

Quia possessio fratris de feodo simplici facit sororem esse heredem. Mes si sont deux freres per divers venters, & leigne est seisie de terre en fee, & mox sans issue, & son uncle entra come procheine heire a luy, quel auxi mox sans issue, oze le puisne frere puit aver la terre come heire al uncle, pur ceo que il est de lentier sanke a luy, coment que il soit de demy sanke a son eigne frere.

session, there the Sister shall have the Land, because *Possessio fratris de feodo simplici facit sororem esse heredem*. But if there be two Brothers by divers Venters, and the Elder is seised of Land in Fee, and die without Issue, and his Uncle enter as next Heir to him, who also dies without Issue, now the younger Brother may have the Land as Heir to the Uncle, for that he is of the whole Blood to him, albeit he be but of the half Blood to his elder Brother.

Son shall be Heir; because, as it hath been said before, regularly he must make himself Heir to him that was last actually seised, or to the Purchaser; and that was to the Father where the eldest Son did not enter. And therefore Littleton addeth, that the Son is Heir to the Father: [a] But when the eldest Son in this Case doth enter, then cannot the youngest Son, being of the half Blood, be Heir to the eldest; but the Land shall descend to the Sister of the whole Blood. Yet in many Cases, albeit the Son doth not enter into Lands descended in Fee-simple, the Sister of the whole Blood shall inherit; and in some Cases where the eldest Son doth enter, yet the younger Brother of the half Blood shall be Heir.

[b] If the Father maketh a Lease for Years, and the Lessee entereth and dieth, the eldest Son dieth during the Term before Entry or Receipt.

of Rent; the younger Son of the half Blood shall not inherit, but the Sister; because the Possession of the Lessee for Years, is the Possession of the eldest Son, so as he is actually seised of the Fee-simple, and consequently the Sister of the whole Blood is to be Heir. The same Law it is, if the Lands be holden by Knights-Service, and the eldest Son is within Age, and the Guardian entereth into the Lands. And so it is if the Guardian in Socage enter.

But in the Case aforesaid, if the Father make a Lease for Life, or a Gift in Tail, and dieth, and the eldest Son dieth in the Life of Tenant for Life or Tenant in Tail, the younger Brother of the half Blood shall inherit, because the Tenant for Life, or Tenant in Tail is seised of the Freehold, and the eldest Son had nothing but a Reversion expectant upon that Freehold or Estate-Tail; and therefore the youngest Son shall inherit the Land as Heir to his Father, who was last seised of the actual Freehold. And albeit a Rent had been reserved upon the Lease for Life, and the eldest Son had received the Rent and died; yet it is holden by some * that the younger Brother shall inherit, because the Seisin of the Rent is an actual Seisin of the Freehold of the Land. But 35 Aff. pl. 2. seemeth to the contrary, because the Rent issueth out of the Land, and is in Lieu thereof, wherein the only Question is, whether such a Seisin of the Rent, be such an actual Seisin of the Land in the eldest Son, as the Sister may in a Writ of Right make her self Heir of this Land to her Brother? But it is clear, that [c] if there be Bastard eigne, and mulier puisne, and the Father maketh a Lease for Life, or a Gift in Tail be reserving a Rent, and die, and the Bastard receive the Rent and die, this shall not bar the mulier; for the Reason of that standeth upon another Maxim, as shall manifestly appear in its apt Place, Sect. 399.

Seisie de terres. [d] But in this Case, if the eldest Son doth enter and get an actual Possession of the Fee-simple; yet if the Wife of the Father be endowed of the third Part, and the eldest Son dieth, the younger Brother shall have the Reversion of this third Part notwithstanding the eldest Brother's Entry; because that his actual Seisin, which he got thereby, was by the Endowment defeated. But if the eldest Son had made a Lease for Life, and the Lessee had endowed the Wife of the Father, and Tenant in Dower had died, the Daughter should have had the Reversion, because the Reversion was changed and altered by the Lease for Life, and the Reversion is now expectant on a new Estate for Life.

Enter. Hereupon the Question groweth, Whether if the Father be seised of divers several Parcels of Lands in one County, and after the Death of the Father the Son entereth into one Parcel generally, and before any actual Entry into the other dieth; this general Entry into Part, shall vest in him an actual Seisin in the whole, so as the Sister shall inherit the whole? And this is a Quere in 21 H. 7. 33. a.

And

[a] Ratcliff's Case, lib. 3. fo. 41.

[b] Post 243. 8 Aff. p. 6.

Mo. 125.

3 Co. 40, 42. Post 191. b.

* 7 H. 5. 34. per Halls & Logdington. 35 Aff. p. 2.

[c] Vid. Sect. 399.

[d] H. 5. 2, 3, 4.

8 Co. 35. b. Post 191. b. 4 Co. 58. b.