

second marriage as their legitime ; and the other half, being the defunct's part, belongs to the bairns of both marriages equally by the universal legacy.

Page 119, No. 443.

---

1682. *February.* JOHN NISBET *against* SIR DANIEL CARMICHAEL.

THOUGH apprising with infestment, or a charge intervening between a base infestment and the first term for payment of annual-rents, is preferable to the infestment of annual-rent, yet a base annual-renter, who had done diligence for possession immediately after the term, was preferred to a comprising without a charge or infestment.

Page 163, No. 568.

---

1682. *February.* ANDREW CASSY *against* WILKY.

IN an action at the instance of one Andrew Cassy against one Wilky, for damage incurred by the pursuer in the free use of his cellar in Edinburgh, occasioned by some rubbish of a house the defender was to rebuild there, conform to the town-council's appointment ;—the Lords assoilyied from the action.

Page 254, No. 898.

---

1682. *February 2.* BOWER of KILMADRUM *against* The EARL of MARESCHAL.

AN apparent heir being pursued upon the passive title of *gestio pro hærede*, for having intromitted with some goods belonging to a defunct, which should be reputed moveable heirship, seeing that it is not the best, but any thing the apparent heir takes ;—Alleged for the defender, That his intromission was by a warrant from the Lords of Session, empowering him to intromit and dispose of some plenishing for the behoof of creditors, and so was not vitious. 2. The defender was only heir of tailyie, and so had no right to heirship moveable, which falls to the heir of line. The Lords assoilyied the defender from the passive title. *Vide* No. 31, *inter eosdem*, (immediately below.)

Page 7, No. 30.

---

1682. *February 2.* BOWER of KILMADRUM *against* The EARL of MARESCHAL.

THE Lords found the title of nobility and office of marshall was annexed to the blood, and not *in commercio* ; and that the using the title, and exercising the office of marshall, made no passive title.

Page 7, No. 31.