

No 30. title had a near resemblance to that of *gestio pro herede*, which is not transmitted against the heirs, neither should the other.

To which it was *answered*, That the rule by which penal passive titles do not transmit against heirs comes from this, that such actions have their rise *ex delicto* or *quasi delicto*; and that there is further reason likewise, that *gestio pro herede* does not transmit, that it is *magis animi quam facti*, and after the death of the person who is said to behave, his successors cannot so well explain *quo animo* or *titulo* his predecessors did intromit.

“ THE LORDS found the defenders liable *in solidum*.”

Reporter, Lord Milton. Act. Pat. Grant. Alt. And. Macdowal. Clerk, Murray.

N. B. It was *alleged* for the pursuer, That a question, such as this, had been determined 3d December 1701, Wilson *contra* Innes, (*see* APPENDIX.) where the LORDS found, that this passive title had the same effect with a service as heir, because it did not prescribe, and did transmit against the heir.

*Edgar, p. 201.*

1732. July.

CREDITORS OF MERCHISTON *against* REPRESENTATIVES OF COLONEL CHARTERIS:

No 31.

A CREDITOR dying during the dependence of a reduction upon the head of usury intended against him, it was questioned if this penal process could transmit against his Representatives; the LORDS found, that the effect of usury being to annul the bond as a real exception, it was good against every person claiming upon the bond; and if good against the heir by way of exception, it must be good by way of action, being the same thing in a different form.—*See* APPENDIX.

*Fol. Dic. v. 2. p. 74.*

1744. February 22.

A. *against* B.

No 32.

THE passive title of vitious intromission, where the proof had been led in the intromitter's time, was found to transmit against his executors. The case would have been the same although it had not gone farther in the intromitter's time than litiscontestation.

*Kilkerran, (PERSONAL AND TRANSMISSIBLE.) No 2. p. 396.*