tors; and then the rule was that laid down in the latter part of the Act, *viz.* the valuation of the respective lands or properties of the heritors. *3tio*, After that was done, each proprietor was to divide the share allocated to him, with those servitude men who derived their right from him or his authors; and in that case the rule is that laid down in the middle of the Act, *viz.* the value of the several rights and interests of the persons concerned; that is to say, the Lords were to estimate what the value of the servitude was, and give off a part of the property equal to it. No fourth part was allowed to the proprietor by way of *præcipuum*, but he was to have all that remained, after deducing the value of the servitude.

N.B.—Several of the Lords had a doubt whether a division could be pursued at the instance of any of those having only servitudes.

1739. *June* 19. MR LYON *against* MISS BLAIR.

THE question here was about the construction of the clause of a tailyie; whether, by the eldest daughter or heir-female to be procreate of the marriage, was meant the immediate daughter of the marriage, in whose right Mr Lyon claimed, or the heir at law, *viz.* the daughter of the son of the marriage, Miss Blair.

The Lords found, That the legal meaning of the term heir-female, which in this tailyie is used to explain eldest daughter, is so fixed and appropriated in our law to denote the female heir at law, that nothing less than the express will of the tailyier, declared in so many words, can alter the signification of it: that here there is no such express will: that the words, eldest daughter, seem to have been inserted to establish a right of primogeniture among the daughters: that, in the case of Bargeny, there was a daughter living at the time of making the entail, whom it may be supposed that the tailyier, out of particular love and favour, called to the succession, to the exclusion of his heir at law; but that was not the case here, where all the persons were unborn. Therefore found, *nemine contradicente*, that Miss Blair, the granddaughter of the marriage, and heir at law, was called to the succession.

1739. *June* 19. STRATHORN *against* CUNNINGHAM.

[Kilk., No. 2, *Prescription.*]

I MENTION this case only because an incidental point was determined in it which seemed to be of some consequence; whether the prescription in favour of tenants, introduced by Act 9, Parl. 2, Sess. 1, Chas. II. takes place when the