

confidants, had made excuseable in him to inform his nearest friend of her insatiable appetite, yet he must at the same time have resolved to separate from her, because they could not consistently with the honour of either of them thereafter live together; and whenever matters came to that pass, the Court could not refuse a separation, and he was to aliment her so long as she was his wife; at the same time I saw no necessity for such vindication nor evidence of the truth of what he reproached her with, and far less saw I necessity of propaling that scandal to so many, or maintaining it in courts of justice. Kilkerran also changed his opinion, and upon the question it carried alter the last interlocutor, and to refuse the bill of advocation *simpliciter*. *Pro* were Minto, Drummore, Kilkerran, Justice-Clerk, Murkle, Shewalton, *et me*. *Con.* were Dun, Haining, and President, but Leven was *non liquet*, and Milton in the Outer-House.

No. 36. and 37. 1750, Feb. 13, 1751, Feb. 13. PRESBYTERY OF PERTH *against* THE MAGISTRATES,—and PRESBYTERY OF LINLITHGOW *against* THE MAGISTRATES.

THIS day we adhered to our interlocutor at the instance of Robert M'Intosh as factor for the Presbytery of Perth against the Town for L.10 yearly since 1740 out of the benefice of the third Minister of Perth, being all that time vacant, whereby we sustained the Town's defence that there was no vacancy, that third Minister being now suppressed by the Town. Our first interlocutor was 21st December last, and 13th February we altered an interlocutor we gave against the Town of Linlithgow finding them liable, and found there was no erection, and therefore no vacant stipend.

\* \* The case No. 38. ought to have been dated 1733. There are particulars in the Notes.

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## HYPOTHEC.

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No. 1. 1735, Feb. 20. GARDEN of Troup *against* DR GREGORY.

THE Lords found that the cautioners had no title to plead the hypothec.—(23d January 1735).

The Lords adhered notwithstanding the rent was paid by the cautioner, in respect the hypothec was not assigned.—(20th February 1735.)

No. 2. 1735, Dec. 4. CREDITORS of M'LELLAN *against* BURNS, &c.

THE Lords preferred Laurie, and found the journeymen neither had hypothec nor action *de in rem verso*.

No. 3. 1736, Feb. 17. NIEL M'VICAR *against* LADY KIRNAN.

THE Lords altered the interlocutor and sustained Mr M'Vicar's hypothec in the writs against the Lady.—(10th July 1735.)

The Lords found that upon supposition that the Lady did not employ Mr Lorimer that he could not plead his hypothec against her.—(17th February 1736.)

**No. 4. 1736, June 29. SIR JOHN RUTHERFOORD *against* SCOTT.**

THE Lords sustained the defence that the defender left as many goods as would satisfy the rent, and that these goods were intromitted with or poinded by the pursuer the master, though for another debt, and therefore adhered to the Ordinary's interlocutor.—(20th June 1735.)

The Lords altered the former interlocutor of 20th June, and repelled the defence that as many goods were left as was sufficient for that year's rent, in respect of the answer that there did not remain as many at the term of payment, and repelled the reply that these remaining goods were intromitted with by the master himself, in respect he intromitted with them by a lawful poinding for former rents, albeit he had no hypothec for these former rents. 29th June 1736 Altered this interlocutor, and adhered to the former of 20th June 1735. I was absent in the Outer-House when the two first interlocutors of this day were pronounced, and have them only by report, but the two about the hypothec (See No. 5.) were delayed till 12 o'clock.

**No. 5. 1736, July 22. PRINGLE *against* SCOTT of Harden.**

THE question put was, Whether *currente termino* a master may by virtue of his hypothec stop a poinding of his tenant's cattle till security be given him for his rent, notwithstanding there are then corns sufficient for payment of his rent, or not? and it carried not. For the interlocutor were Royston, Newhall, Minto, Haining, Dun, Monzie, Easdale. Against it were Milton, Drummore, Shewalton, Coupar, Leven, and the President, but he had no vote, and Murkle did not vote. (*Vide* 20th June, Sir John Rutherfoord, *supra.*)—29th June 1736, This interlocutor altered and the reverse pronounced, though none that were for the last interlocutor altered. We did not determine the specialty mentioned in Harden's petition. 22d July 1736 The Lords adhered to the interlocutor of 29th June.

**No. 6. 1737, Feb. 18. P. CRAWFURD *against* TACKSMEN of LANGTOWN.**

THE Lords unanimously found, that the crop 1736 was not hypothecated for the rent 1735. 2dly, We also found, that for the crop 1736, whereof the term of payment was not come, both the offers made by the creditor were sufficient, viz. a bond with sufficient caution offered to be delivered to the master himself; 2dly, Consignation of Bank notes in the Sheriff's hands,—which were *separatim* relevant, for the Bank notes would not be a good payment, yet they are good security, and the Sheriff is the County Judge, and the proper Judge in poindings long before the institution of the Session, 21st January.—18th February 1737 The Lords adhered. *Vide* 15th November, (No. 7.)

**No. 7. 1737, Nov. 15, 29. P. CRAWFURD *against* TACKSMEN of LANGTOWN.**

IN this case, (which see No. 6.) the first point decided was the defence of steel-bow. Arniston and I and others doubted whether the defence might not be good, if there was