he serve heir to his father. This found no consolidation, and that he had only right to the superiority.

1741, Dec. 15.

First find that the property and superiority were not consolidated in the person of either Alexander third or Alexander fifth, and find that the pursuer the heir of Alexander third cannot quarrel the charter by him to his brother John 3*tio*. A hearing January 8th. Whether the pursuer as heir served to the last Coulterallers though *cum beneficio* can quarrel any of his deeds, though concerning subjects not in the inventory? and to lay before us at same time the value of the subject; and 28th January 1742 adhered as to the two first points. As to the other point on which the hearing was appointed, they found that the service even *cum beneficio* bars him from quarrelling the deeds of Alexander fifth. 12th November 1742 The Lords altered, and found him not barred by his service.

(Reference is in the Dictionary erroneously made to the title SUPERIOR AND VASSAL.)

No. 5. 1749, July 12. SIR KENNETH M'KENZIE, *Supplicant.*

THE petitioner being at Mahon when his brother Sir George died 20th May 1748, leaving a wife, and not known whether with child or not, the petitioner could not at that distance record inventories in order to a service *cum beneficio;* and the Sheriff-clerks scrupled to record them. Now therefore he prayed for our authority,—and we authorized the recording, but would not determine what effect that would have,—and therefore reserved to all parties to be heard on the effect of such recording.

HEIR-PORTIONER.

No. 1. 1743, Feb. 1. PEADIE *against* PEADIES.

THE Lords found, (*me referente*) that the principal messuage, with office-houses, yards, and orchard, belongs to the eldest heir-portioner without division and without any recompense to the other heirs-portioners. This passed without a vote, but several were of a different opinion in point of law, had it not been the precedent 1707, Cowie against Cowie, (DICT. No. 6. p. 5362.) particularly the President, Murkle, and I.

No. 2. 1744, Nov. 2. LADY HOUSTON *against* SIR GEORGE DUNBAR.

AN estate devolving to three several heirs-portioners, wherein there were two feu-superiorities, the question was, whether the eldest had right to sell the superiorities without recompense, or if they should divide?—and consequently, if there were but one, that there behoved to be a recompense. Drummore thought the eldest had right to both superiorities without any recompense,—but after he read Lord Stair he altered his opinion. Arniston thought the eldest had her election of one, and that without any recompense,—that the

second could have the other without recompense, and the youngest none at all. The Lords found the eldest had right to one superiority and the second to the other, and that both were liable for a recompense to the third for her proportion of the feu-duties, but without regard to the casualties.

No. 3. 1744, Nov. 8. CREDITORS of ROSEBERRY *against* LADIES PRIMROSE.

THE Lords adhered to my interlocutor finding that the Ladies could not compete with the creditor's adjudication, or have any preference on the heritable subjects yet extant for any part of other heritable subjects that the Earl or his cedents may have intromitted with more than their half. The President was clear that these intromissions ought to be imputed in satisfaction of the Earl's and his cedents half of the *universitas*; *2do* that the creditor's adjudication and charge against superiors gave him no more right than was in the Earl, and that the Ladies were preferable to him by the father's disposition for the full half of the *universitas*; and Dun was of the same opinion. But all the rest differed in both points. Arniston argued long and well, and said that in the law of Scotland there was no action *familiæ erciscundæ*, that heirs-portioners succeeded each equally in every heritable subject; and I observed as a further argument, the interest of superiors in that succession, that a superior giving a charter to heirs whatsoever, if there were three daughters, each behoved to be his vassal, whatever lands the defunct might have held of other superiors; and if there were three subjects, one held ward, another feu, another blench, and three daughters, one one year old, another ten years old, a third major and married, this Court could not give the ward-land to the eldest, to cut the superior out of ward and marriage, nor to the youngest in prejudice of the heirs. Therefore Arniston observed that intromission with one subject, more than the intromitter's right, could not extinguish her right to another subject, and if the younger children had in this case completed their rights by adjudication against Roseberry and infeftment from the several superiors, the intromission of one of them with one of the debts, for example Lord Primrose, could not transfer to the other sisters her infeftment in General Preston's estate. Next as to the diligence,—that the property remained with the last Roseberry notwithstanding his general disposition,—that after his death the Ladies had *jus ad rem*, but the real right, the *jus in re*, was *in hæreditate jacente* and transmitted to this Roseberry by his infeftment when he was infeft, and to the creditors by their charge to enter heir in special, which carried, not the Earl's right of apparency only, but the full property that was in the defunct, and which adjudications were completed by charges against superior,—and a contrary judgment would overturn the foundations of our law, and security from our records.

No. 4. 1750, Jan. 2. CHALMERS *against* CHALMERS.

THIS question was about the *præcipuum* of the eldest sister and some superiorities; Whether the eldest sister should have not only the garden but orchard, both being about two acres and a half inclosed together with a hedge? *2do*, so much of the avenue as the garden on both sides reached? and we found she had right to them, and to the office-houses adjacent,—but ordered a hearing as to the superiorities, Whether they are to be