*** Harcarse reports this case:

No. 11.

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 suæ familiæ*, 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 brieves and served.

Harcarse, No. 70. *p.* 13.

1696. *February* 20.

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

No. 12.

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 assents, 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 pasages 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 succed and debar an *ultimus hæres*.—But that is in the agnatick 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.

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

No. 13.
Conquest divides amongst females, as

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.
heirs-portioners, as well as heritage.

who had two sisters, one elder and one younger; and the lands being conquest, did ascend to the eldest sister, and to William Carse as descended of her.

Mr. Robert Russel, descended of the youngest sister, claimed an equal share, as heir-portioner, and alleged that there was neither the opinion of lawyers, nor any precedent of conquests ascending to an elder sister. It was long doubtful amongst the ancient lawyers, in what manner conquest was transmitted: And that matter was determined by the 88th and 97th chapters *Quoniam Attachiamenta*, by which it is provided, "That if there be three brethren, and the mid-brother deceasing without heirs of his body, the eldest and first begotten shall succeed to the land and tenement, and not the after born or youngest brother," because lands conquest should ascend by degrees, and the heritage descend by degrees: And the 97th chapter is to the same effect. But there is no notice taken of elder or younger sisters; and the reason is, because the law of primogeniture carried the whole succession to the eldest son, or nearest heir-male, except in the case of conquest; but daughters or heirs-female succeeded equally *in capita;* therefore there was no occasion of a speciality in conquest in the succession of females: And lawyers who write upon the subject of conquest, do only state the case of a middle brother-german deceasing but not of females; yet Craig, Lib. 2. Dieg. 15. *in fine*, has these words, "Si plures sint sorores, & una vel feudum vel annuum reditum acquisiverit, & sine liberis mortua fuerit, omnes sorores ad ejus successionem per capita admittentur."

"The Lords found the succession did descend upon the heirs of both sisters as heirs-portioners."

Fol. Dic. v. 4. *p.* 398. *Rem. Dec. v.* 1. *No.* 3. *p.* 5.

*** A similar decision was pronounced, January, 1727, Adam against Thomson. See APPENDIX.

1734. *June* 12. EARLS of LOWDON and GLASGOW *against* LORD KERS.

No. 14.

The Lords found an adjudication *contra hereditatem jacentem*, preferable to an assignation of mails and duties granted by the defunct proprietor, where the competition was about the rents that fell due betwixt the proprietor's death and the date of the adjudication. See APPENDIX.

1757. *November* 29. ISAAC GRANT *against* PETER GRANT.

No. 15.
Heritage of fourth brother goes to immediate elder.

William Grant of Larg had four sons, John, James, Peter, and George.

George, the youngest, died without issue, leaving an heritable subject.

William, the son of Peter the third son, then deceased, obtained brieves for serving himself heir of line and conquest to George.