interest, through his assigning of the first bond after the last was satisfied; and having deponed that the first bond was never presented to him for his own debt, but that he had granted the assignation eighteen months after the date of the bond, upon Kilkerran's saying that he had made use of his and his wife's name to secure the money from his own creditors, which he did *bona fide*, thinking that he was but denuding himself of a trust;—the Lords assoilyied Kennedy, though there were many obvious presumptions that Kilkerran had not acted fairly in the matter; particularly, he was a subscribing witness in the first bond, which made it look like something else than a trust for his behoof.

Page 37, No. 165.

1682. *November.* HENRY BLYTH *against* THOMAS LAWSON.

FOUND that if any part of the sum, duly apprised for, be not satisfied within the legal, that the whole lands apprised belong to the appriser. *Vide* No. 281, [Blyth against Lawson, December 1682.]

Page 66, No. 279.

1682. *November.* HELEN COASH *against* JOHN KING.

SEISIN, granted *propriis manibus* to a singular successor in burghland, without an adminicle in writ, not sustained; though seisin in these, granted to heirs by hasp and staple, has privilege.

Page 164, No. 592.

1682. *November* 2. LADY KIRKLAND *against* THOMAS BURKLAE.

FOUND that the expenses of funerals, mournings, entertainment of the family to the first term after the defunct's death, the relict's lying in, and baptism of a posthume child, are all privileged debts; for defraying whereof the relict had retention of the executry goods, *pro tanto:* albeit the defunct was *maxime obæratus* and the relict had a considerable jointure; and the creditors contended, that, in respect of the husband's condition and burdens, nothing ought to have been privileged but funeral expenses; at least that the other debts, if allowed to be due, should have no preference.

Page 122, No. 445.

1682. *December.* BONHARD *against* BORREL, in NEWBURGH.

ONE having granted a bond for salt to an overseer of coal and salt, designed

overseer;—the Lords, in a competition between [the] overseer's creditors and the master of the salt-pans, preferred the master, and presumed the salt came out of the master's pans, unless the contrary were proven.

Page 39, No. 181.

1682. *December.* The LAIRD of AIRTH *against* the LAIRDS of QUARREL.

THE Laird of Quarrel elder, being debtor to my Lord Elphingston, in the sum of 2000 merks, not bearing annual-rent, and my Lord Elphingston being debtor to my Lord Torphichen in the like sum bearing annual-rent,—young Quarrel was assigned thereto, and pursued my Lord Elphingston; who craved compensation, in respect young Quarrel being *in familia*, it is presumed he acquired the debt pursued for by his father's means; and that the course of annual-rent ought to sist from the date of his right. The Lords,—in respect old Quarrel was cautioner with Bonhard for the like sum to my Lord Torphichen, and the bond contained an obligement to infeft in old Quarrel's land;—found, that Torphichen's bond was acquired by the father's means; and so sustained the compensation, although the son was only bound in the clause of relief to Bonhard and the father.

Page 60, No. 254.

1682. *December.* CHRISTY *against* CHRISTY.

MR James Christy having left Jean Christy, his daughter and only child, executor and universal legator, and David Christy, failing her by decease; Jean did execute the testament, and obtain sentences for the defunct's moveables, and died shortly after she had been confirmed executrix and had executed the testament by obtaining sentences for the defunct's moveables; and Mr James's relict brought forth a posthume about nine months after his father's decease, called James, who was served executor to Jean his sister, and pursued by David Christy as substitute to her in the office of executry and universal legacy, to make payment of all Mr James's goods and gear. Alleged for the defender, That, as the father had preferred the defender's sister to David the substitute, it is presumed that he would *multo magis* have preferred the defender his son; for, by the civil law, *ex supernascentia liberorum testamentum rumpitur*, and, *in substitutione fidei commissaria*, the children of the party institute were always preferred to the last substitute, a stranger, or in a remoter degree, and donations were revokable *agnatione liberorum*. Answered for David Christy, This is a great novelty in our law, where the effects and solemnities of testaments are quite different from what they are by the civil law, in consideration of *hæredes sui*, and other subtilties, which have no foundation in our custom; and, seeing the father hath not declared his mind as to the supposeable and possible case of a posthume, *casus omissus habetur pro omisso*. 2. As an infeftment of tailyie to Jean the daughter, and, failing of her, to David, could not have been quarrelled by the posthume brother, though it carried away some part of the heritage, far