If there be several brothers, and the Middle of three brothers die Leaving both heretage and Conquest, law creates two heirs to him, Viz. Makes his Immediate Elder brother heir of Conquest, And the Immediate younger brother his heir of line. Quon. Attach. Cap. 88 & 97. For heretage descends according to the law of Nature and Conquest descends Craig Feud. lib. 2 Tit. 15 § 7 Which was so appointed for enriching Elder brothers, whom our law still favours. If the Youngest of three brothers dies, the Immediate Elder brother is his heir of Conquest Stat. K. Robert 3 Cap. 3. Craig. ibid. And the heretage of a Youngest brothers son was found to belong to the Middle or Immediate Elder brother, and not to ascend per saltum to the eldest brother, 16 Decemb. 1681 Johnston contra Walton. If a son of a second Marriage die without issue, leaving two or three brothers of a former Marriage the Youngest is both heir of line and of Conquest 20 July 1664 Lady Clarkington contra Stuart Stair lib. 3 Tit. 5 § 10 Infine jur. Ws. the Youngest is both heir of line and of Conquest Stair ibid. § 11 that Jenzie Just. lib. 3 Tit. 8 § 11. So that Craig's opinion Cibi. § 4 that where there is an Elder and Younger brother or an Elder or Younger Father's brother &c. or their issue to succeed, Stair ibid. § 10 pr. Females is now over ruled. There is no place for an heir of Conquest (except the eldest in such a case) Intitled to succeed in Conquest Lands, Succeed as heirs to Conquest as well as heretage, and the Elder doth not exclude the Younger 5 Feb. 1717 Earl contra Rigal Craig ibid. V.g. If I have a proprietor of lands conquest by him & dies having only his Sisters or their Descendants, the Elder and Younger succeed as heirs portioners in Equity or their Descendants succeed in stirpes. By the Custom of England, the Eldest brother succeeds to all his brethren dying without issue.

3° If there be no brothers or sisters German or Consanguineans the succession descends, or to the father of the Deceast Craig Feud. lib. 2 Tit. 13 § 16. Stair lib. 3 Tit. 4 § 33 Vers. We shall not need here Spotiswood Hope Maj. Pratt. Tit. Succession, Burnet contra Maule. Because he Pronounced can lawfully Relevy that the father Brother is Nearer than the father. The Reason why our Custom postpones the father of the Deceast to his brothers and Sisters, is: partly, Because heretage being Commonly Derived to Children from the father, it is by the Continuance of the same paternal affection transmitted to brothers and Sisters; partly, for that these want more to be provided than the father, who Commonly Reserves his own life rent, and a fathers succession to his Child is called tristis et lurbata Successio, A Succession contrary to the order of Nature, Conform to which Children should out live their parents, who ought to lay up for their Children 2 Cor. 12. 14 & Pro. When it does happen, that a father outlives all his Children who die without issue, it

is but just he should not succeed to both of his Children and also of the goods which they may leave behind them. For the law of Nature calls him to the succession as being the head of kin, and Equity gives him this Comfort under his loss: Because either the Estate or part of it came from him, or Gratitude for the Childrens Education may direct so; and the Childrens Estate ought in such a Case to supply the necessities of the life of him to whom they ow their own. It is a Maxim in the law of England, that Inheritance cannot ascend, or Remount in the right line: the English having the same notion of succession in that line, that the Aristotelian Philosophers had of heavy bodies, which according to them Naturally descend, but can never ascend. So that if a son purchase land and die without issue, the father's brother shall have the land as heir to the son, and not the father, Altho the fathers Relation be nearer to the Deceast, than that of the Uncle: for the father may come often and accidentally and obliquely to the Estate as heir to his own brother who succeeded to the son, for that he Commeth to it by Collateral Descent, and not by Lineal Ascent Littleton lib. 1 Sect. 3. Which is agreeable to the Feudal Law, Craig ibid. § 15 And also to the Ancient Law of Scotland, which allowed of no succession in the right Line Ascendant, Skene de verb. Signif. Verb. Enerd. By our Law the Mother never succeeds, Craig ibid. lib. 2 Tit. 4 § 5. Infine But 2° failing the father, the Sisters and Brothers succeed in their order. 3° failing the fathers Collaterals, the succession mounts to the grand father. After whom, it goes aside to his Collaterals. Which failing it reacheth to the great grand father &c. So long as any proximity of blood can be made appear. For as hath been hinted already there is no Representation among Ascendants, as there is among Descendants Novel. 118 Cap. 2. But the Spirit of the Customs of France, by the Rule proximus paternus, Maternus Maternis, prefer the Remotest Ascendants to those who are Nearer, with respect to the goods Deriven from their Stock Les loix Civiles &c. Tom. 1 part 2. Liv. 2 Tit. 2 Sect. 1 Art. 5.

4° When the Defunct's Blood is spent, so as no person can justly Claim to be of kin to him, the King succeeds as last Heir Vid. Supra pag. 1319. For tho by the Civil law Ch. E. Unde Vir & Uxo. and some Customs in France (Les Loix Civiles &c. Tom. 1 part 2 prop. art. 11) the husband and wife succeed one to another, when any of them who died first has no Descendants, Ascendants or Collateral Relations, This succession of the husband to the wife and of the wife to the husband, is not in use either in Scotland or England with Respect to lands of Inheritance except in so far as Concerns those Legal Interests for term of life of Curtesy