

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.