as accords.

Fol. Dic. v. 2. p. 398. Fountainhall, v. 1. p. 492.

* * Harcarse reports this case :

In the competition for the right of succession betwixt the nephew of a consanguinean brother, and the nephew of a german-sister to the defunct, it was alleged for the consanguinean nephew, that regularly the masculine line excludes the feminine; and though by our custom, drawn from the civil law, the german sister is preferred to the consanguinean brother, yet that principal is but personal to the sister competing, when both bloods concur in the same degree, and belongs not to her descendants.

Answered for the German nephew: Albeit a woman is termed *ultima sue familiae*, yet by our law and custom, the representatives of a sister-german exclude the masculine consanguinean line.

The Lords ordained the point to be heard in presence, January, 1688, Captain Collison against Moir. The german nephew declining to debate, the consanguinean nephew took out briefs and served.

Harcarse, No. 70. p. 13.

No. 11.

1696. February 20.

MR. GEORGE ALEXANDER, Advocate, and one KER, against ALEXANDER CLARK.

Mr. George Alexander, and one Ker, raise a reduction of Alexander Clark's service as heir to his grandfather's sister's daughter, (of whose *ultimus hæres* they had a gift from the Exchequer,) upon this ground, that, by our law, there was no succession by the mother's line, as Craig asserts, Lib. 2. Dieg. 14. De successione fæminea, and Stair, Tit. 26. Of Succession, § 34. shews there is no place for cognates. So also Mackenzie, Institut. p. 294. The other party adduced also passages seemingly in his favours, from all the three, as Craig, Lib. 2. Dieg. 17. affirming, while there is any alive who can instruct contingency of blood to the defunct, they ought to succeed and debar an *ultimus hæres*.—But that is in the agnatick line; and as to *Regiam Majestatem*, Lib. 2. Cap. 25. many of our Lawyers disown it from being any part of our law; *esto* it were, it is now in desuetude. The Lords preferred the donatar to the *ultimus hæres*. See Stair, Book 4. Tit. 22. that bastards are not secluded from the mother's succession, nor those of her line. This should be amended by an act of Parliament, that there may be no room hereafter for an *ultimus hæres* in such cases.

Fol. Dic. v. 2. p. 397. Fountainhall, v. 1. p. 713.

No. 12.

1717. February 5. WILLIAM CARSE against MR. ROBERT RUSSEL.

In the competition for the mails and duties of Wester Dikehead, William Carse craved to be preferred, because the lands were conquest by ——— Tennant,

No. 13.
Conquest divides amongst females, as