

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 *familia erciscunda*, 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 *hereditate 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