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-

quired to be seen in common form by the debtor; and creditors must hold themselves content with seeing in the clerk's hands. The Lords ordained the first adjudication, whether upon the old or new Act of Parliament, to be seen in common form, if desired, either by the debtor or a co-creditor.

Nota. Though there be a former apprising or adjudication, an adjudication after year and day thereof ought not to pass summarily, and of course, but must go to the roll—seeing such a posterior adjudication is not concerned in the running of the year, to come *in pari passu.*

Page 2, No. 9.

1685. *November.* JOHN DICKSON *against* JAMES AITCHESON.

ONE Aitcheson being infeft in a house in Kelso, upon a disposition from Dickson, which happened to be burned before he attained possession; and the seller having pursued for the price,—Aitcheson suspended on this reason, That he was never in possession, and therefore the loss, by the burning of the house, must ly upon the seller. 2. A part of the price was remitted to third parties, and not yet determined by them; so that the bargain was incomplete. Answered, A sale being perfected, *periculum rei venditæ ante traditionem sequitur emptorem;* and, by delivery of the disposition, the bargain was perfected; and the danger should have followed the buyer, though he had not been infeft; *multo magis* where he was infeft, and present producing the disposition. Besides, the tradition of earth and stone was a symbolical possession; and, if need were, it could be made appear that possession was offered by instrument. 2. The referring a part of the price to the arbitrament of a third party hinders not the consummation of the bargain. The Lords found the letters orderly proceeded against the buyer.

Page 29, No. 139.

1685. *November.* GEORGE GOWAN *against* MARGARET FORREST.

A WIFE's father having obliged himself, in her contract of marriage, to pay the tocher to her and her husband; and she, twenty years after the husband's death, having pursued his heir to make up the deficiency of her jointure;—Alleged for the defender, The tocher being payable to the wife as well as to the husband, *sibi imputet* that she did not recover payment before now; that the father, the debtor, is insolvent; and the clause in the contract, that the husband is to add to the tocher, imports the condition of payment thereof. Answered, The making it payable to the wife was but a compliment, and, *jure mariti,* it accresced to the husband. Again, she was not *valens agere* during the marriage, nor obliged, either before or after, to do diligence. The Lords found the negligence only to be imputed to the husband and his heirs, and not to the wife; and therefore repelled the defence.

Page 97, No. 375.
