second could have the other without recompense, and the youngest none at all. The Lords found the eldest had right to one superiority and the second to the other, and that both were liable for a recompense to the third for her proportion of the feu-duties, but without regard to the casualties.

No. 3. 1744, Nov. 8. CREDITORS of ROSEBERRY *against* LADIES PRIMROSE.

THE Lords adhered to my interlocutor finding that the Ladies could not compete with the creditor's adjudication, or have any preference on the heritable subjects yet extant for any part of other heritable subjects that the Earl or his cedents may have intromitted with more than their half. The President was clear that these intromissions ought to be imputed in satisfaction of the Earl's and his cedents half of the *universitas*; *2do* that the creditor's adjudication and charge against superiors gave him no more right than was in the Earl, and that the Ladies were preferable to him by the father's disposition for the full half of the *universitas*; and Dun was of the same opinion. But all the rest differed in both points. Arniston argued long and well, and said that in the law of Scotland there was no action *familiæ erciscundæ*, that heirs-portioners succeeded each equally in every heritable subject; and I observed as a further argument, the interest of superiors in that succession, that a superior giving a charter to heirs whatsoever, if there were three daughters, each behoved to be his vassal, whatever lands the defunct might have held of other superiors; and if there were three subjects, one held ward, another feu, another blench, and three daughters, one one year old, another ten years old, a third major and married, this Court could not give the ward-land to the eldest, to cut the superior out of ward and marriage, nor to the youngest in prejudice of the heirs. Therefore Arniston observed that intromission with one subject, more than the intromitter's right, could not extinguish her right to another subject, and if the younger children had in this case completed their rights by adjudication against Roseberry and infeftment from the several superiors, the intromission of one of them with one of the debts, for example Lord Primrose, could not transfer to the other sisters her infeftment in General Preston's estate. Next as to the diligence,—that the property remained with the last Roseberry notwithstanding his general disposition,—that after his death the Ladies had *jus ad rem*, but the real right, the *jus in re*, was *in hæreditate jacente* and transmitted to this Roseberry by his infeftment when he was infeft, and to the creditors by their charge to enter heir in special, which carried, not the Earl's right of apparency only, but the full property that was in the defunct, and which adjudications were completed by charges against superior,—and a contrary judgment would overturn the foundations of our law, and security from our records.

No. 4. 1750, Jan. 2. CHALMERS *against* CHALMERS.

THIS question was about the *præcipuum* of the eldest sister and some superiorities; Whether the eldest sister should have not only the garden but orchard, both being about two acres and a half inclosed together with a hedge? *2do*, so much of the avenue as the garden on both sides reached? and we found she had right to them, and to the office-houses adjacent,—but ordered a hearing as to the superiorities, Whether they are to be

divided, or if they go to the eldest,—in which case we agreed that the younger should have the recompense.

HERITABLE AND MOVEABLE.

No. 1. 1735, July 25. SIR JOHN DALRYMPLE *against* EXECUTORS of HALKETT.

See Note of No. 1. *voce* BANK.

No. 2. 1735, July 3, 29. DAUGHTER of MONRO *against* MONRO.

THE Lords found the bond not rendered moveable neither by the process for payment nor by the trust-assignation. 29th July The Lords adhered.

No. 3. 1736, Jan. 14. BALFOUR *against* WILKIESON.

THE Lords found, that the relief competent to this executrix against the heir, of sums paid by her before her marriage, fell under the *jus mariti*, though the sums paid were bonds bearing annualrent.

No. 4. 1736, Jan. 21. CREDITORS of CAVE *against* MURRAY.

THE Lords adhered, and thought the sum both arrestable and even moveable, though the creditors had acceded to the trust right.

No. 5. 1737, Jan. 5. July 8. FISHER *against* MURRAY.

THE Lords found the wife Elizabeth Fisher entitled to the half of the property of the whole moveables and executry, including the half of what by the former interlocutor she liferents to make up the deficiency of her annuity as well as the rest, (*me renitente.*) This was determined in consequence of an interlocutor of the Lord Ordinary, finding that the provision in the contract of marriage of moveable goods and gear included debts and sums of money, whereof several doubted. But I own I thought, notwithstanding the Ordinary's interlocutor, that by the contract the subjects to be liferented by the wife were *destinatione* heritable. 8th July The Lords adhered.

No. 6. 1737, July 7, Nov. 11. EXECUTORS of PRINCIPAL SMITH *against* THE HEIR.

THE Lords altered the Ordinary's interlocutor, and found the whole sums moveable, in respect the lands were sold by the trustees and *fides habita de pretio* before the principal's death. But if it had not been that case I believe we should have found the sums heritable, though not very consistently with a former decision 21st January 1736, (No. 4.) 11th November 1737 The Lords adhered as to so much of the price as falls to this debt.