

HEIR PORTIONER.

1523. February 26.

ELIZABETH FENTON *against* The HERITRIX of Dirleton.

No 1.

GIF ony fre tenant or vassal haldand landis of diverse and sindrie sisteris, or utherwayis airis-female, as thair superiouris, he aucht and sould be enterit thairto be the eldest air-female allenarlie, and the releif quhilk he payis the time of his entrie sould be equallie dividit amang all and hail the superiouris, and on na wayis sould pertene to the eldest aire alane.

Fol. Dic. v. 1. p. 363. Balfour, (RELIEF.) No 5. p. 256.

1669. December 2. CARRUBER, (Monteith of) *against* SIBBALD, (Boyd.)

No 2.

CARRUBER and Mr David Sibbald having married two sisters, who were heirs portioners to Mr Robert Boyd, there was a decret of division raised and put to the knowldege of an inquest, who did ordain the eldest sister to have the principal house and messuage of the whole lands; and did ordain the second sister to have the mill and mill-lands, with the multures, as being in worth equivalent to the lands of this division. There being a reduction intented upon this ground, that the whole lands and mills being divisibile of their own nature, they should have been equally divided, especially they being *tenementa diversa*; and, as to the house, if it could have been conveniently divided, it ought to have been done, it was *answered*, That the messuage did belong to the eldest sister *jure primogeniturae*; and the mill being divisibile of its own nature, and worth the whole lands, there was a necessity to make the division, as was found by the inquest.

A message ought to be divided among heirs portioners, if it may be justly done, otherwise it falls to the eldest, who must satisfy the rest for their proportions.

THE LORDS did sustain the reduction, and ordained a new commission for dividing the house and messuage if it might be conveniently done; otherwise, that it might be valued, and the youngest sister have satisfaction for the half;

Tho' a mill cannot be possessed by two persons, yet the Lords divided the rents between two heirs portioners.