

tion thereof is a legal assignation, carrying the right, and needed no infeftment. Answered for Northesk, That not only had Dougal an adjudication, without infeftment in his person, but Sir Patrick, before his own adjudication, stood infeft in a right in trust for Dougal, so as Dougal, the common debtor, must be considered as having infeftment in the lands ; and therefore Northesk's adjudication being completed by infeftment, it is the first effectual right ; and Sir Patrick's, though prior, can only come *in pari passu*. Replied for Sir Patrick, *Esto* the infeftment was intrusted for Dougal,—the right, in his person, by the back-bond, not being real, but only a personal obligation to force Sir Patrick to denude, the same fell under Sir Patrick's adjudication, which needed no infeftment to complete it ; and Northesk, being without year and day, could not come *in pari passu*. The Lords sustained the allegiance made for Northesk ; which is irregular.

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1685. *March.* LORD KEMNY *against* MR THOMAS RIGG.

FOUND that a husband's *jus mariti* and courtesy, though transmissible by assignation, as moveable rights, are apprisable *habili modo* ; just as tacks for years are, *habili modo*, apprisable, or adjudgeable, though moveable *quoad* other effects.

Page 77, No. 315.

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1685. *March.* GORDON, Parson of Banchory, *against* The LAIRD of ELSICK.

A DECREET being quarrelled upon this ground, That the Lords had mistaken the probation, in finding a piece of burnt land to lie within the pursuer's march, which is convelled by ocular inspection ;—the Lords recommended an amicable settlement to the parties, and, in case that took no effect, appointed two of their number to make a new visitation.

Page 109, No. 407.

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1685. *March.* The DUKE of QUEENSBERRY *against* The REPRESENTATIVES of MR JOHN FINLAY.

THE Duke of Queensberry having pursued the representatives of one of his father's chamberlains, to count and reckon for his intromissions, the defender produced a general discharge, after the years of his factory, discharging all intromissions as factor or chamberlain, and acknowledging count, reckoning, and payment. Alleged for the pursuer, That the said discharge was but granted in trust, as appears from the granters not retiring the instructions. The Lords, before answer, ordained the pursuer to condescend and instruct his several qualifications of trust.

Page 112, No. 420.