

* * Harcarse reports this case :

In the competition for the right of succession betwixt the nephew of a consanguinean brother, and the nephew of a german-sister to the defunct, it was alleged for the consanguinean nephew, that regularly the masculine line excludes the feminine; and though by our custom, drawn from the civil law, the german sister is preferred to the consanguinean brother, yet that principal is but personal to the sister competing, when both bloods concur in the same degree, and belongs not to her descendants.

Answered for the German nephew: Albeit a woman is termed *ultima sue familiae*, yet by our law and custom, the representatives of a sister-german exclude the masculine consanguinean line.

The Lords ordained the point to be heard in presence, January, 1688, Captain Collison against Moir. The german nephew declining to debate, the consanguinean nephew took out briefs and served.

Harcarse, No. 70. p. 13.

No. 11.

1696. February 20.

MR. GEORGE ALEXANDER, Advocate, and one KER, against ALEXANDER CLARK.

Mr. George Alexander, and one Ker, raise a reduction of Alexander Clark's service as heir to his grandfather's sister's daughter, (of whose *ultimus hæres* they had a gift from the Exchequer,) upon this ground, that, by our law, there was no succession by the mother's line, as Craig asserts, Lib. 2. Dieg. 14. De successione fæminea, and Stair, Tit. 26. Of Succession, § 34. shews there is no place for cognates. So also Mackenzie, Institut. p. 294. The other party adduced also passages seemingly in his favours, from all the three, as Craig, Lib. 2. Dieg. 17. affirming, while there is any alive who can instruct contingency of blood to the defunct, they ought to succeed and debar an *ultimus hæres*.—But that is in the agnatic line; and as to *Regiam Majestatem*, Lib. 2. Cap. 25. many of our Lawyers disown it from being any part of our law; *esto* it were, it is now in desuetude. The Lords preferred the donatar to the *ultimus hæres*. See Stair, Book 4. Tit. 22. that bastards are not secluded from the mother's succession, nor those of her line. This should be amended by an act of Parliament, that there may be no room hereafter for an *ultimus hæres* in such cases.

Fol. Dic. v. 2. p. 397. Fountainhall, v. 1. p. 713.

No. 12.

1717. February 5. WILLIAM CARSE against MR. ROBERT RUSSEL.

In the competition for the mails and duties of Wester Dikehead, William Carse craved to be preferred, because the lands were conquest by ——— Tennant,

No. 13.
Conquest divides amongst females, as