the ancient heritage, which undoubtedly did belong to his eldest son and apparent heir, and to which neither the daughter, nor her elder nor younger brother could pretend any right. And farther, Skene *De verborum significatione*, upon that title of conquest, is more clear that *conquestus* signifies lands which any person acquires *privato jure et singulari titulo*, and is express, that "De jure hujus regni conquestus cujuslibet hominis qui moritur de ipso sasitus hæreditarie sine hærede de corpore suo gradatim ascendit; so that all the ancientest laws and statutes of King William, Robert the Third, and *Leges Burgorum*, are only to be understood in that case where the acquirer *obiit sasitus;* and likewise *Craig De feudis*, in his titles "De successione collaterali, et conquestu, si plures sint apud nos fratres veluti quatuor, et tertius feudum acquiserit," is express, that the question of conquest and succession thereto by the death of a third brother, is only si feudum acquiserit et decesserit, &c. where he declares, that the law as to conquest doth flow to us from the English law, who had it derived to them from the Normans when they were conquerors; and is clear, that by the law of England that question anent succession to conquest, is only where tertius aut quartus frater feudum acquisivit; wherein their law differs from ours, because the eldest brother succeeds to the third or fourth brother, passing by the intervening brothers; and therefore it seems to be most founded in law that conquest can never be the question, but *in feudis*, and not where the subject in question is an obligement to infeft for security of a sum of money; albeit it is granted, that if a second brother should acquire an absolute and irredeemable right of lands, but happen to die before infeftment, or, if being infeft, he should resign, reserving a reversion to him and his heirs, which might be said for the heir of conquest; but as to the subject now in question, seeing the lands out of which the deceased Margaret Falconer should have gotten infeftment, and no sasine followed, nor had she any right to a reversion, and that it was in her father's power to infeft her or not, to interpret that right to be *feudum*, or *de natura feudi*, seeing it was impossible she could succeed to the land, it is thought that there was much reason against that decision. No. 8.

Gosford MS. Nos. 773, 776. *p.* 481.

*** Stair and Dirleton's reports of this case are No. 3. p. 5605. *voce* HERITAGE AND CONQUEST.

1681. *December* 15. JOHNSTON *against* WATSON. No. 9.

In the mutual reduction pursued by Johnston against Watson, and Watson against Johnson of two services, the one being of the eldest brother's son, as heir to the youngest brother's son, and the other service being of the mid-brother's eye as heir to the youngest brother's son, the Lords found that the subject matter in debate, being heritage in the person of the defunct, who was the youngest brother's son, his right being a disposition from his father, and so was *præcep-*

No. 9. *tio hæreditatis*, that the mid-brother's oye had right, and not the descendants of the eldest brother, in regard they found that the heritage of a youngest brother's son did ascend and belong to the middle or immediate elder brother, and did not ascend *per saltum* to the eldest brother.

Fol. Dic. v. 2. *p.* 398. *Pres. Falconer, No.* 9. *p.* 4.

*** Fountainhall reports this case:

The case William Watson and Johnstons, against Johnston and Doctor Hay, being this day advised, the Lords " found there were three brothers, and Patrick to be the eldest; and found, what lands the youngest conquessed became heritage when they once descended to his son; and therefore, that the middle brother and his posterity, (because he was immediate elder,) succeeded to the said youngest brother's son, and that it did not go to the eldest of all the three, though he was the representative of the *communis stipes* their father."—Craig, Lib. 2. De Successione differs from this.

Fountainhall, v. 1. *p.* 167.

No. 10.

1686. *January.* JOHN STENHOUSE *against* ANDREW DEWAR.

In a competition betwixt a niece by a sister-german, and the uncle-consanguinean, brother to the defunct, the Lords found the niece heir of line, and reduced the uncle's service.

Fol. Dic. v. 2. *p.* 397. *Harcarse, No.* 72. *p.* 12.

1688. *January* 17. COLLISON *against* MOIR.

No. 11.

In Robert Collison and Moir's case, it was debated *in præsentia* between a sister-german to a defunct and his brother consanguinean, and their descendants, which of them was preferable in the succession to his heritage; the succession was to Mr. Robert Petrie, Provost of Aberdeen. Hope, Minor. Pract. Tit. 2. brings them in equally in moveables, but prefers the sisters-german in land, because *ex utroque latere, et ob duplicitatem vinculi.* The President thought here, that the defunct not being infeft, they were alike to the *communis stipes*, and was therefore for preferring a brother and his issue, who always *in pari casu* excludes sisters; and search having been made in the records of the Chancery, it was alleged, that services and retours were found where he had been preferred; and Novel. 118. favoured it, so that at last the descendants of the brother were allowed to serve, but prejudice to the other party to quarrel the same, as accords.

Fol. Dic. v. 2. *p.* 398. *Fountainhall, v.* 1. *p.* 492.