

Answered for the pursuer, He is regularly served heir-male to William, Earl of Dalhousie, his cousin, Earl William being truly and effectually served heir-male to Earl George, his father; for *legitimus et propinquior hæres* is a general designation applicable to all heirs *in suo genere*, according to the last investiture; and generally all brieves, even of heirs-male and provision, bear only *legitimus et propinquior hæres*; though, sometimes, the word *masculus*, or *provisionis*, (which is not *de essentia*) be added *ex superabundanti*. Besides, albeit a general service of an heir of line requireth no more for its foundation but the propinquity of blood; yet, in a special service, there must be a voucher and document for verifying to the inquest, that the person to be served is *legitimus successor* in these lands, viz. the sasine of him last infeft. Now, how could the inquest, who had Earl George's sasine produced in their presence, and under their consideration, have returned Earl William by a special service, to have right, as naked heir of line to the estate of Dalhousie, which, by the last investiture, was conveyed to heirs-male?

No 13.

THE LORDS found, that Earl William, being eldest son, and thereby both heir-male and of line to Earl George, and served *legitimus et propinquior hæres* to him in lands, wherein Earl George was infeft to himself and his heirs-male, ought to be understood as served in the terms of Earl George's infeftment; and therefore repelled the objection, and sustained process.

Fol. Dic. v. 2. p. 345. Forbes, p. 630.

1738. July 21. EDGAR *against* MAXWELL of Barncleugh.

In a contract of marriage, an estate being disposed to the husband, and his heirs-male of that marriage, which failing, his heirs-male of any other marriage, which failing, his heirs-female of that marriage; and their being daughters of that marriage, but no sons, a service by the eldest son of the second marriage, as heir-male in general to his father, was found not to carry the provision in the contract of marriage, though, at the same time, he was heir-male of provision; upon which footing the heirs-female of the first marriage, who claimed the estate after his decease, were preferred to his gratuitous assignee.

No 14.

Fol. Dic. v. 2. p. 345.

* * See this case by Kilkerran, *voce* SERVICE and CONFIRMATION. See also No 10. p. 3089. *voce* CONSOLIDATION, and No 17. p. 4325. *voce* FIAR ABSOLUTE LIMITED.

1745. June 5. MERCER *against* SCOTLAND.

No 15.

A NEPHEW having, from his uncle, a disposition *omnium bonorum* that should belong to him at his death, with a provision, that he should be liable for the