

adjudication by a charge which was equal to an infestment on each subject, and therefore as the pursuers could be preferred on no more than they had adjudged, so the creditors had completed their right to the other half. But I found that whatever this Earl had uplifted out of any particular subject, should be imputed to his half of that subject. The Ladies reclaimed, and the President was clear against the interlocutor on both points. He considered the whole as one *universitas* to be divided, whereof the Earl had already drawn so much; (and it would be so in executory, *vide* 16th June 1664, Murray;*) and as to the diligence, he thought that the Ladies were by their father's disposition preferable to this Earl the heir, and that his creditors' adjudications and charge could give them no more right than was in their debtor; but Arniston differed from him in both points, and argued long and well, and *inter alia*, as to the first point said, that by the law of Scotland, there is no such thing as an action *familiæ eriscundæ*; but every heir-portioner succeeds to a share of every heritable subject; and as to the other, that the *jus in re* devolved to this Earl, notwithstanding the disposition; and the creditors' charge to enter heir, and adjudications and charge against the superiors, carried that *jus in re* preferably to any personal right, whether of the last Earl or this Earl, and that a contrary judgment would overturn the foundations of our law, and our security from the records; and it carried by a very great majority to adhere. (See DICT. No. 75. p. 534. and No. 102. p. 3322.)

No. 4.

1750. January 2.

CHALMERS *against* CHALMERS, Heirs-Portioners of Gadgirth.

No. 5.

WE found that the eldest should have as a *præcipuum* without recompense, not only the house and garden, and offices adjoining to and belonging to the house, but the orchard also and avenue through it to the house, so far as the garden reached; but as there were several superiorities, we appointed a hearing in presence whether these should be divided as far as could be without splitting any one superiority; or if the whole must go to the eldest, and the younger sisters have a recompense for the feu-duties.—*N. B.* The garden and orchard were only about two acres and a half. (See DICT. p. 5369.)

(* DICT. No. 4. p. 13300.)

See NOTES.