monition did not bear the procuratory was shown or offered; the cause being favourable, and it was not alleged that the procuratory was called for.

Page 242, No. 849.

1685. *March.* LADY ANNE GORDON *against* The EARL of ABOYN.

THE Earl of Aboyn being pursued by Lady Anne Gordon, as representing his father, who was factor for the pursuer, and so liable to do ordinary diligence for uplifting the rents of her locality, which are now become desperate by the poverty of tenants, seeing *mandatarius tenetur ad talem fidem et diligentiam in rebus mandatis qualem præstare solet in suis*;—Answered for the defender, That, by the quality of the factory, he was liable for actual intromissions allenarly, and could not be obliged to intromit; and his service was gratuitous. The Lords sustained the answer for the defender.

Page 258, No. 914.

1685. *March* 12. GENERAL DALZIEL *against* The EARL of MARR.

IN a competition between a prior infeftment of relief, without possession or confirmation, and a posterior public infeftment confirmed,—Alleged for the infeftment of relief, That, seeing the same was not a title of possession till after distress, it must be reputed public *ab initio*, unless, after distress, the party had been *in mora* to possess: just as an infeftment of annualrent would be preferred to a posterior voluntary [right] clothed with possession before the term of payment of the annualrent, seeing the annualrenter could not possess till the term; and the want of possession cannot infer simulation. Answered, The infeftment of relief might have been made public, *ab initio*, by confirmation; and, as a confirmation, prior to another right attaining possession, will make the first preferable right, so an infeftment of relief should be made public by confirmation or declarator. The Lords inclined to prefer the infeftment of relief for the reason above mentioned; but the point was not voted.

In this competition, it was further alleged, That the confirmation of the infeftment of relief was of a date posterior to the other's confirmation; yet that can only be considered from the date of the superior's delivery of it to the party, and not from the date of his subscription, otherwise it might be in the power of superiors to let confirmations ly subscribed several years by them, and prefer creditors as they think fit. Answered, Seeing the superior's confirmation requires not to be published, but may be kept private by the obtainer, and the design thereof is only to have the superior's consent, after the charter is signed and the composition paid, it is looked upon as the party's evident from the date of the subscription; and the priority and preference of confirmations in exchequer is ruled according to the date and sealing, without respect to the delivery. The Lords found the allegeance of not-delivery relevant; and that confirmations granted by private superiors are to be considered from the date of delivery to the party, or some to his behoof, and not from the date of subscribing. Which

decision seems not very well founded.—*Castlehill's Pratt.* tit. *Infeftment*, No. 72.

Page 166, No. 601.

1685. *March* 18. LORD MARR *against* JOSEPH BRODY'S SON.

IN a competition, it being alleged, That a poinding of the ground at Candlemas, upon Brody's infeftment the 21st of December preceding, for the annual-rent fallen due at Candlemas, did not clothe the infeftment with possession; because that made not a complete term's annual-rent. Answered, The ground may be poinded, after the term of payment, for any proportion of annual-rent fallen due before, though but a month or a week's annual-rent; and, consequently, the infeftment is thereby clothed with possession. The Lords sustained the reply for Brody, and preferred him to the other annual-renter, whose right was clothed with possession after that Candlemas.

Page 167, No. 602.

1685. *March* 20. DICKSON of HARTRIE *against* DICKSON of WHITSLEAD.

A DISPOSITION by a father to his son and apparent heir, was reduced upon the Act of Parliament 1621, at the instance of the granter's creditors, though it was made in implement of the son's mother's contract of marriage; because obligements in contracts, by way of destination, cannot be obtruded to creditors.—*20th March* 1685. This was afterwards stopped.

Page 155, No. 558.

1685. *March and November.* M'KIE *against* SHAW and KER.

AN arrestment of a parcel of sheep in the debtor's own hand, found not to prescribe in five years, as an arrestment laid on in a third party's hand would do.—*March* 1685. And, in November 1685, the just contrary was found in this cause.

Page 17, No. 87.

1685. *November.* LORD YESTER *against* LORD LAUDERDALE.

IN the adjudication, at the instance of my Lord Yester against the estate of the Duke of Lauderdale, upon a *cognitionis causa*, and my Lord Lauderdale's renouncing to be heir, compearance was made for Lauderdale, who, as a creditor to the Duke, craved to see the process in common form; for it was the first adjudication. Alleged for the pursuer, That an adjudication can only be re-