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-