are diviſible, the eldeſt female heir has a certain pre­rogative, it is not ſo in a kingdom that is indivisible; there the neareſt heir of blood is preferable whenever the ſucceſſion opens. —To this Baliol replied, that the claimants were in the court of their lord paramount; and that he ought to give judgment in this caſe, as in the caſe of any other tenements, depending on his crown, that is, by the common law and uſage of his kingdom, and no other. That by the laws and uſages of England, the eldeſt female heir is preferred in the succeſſion to all inheritances, indiviſible as well as diviſible.

1. It was urged by Bruce, that the manner of ſucceſſion to the kingdom of Scotland in former times, made for his claim; for that the brother, as being neareſ**t** in degree, was wont to be preferred to the ſon of the deceaſed king. Thus, when Kenneth Macalpin died, his brother Donald was preferred to his ſon Conſtantine, and this was confirmed by ſeveral other au­thentic inſtances in the hiſtory of Scotland. — Baliol anſwered, that if the brother was preferred to the ſon of the king, the example proved againſt Bruce; for that the ſon, not the brother, was the neareſt in degree. He admitted, that after the death of Malcolm III. his brother uſurped the throne; but he contended, that the ſon of Malcolm complained to his liege lord the king of England, who diſpoſſeſſed the uſurper, and placed the ſon of Malcolm on the throne; that after the death of that ſon the brother of Malcolm III. again uſurped the throne; but the king of England again diſpoſſeſſed him, and raiſed Edgar, the ſecond ſon of Malcolm, to the ſovereignty.
2. Bruce pleaded, that there are examples in other countries, particularly in Spain and Savoy, where the ſon of the ſecond daughter excluded the grandſon of the eldeſt daughter. Baliol anſwered, that examples from foreign countries are of no importance; for that according to the laws of England and Scotland, where kings reign by ſucceſſion in the direct line, and earls and barons ſucceed in like manner, the iſſue of the younger ſiſter, although nearer in degree, excludes not the iſſue of the eldeſt ſiſter, although more remote; but the ſuc­ceſſion continues in the direct line.
3. Bruce pleaded, that a female ought not to reign, as being incapable of governing: That at the death of Alexander III. the mother of Baliol was alive; and as ſhe could not reign, the kingdom devolved upon him, as being the neareſt male heir of the blood royal. But to this Baliol replied, that Bruce’s argument was inconſiſtent with his claim: for that if a female ought not to reign, Iſabella the mother of Bruce ought not, nor must Bruce himſelf claim through her. Beſides, Bruce himſelf had ſworn fealty to a female, the maiden of Norway.

The arguments being thus ſtated on both ſides, Ed­ward demanded an anſwer from the council as to the merits of the competitors. He alſo put the following queſtion to them: By the laws and uſages of both kingdoms, does the iſſue of the eldeſt ſiſter, though more remote in one degree, exclude the iſſue of the ſecond ſiſter, though nearer in one degree? or ought the near­er in one degree, iſſuing from the ſecond ſiſter, to ex­clude the more remote in one degree iſſuing from the eldeſt ſiſter? To this it was anſwered unanimouſly, That by the laws and uſages of both kingdoms, in every heritable ſucceffion, the more remote in one de­gree lienally deſcended from the eldeſt ſiſter, was pre­ferable to the nearer in degree iſſuing from the ſecond ſiſter. In conſequence of this, Bruce was excluded from the ſucceſſion; upon which he entered a claim for one third of the kingdom: but being baffled in this al­ſo, the kingdom of Scotland being determined an indiviſible ſee, Edward ordered John. Baliol to have ſeiſin of Scotland; with this caveat, however, “That this judgment ſhould not impair his claim to the property of Scotland.”

After ſo many diſgraceſul and humiliating conceſſions on the part of the Scots, John Baliol was crown­ed king at Scone on the 30th November 1292; and ſiniſhed the ceremony by doing homage to the king of England. All his ſubmiſſions, however, could not ſatisfy Edward, as long as the leaſt ſhadow of indepen­dence remained to Scotland. A citizen of Berwick appealed from a ſentence of the Scots judges appointed by Edward, in order to carry his cauſe into England. But this was oppoſed by Baliol, who pleaded a promiſe made by the Engliſh monarch, that he ſhould “obſerve the laws and uſages of Scotland, and not with­draw any cauſes from Scotland into his Engliſh courts.” Edward replied, that it belonged to him to hear the complaints made againſt his own miniſters; and concluded with aſſerting his right, not only to try Scots cauſes in England, but to ſummon the king of Scot­land, if neceſſary, to appear before him in perſon. Baliol had not ſpirit to reſiſt; and therefore ſigned **a** moſt diſgraceful inſtrument, by which he declared, that all the obligations which Edward had come under were already fulfilled, and therefore that he diſcharged them all.

Edward now thought proper to give Baliol ſome marks of his favour, the moſt remarkable of which was giving him ſeiſin of the Iſle of Man; but it ſoon ap­peared that he intended to exerciſe his rights of ſuperiority in the moſt provoking manner. The firſt inſtance was in the caſe of Malcolm earl of Fife. This nobleman had two ſons, Colban his heir, and another who is conſtantly mentioned in hiſtory by the family- name of Macduff. —It is ſaid, that Malcolm put Mac­duff in poſſeſſion of the lands of Reres and Crey. Mal­colm died in 1266; Colban his ſon, in 1270; Dun­can the ſon of Colban, in 1288. To this laſt earl, his ſon Duncan, an infant, ſucceeded. During the non­age of this Duncan, grand-nephew of Macduff, Wil­liam biſhop of St Andrew’s, guardian of the earldom, diſpoſſeſſed Macduff. He complained to Edward; who having ordered his cauſe to be tried, reſtored him again to poſſeſſion. Matters were in this ſtate when Baliol held his firſt parliament at Scone, 10th February 1292. There Macduff was cited to anſwer for having taken poffeſſion of the lands of Reres and Crey, which were in poſſeſſion of the king ſince the death of the laſt earl of Fife. As his defences did not ſatisfy the court, he was condemned to impriſonment; but an action was reſerved to him againſt Duncan, when he ſhould come of age, and againſt his heirs. In all this defence, it is ſurpriſing that Macduff ſhould have omitted his ſtrongeſt argument, viz. that the regents, by Edward’s au­thority, had put him in poſſeſſion, and that Baliol had ratified all things under Edward’s authority. How­ever, as ſoon as he was ſet at liberty, he petitioned Baliol for a rehearing; but this being refuſed, he appealed