

No 6.

case, because by that law there was no privilege to primogeniture; and what is mentioned in the majesty relates to a succession that is now quite unknown in Scotland; and what Craig asserts is not confirmed by any decision; and the same paragraph bears, that superiorities belong to the eldest without any compensation, except where there is a constant feu-duty which is divisible, and there is no reason offered why a compensation should be given for the messuage more than the superiorities; and whatever hath been the opinion of lawyers of old, yet later custom hath favoured the eldest daughter: and my Lord Stair doth very plainly affirm, that the eldest hath right to the principal messuage and all indivisible rights without any thing in lieu thereof to the rest, and differs from Craig's opinion, that the feu-duties are to be divided, because the superiority being indivisible the feu-duty is a necessary consequence thereof.

"THE LORDS found, that the eldest hath right to the messuage, without any allowance to the younger in lieu and place thereof."

Dalrymple, No 76. p. 96.

* * See the report of this case by Fountainhall, No 7. p. 2453.

No 7.

1725. January 16. EXECUTORS OF LADY GARNKIRK *against* GRAY.

IN a question among heirs portioners whether the heirship moveables go as a *præcipuum* to the eldest, or divide among all, the LORDS found the eldest sister can only draw her share. See APPENDIX.

Fol. Dic. v. I. p. 363.

No 8.

1730. December. DUNBAR of Mochrum *against* LADY HOUSTON.

WHAT falls to the eldest heir portioner as a *præcipuum* with or without recompence to the sisters debated, but not determined. See APPENDIX. (See the next case.)

Fol. Dic. v. I. p. 364.

No 9.

1742. December 18. LADY HOUSTON *against* DUNBAR.

FOUND, that the eldest of three heirs portioners was entitled to that third, within which the mansion-house lay.

Kilkerran, (HEIRS PORTIONERS.) No I. p. 247.