No. 13. 1747, June 19. M'KENZIE of Rosehaugh *against* CRICHTON, &c.

THE question was, whether in rural tenements the landlord has an hypothec in household furniture and other moveables *invecta et illata* other than corns and cattle. Kilkerran had found that he had not. We could find no precedent in all our books where the point had been determined, only Tinwald thought it had been decided since 1740 or 1741, in some case where he was lawyer, but forgot the names, and Arniston said it was daily practice in the country to assume that hypothec, and yet if it was never so decided before, nor mentioned in our law books, that would be an extension of the hypothec. There was a decision, Harcarse, D. 522, (DICT. No. 42. p. 6239.) that *invecta et illata* in general in rural tenements, such as cloth or manufactures, were not subject to the hypothec, though in foreign countries the distinction betwixt urban and rural tenements as to *invecta et illata* seems to be pretty much taken away, and both Stair and M'Kenzie agree that it still remains and is observed with us, but the question is what they mean by *invecta et illata?* We seemed to agree, that *instrumenta fundi* though they are not fruits yet are liable to the hypothec as much as labouring oxen, and the great difficulty was as to household furniture. Arniston thought the landlord had *jus retinendi* on the ground but not to bring them back, nor so strong as in corn or cattle, and Tinwald said he believed the decision he remembered was to the same purpose. The President thought there was a hypothec in ordinary furniture, such as is necessary for a tenant, but not in a gentleman's valuable furniture, as clocks, hangings, &c. and it was said that silver work could not be included in such furniture, (the question was about Campbell of furniture, who after selling his estate took a lease of the mains and mansion-house.) But the opinions seemed to be so various, and we were so uncertain, that we remitted back the petition and answers to Kilkerran, Ordinary, to enquire about the decision that Tinwald mentioned.

No. 14. 1747, Nov. 20. SIR JOHN HALL *against* NISBET of Dirleton.

SIR JOHN HALL as creditor to a tenant of Dirleton, attempted to poind the tenant's crop betwixt Yule and Candlemas, and Dirleton's factor stopped him till payment of his farms and money rent. The creditor offered a neighbouring tenant cautioner, which the other said he was not bound to accept. We found he was not bound to accept of caution for his farm and allow the corn to be poinded; and therefore sustained the defence.—June 2d 1748 Adhered.

No. 15. 1749, July 5. CREDITORS of LIDDERDALE of Torrs, *Competing.*

NASMYTH, who was Lauderdale's agent, had the writs of the estate in his hands, and was creditor in an account, and particularly in the dues he had paid the Sheriff upon the clause *capiendo securitatem* in order to get his client infeft, and there being a ranking and sale, the question was, Whether he had a right of hypothec on these writs? Against them I quoted the case 10th July 1735 and 17th February 1736, Creditors of Kirnan and M'Vicar, (No. 3.) and 31st January 1738, Earl of Sutherland against Mr D. Coupar, (No. 8.) and we delayed till the lawyers look into them,—16th June 1749.

The Lords (5th July) found that an agent has a hypothec in the writs of his client's lands in his hands not only against his employer but also against his creditors, contrary to the decision Creditors of Kirnan 10th July 1735 and 11th February 1736; 2dly, Found the money paid by him to the Sheriff on taking his client's infeftment that he has no hypothec for it.

No. 16. 1750, Jan. 12. ANDREW BROOMFIELD *against* DAVIDSON.

JOHN TAYLOR got a tack from Davidson, his entry to be at Whitsunday 1740 and first term's payment Martinmas 1740, and the next Whitsunday 1741. In 1748 Andrew Broomfield came to poind the tenant's crop, and Davidson claimed his hypothec for the rent that was due at Martinmas 1747 and Whitsunday 1748, and it was agreed that the crop should be disposed of till the matter was decided. Broomfield contended that the hypothec was only for the rent payable at Martinmas 1748 and Whitsunday 1749, that the crop could only be hypothecated for one year's rent, and it behoved to be the legal terms and not conventional terms that are the rule. Lord Milton found that Davidson had his hypothec for Martinmas 1747 and Whitsunday 1748;—and we adhered, and refused a bill without answers,—because as the rent paid at Martinmas 1740 and Whitsunday 1741 was the rent of crop 1741, for which rent alone the master could have a hypothec, and after it was paid the crop was liable to no hypothec, so the rent payable at Martinmas 1747 and Whitsunday 1748 behoved to be the rent payable for crop 1748, and which was agreeable to our decisions betwixt Crawfurd and the Tacksmen of Langtown (*supra*) Yet some of us differed, *inter quos* Justice-Clerk.

No. 17. 1751, July 18. ROBERT DALRYMPLE *against* EARL of SELKIRK.

EARL of SELKIRK, as creditor to Captain John Dalrymple, nephew to the late Earl of Stair, and brother to this Earl of Dumfries, adjudged from the Earl of Dumfries and the first Earl of Stair, as charged to enter to Captain Dalrymple, certain lands part of Earl of Stair's estate, wherein he had infeft his nephew, held of the Crown, to qualify him for voting in elections; and having pursued maills and duties, Mr Dalrymple of Stair, as heir of provision to the late Earl, produced his rights to these lands and competed with him. Earl of Selkirk, on a diligence for recovering his author or debtor's rights, cited Robert Dalrymple, writer to the signet, who produced dispositions of the lands by the last Earl of Stair to Captain Dalrymple, with charters and sasines upon them, but claimed a hypothec for payment of the expenses of completing all these rights which he said he was employed by Earl of Stair to expede, and kept the writs for his payment. Kilkerran, Ordinary, seemed to think the hypothec was not good in this case against the pursuer, who might use the writs *in modum probationis*, as we found in the Earl of Sutherland's case in a declarator of recognition of the estate of Skelbo,—but I observed that would not apply to the case for that the pursuer was using these writs not *in modum probationis* of a fact, but as his titles to the maills and duties, and as now his writs by his adjudication. The Ordinary and the Court were satisfied with the distinction, and therefore remitted it back to the Ordinary that he might sustain the hypothec.