

No. 9. *tio hereditatis*, that the mid-brother's oye had right, and not the descendants of the eldest brother, in regard they found that the heritage of a youngest brother's son did ascend and belong to the middle or immediate elder brother, and did not ascend *per saltum* to the eldest brother.

Fol. Dic. v. 2. p. 398. Pres. Falconer, No. 9. p. 4.

* * * Fountainhall reports this case :

The case William Watson and Johnstons, against Johnston and Doctor Hay, being this day advised, the Lords " found there were three brothers, and Patrick to be the eldest ; and found, what lands the youngest conquested became heritage when they once descended to his son ; and therefore, that the middle brother and his posterity, (because he was immediate elder,) succeeded to the said youngest brother's son, and that it did not go to the eldest of all the three, though he was the representative of the *communis stipes* their father."—Craig, Lib. 2. De Successione differs from this.

Fountainhall, v. 1. p. 167.

No. 10.

1686. *January.* JOHN STENHOUSE *against* ANDREW DEWAR.

In a competition betwixt a niece by a sister-german, and the uncle-consanguinean, brother to the defunct, the Lords found the niece heir of line, and reduced the uncle's service.

Fol. Dic. v. 2. p. 397. Harcarse, No. 72. p. 12.

1688. *January 17.* COLLISON *against* MOIR.

No. 11.

In Robert Collison and Moir's case, it was debated *in prasentia* between a sister-german to a defunct and his brother consanguinean, and their descendants, which of them was preferable in the succession to his heritage ; the succession was to Mr. Robert Petrie, Provost of Aberdeen. Hope, Minor. Pract. Tit. 2. brings them in equally in moveables, but prefers the sisters-german in land, because *ex utroque latere, et ob duplicitatem vinculi*. The President thought here, that the defunct not being infest, they were alike to the *communis stipes*, and was therefore for preferring a brother and his issue, who always *in pari casu* excludes sisters ; and search having been made in the records of the Chancery, it was alleged, that services and retours were found where he had been preferred ; and Novel. 118. favoured it, so that at last the descendants of the brother were allowed to serve, but prejudice to the other party to quarrel the same, as accords.

Fol. Dic. v. 2. p. 398. Fountainhall, v. 1. p. 492.