

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. 242.

* * * The following particulars of the case are mentioned in the Folio Dictionary :

THE estate of Carnock having devolved on several heirs portioners, the principal mansion house was decerned by a decree arbitral, and an interlocutor of an Ordinary following thereon, to belong as a *præcipuum* to Lady Houston, the eldest heir portioner. Afterwards the Sheriff of the county appointed an inquest, who having surveyed the whole estate, divided it, by their verdict, into three parts. Lady Houston *insisted*, That as eldest heir portioner, she was entitled to have for her share the third that lay most contiguous to the mansion-house ; especially as the planting and offices stood upon that part. *Urged* for the other sisters, The preference of the shares ought to be determined by lot, especially as the third next to the mansion house was of greater value than the others ; as an evidence of which being the fact, each of the two younger sisters offered L. 500 Sterling to have that third adjudged to them. *Replied*, That the offer of L. 500 proceeded merely from caprice, as the several shares were found equal by the inquest ; and a considerable time having now intervened since their verdict was returned, it could not be opened again without the strongest evidence of fraud. THE LORDS approved of the division reported by the inquest, and found that Lady Houston the eldest heir portioner was entitled to that third contiguous to the mansion-house, as bounded in the said verdict, and that the other two heirs portioners must cast lots, or cavel for the remaining thirds of the lands.

Fol. Dic. v. 3. p. 263.

1743. February 2.

MARGARET PEADIE, eldest Heir Portioner of Ruchill, *against* GRIZEL, &c. PEADIES, the other Heirs Portioners.

THE question betwixt these parties resolved into a neat point of law, *scilicet*. Whether the mansion-house, office-houses, and gardens on the lands of Ruchill should belong to the pursuer, as the eldest heir portioner, without any consideration or recompence to be given to the other heirs on that account.

The substance of the *arguments* for the eldest was, That the brief of division concerned only such subjects as admitted of a division, and by no means such as were in their own nature indivisible ; consequently, these last did, by the feudal law, *jure præcipui et primogenituræ*, necessarily belong to the eldest heir portioner without division, and without any recompence to the other *puisne* heirs portioners ; that the want of a head in the brief to enquire into indivisible subjects, and to afford a recompence from the eldest, carried alongst with it a strong evidence, that no such thing was known in the law of Scotland at that time : That it was certain, indivisible subjects, such as superiorities, jurisdictions, towers, and fortalices, fall to the eldest without any recompence ;

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The principal dwelling-house, or messuage, &c. belongs to the eldest heir portioner, without any recompence to the other heirs portioners. See No 6, p. 5362.