

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 3tio. 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