

COMMON INTEREST.

1638. July 17.

DENHOLMS *against* DENHOLMS.

THE three daughters of umquhilè Andrew Denholm, being his heirs in a tenement of land in Edinburgh, which was, by decret of the town of Edinburgh, divided among them and their husbands, viz. George Ross, who married the eldest, and Andrew Oswald, who married the youngest, and which Andrew also had acquired the second sister's part of the land, and so thereby he had right to the two part of the land; this decret of division being drawn in question by way of suspension, wherein the sisters and their husbands controverted, whether the eldest sister and her husband should have the principal original writs delivered to her, or if the same should be delivered to Oswald; which he *alleged* it ought to be, seeing he was heritor of the two part, and that the principal writs should go with them, who had right to the greatest part of the lands; and that the transumpt should only be delivered to the other sister, (although eldest), she having only right to the third part of the land: THE LORDS found, that the principal and original writs should be delivered to the eldest sister, to be kept by her; and that she ought to have the keeping of the same, which they ordained to be made furthcoming to the other sisters at all occasions, when necessity and reason should require the same: For the acquiring of the other sister's right by the third sister (whereby the two part of the lands were in the person of the one sister) was found not to derogate to the privilege of primogeniture, competent to the eldest, no more than if all the three sisters had retained ilk one their own portions, *quo casu* the eldest would have had ever the preference in the custody of the principal writs; and albeit the one sister had sold her right, either to her other sister, or to a stranger, no reason was therefore that that deed should derogate to the privilege of the eldest: And the LORDS found, that the transumpt should only be delivered to the other sister, who had right to the two parts; and which transumpt, they found, should make as great faith as the principals; and ordained these transumpt to be made upon the equal half charges of these parties, the one-half to be paid by the eldest sister, and the other equal half by the other sister, who had right to the two parts of the land. See HEIRS PORTIONERS.

No 1.

The eldest heir-portioner has the custody of the writs, and must give transumpt to a younger sister upon the equal expenses of both; though the younger sister may have acquired right to another sister's proportion, and so have a greater interest than the eldest.

Act. Oswald et Primrose.

Act. ———.

Clerk, Gibson.

Fol. Dic. v. I. p. 154. Durie, p. 858.

No 2.

1675. January 26.

A. against B.

UPON a bill, the LORDS found, that parties having a joint and equal interest in lands and tenements, both as to the right itself being disposed to them jointly, and as to the respective proportion and parts of the said tenements, the principal writs should be kept by such as offered caution to the other portioners; and that transumps should be given to the other persons concerned, upon the common charges of them all.

Fol. Dic. v. 1. p. 154. Dirleton, No 227. p. 107.

No 3.

An eldest brother preferred to the custody of the writs, though the estate was in Holland, where all the children succeed equally, and another brother had purchased in all the other children's parts.

1677. February 29.

A. against B.

AN exhibition being pursued at the instance of an heir of conquest; and it being *alleged* by the heir of line, that some of the lands, whereof the writs were craved to be exhibited, were in Holland; and that, by the custom there, the eldest brother did not succeed as heir of conquest, but all the brothers and sisters equally, so that the writs ought not to be delivered to the pursuer, who had only an interest as to the fifth part, whereas the defender had four parts, having acquired three from his brothers and sisters, and having one himself; and he having the far greater interest in the land and writs, ought to have the keeping of the same, being liable to make them furthcoming to the pursuer.

THE LORDS notwithstanding preferred the elder brother to the keeping of the writs.

In that same cause, it was *alleged*, that, as to the lands in Scotland, the defunct's right was only by a comprising, which was personal, and whereupon no infestment had followed; and which belonged to the heir of line, as tacks and reversions: THE LORDS, nevertheless, found, that the heir of conquest has right to the same, conform to a late decision. See HERITABLE and MOVEABLE.

Fol. Dic. v. 1. p. 154. Dirleton, No 451. p. 219.

No 4.

A process of removing, at the instance of one adjudger, cannot proceed without concurrence of the rest, unless the pursuer offer a more sol-

1680. December 21.

A. against B.

ONE ——— pursues removing against the tenants of ——— lands, apprised by him. Compearance is made for ———, who *alleged*, that he had apprised the same lands since 1652, and before this apprising, and so had equal right coming in *pari passu* with him, and therefore he could not remove the tenants without his consent. It was *replied*, *imo*, That the pursuer's interest was very great, and the other parties but small, and therefore he could not hinder the removing.