less can the substitution to the universal legacy be impugned, which only affects the dead's part, the sister's legitime being transmitted to the defender her brother, as her nearest of kin. Here parties are not in the case of the civil law, and the *fide* commissary institutions; for the sister institute had no children; and the *magna pars bonorum* was disponed; and *transmissio jure sanguinis* is only competent to descendants. The Lords, having considered this debate, demurred to determine the cause; but resolved they would hear parties upon this point, if the testament, being confirmed by the sister and decreets taken against the debtors payable to her, did establish the right of the sums in her person, so as they did no longer remain *in bonis defuncti*, although they were neither paid to her, nor innovated by her? Alleged for the brother, That with us the legitime transmits even before confirmation, which is but *modus acquirendi;* and though, by the ancient civil law, *hæreditas inaudita non transmittitur*, yet the *jus novum* allowed the exceptions of *jus suitatis*, to which our legitime answers, *jus sanguinis, et jus deliberandi;* and the nearest of kin having right with us *jure sanguinis*, it ought to transmit *jure sanguinis* without confirmation, as was decided, *anno* 1663, in the case of Bell and Wilkie. Answered for David Christy, That, by the current of our practice, the interest of nearest of kin doth not transmit without confirmation; and executors recovering decreets doth execute testament, so as the office cannot transmit; yet the right of the sums are not established in the person of the executor or legator, unless they be received, or the securities innovated. The parties settled before interlocutor. *Vide* No. 222, [Cameron, February 1688;] and No. 454, [Henderson against Saughtonhall, March 1683.]

Page 122, No. 446.

1682. *December.* ANDERSON and OSWALD *against* MORTIMER.

FOUND that a child alive at the dissolution of the marriage, though it die before confirmation, makes a tripartite division. 2. That, seeing bonds bearing annual-rent are heritable *quoad relictum*, and only moveable in favour of bairns, they always come under a bipartite division. 3. That a wife's provision to goods and gear did not comprehend *nomina debitorum* bearing annual-rent.

Page 123, No. 449.

1682. *December.* PRINGLE *against* FULLERTON of CRAIGHALL.

ONE imprisoned in France, at a creditor's instance, having granted a bond to another person for another cause, and raised reduction thereof *ex capite metus;* —it was alleged for the creditor in the bond, That the imprisonment being lawful, it was not *justus metus*, though the bond had been to him that did imprison the granter; *multo minus* can it be obtruded to a third party that had no accession to the imprisonment; and all the pursuer could crave, was, that the bond might not cut him off from any defences against the debt. Answered for the pursuer, That he being under no obligation before the granting of the con-

cussed bond, that ought not to be made use of to constitute the debt against him. The Lords found the reason of reduction, as libelled, not relevant; and that a party lawfully imprisoned might grant a bond gratuitously, where there was no antecedent cause.

Page 147, No. 531.

1682. *December* 6. GAVIN HAMILTON *against* the HEIRS of BONNAR.

JEAN Lockhart having commenced a process for 4000 merks, as the half of the tocher provided to return to her, in case of no children, by her contract of marriage with John Bonnar;—it was alleged for the defender, That the tocher could not return, because it was never paid. Answered, The wife must have the benefit of the provision, unless it were alleged that the husband had done sufficient and timeous diligence for payment of the tocher, and could not recover the same. Which answer the Lords found relevant. But the defender condescending afterwards, upon diligence, *viz.* that he had pursued Captain Lockhart, the debtor, when insolvent, who was the pursuer's uncle, before the Chancery of England, where the process depended three years;—the Lords sustained the diligence, and assoilyied, although the process was never brought to any determination: And had it been sooner intented, might have proved more effectual; but Captain Lockhart's condition altering unexpectedly, by the eviction, from him, of a considerable land-estate, and the process having been intented, within two years after the term of payment of the last moiety, against so near a relation, the Lords sustained the diligence as competent.

Page 84, No. 347.

1682. *December* 13. ALISON and AIKMAN *against* LUDOWICK CANT.

IN a competition between two base infeftments of annual-rent, confirmed in Exchequer in one day, but the one expede a month before the other at the great seal, they were not brought *in pari passu;* but that which first passed the seal was preferred, unless it were made appear that the other was as timeously offered to the keeper of the seal. *Vide* No. 587, [Alison against Cant, March, 1682.]

Page 164, No. 593, [1st.]

1682. *December* 20. LORD ROSS *against* KER of MORISTOWN, &c.

MR John Wilkie, having granted an assignation, to his creditors, of some debts due to him by Sir John Wilkie of Fouldown, which was intimated to the Lady Ross, his daughter and heir; and, thereafter, Mr John having restricted the said sums to the half, in favours of the Lord Ross;—alleged for the Lord Ross, That his lady being minor and married, intimation ought to have been made to