drink, whether foreign or domestic, in his house. We appointed a hearing upon Wednesday.

The President seemed, when the cause was formerly in Court, to be the person that had greatest difficulty as to the opinion then given by Arniston, (to which I agreed) that the trades could keep taverns for retailing wine in their own houses; and now after the hearing, he declared he agreed to the opinion given; and therefore we suspended the charge, but agreed that they could not retail wine to be retailed out of their own houses. 26th January.

Upon a reclaiming bill against the interlocutor of 26th January, averring that in Edinburgh the trades cannot retail wines, &c. without entering with the guildry, we allowed a proof before answers; and a proof was brought, that when one in Edinburgh sells wine, they compel him to enter guild-brother, but they allow him to continue the exercise of his craft,—notwithstanding whereof we adhered. *Renit.* President. 24th November.

PRIVILEGED DEBT.

No. 1. 1737, Jan 11. GRAHAM *against* GORDONS OF CRAICHLAW.

THE Lords on a division adhered to the Ordinary's interlocutor, modifying the Lady's mournings to L.45, though many of us were for restricting to L.30, 11th January 1737, —and 1st February the Lords adhered.

PRIZE.

No. 1. 1751, Nov. 27. CAPTAIN CARSWELL *against* MARSHALL.

THE Rebels in 1745 took a horse from Marshall, which was taken from them by the Berwick Militia, and said to be then bought from them by Captain Grozet, and by him made the Company's bat-horse, for which it seems the King allows L.10. The Captain was killed at Callender, and Carswell got his Company, and got the horse for the Company's bat-horse, and if he had not got him, would it seems have been entitled from Grozet's executor's to L.10. Thereafter Marshall challenged the horse at Glasgow, and 5th January 1750, the Lords found that the property was not transferred either by the capture by the Rebels or retaking by the Militia or the army; and a proof was allowed of Marshall's property, and of what price Grozet paid for him, or what he cost Captain Carswell. The property was proved, and no proof what was the price paid by Grozet, only that he bought him, and that Carswell got him in place of L.10 sterling, for the

Company's bat-horse. Shewalton found Carswell liable for L.12 as the value of the horse when arrested at Glaswow; found him not entitled to be repaid what he cost him; and found him liable in expenses; and on a reclaiming bill, the majority of the Court adhered. The President and Justice-Clerk differed from the interlocutor 1750, and thought a horse taken in Rebellion was a case different from one taken by thieves or robbers. I again agreed with that interlocutor, and many things taken by the Rebels had been justly recovered from third parties after the last Rebellion; nor did I think the Officers entitled to salvage, properly so called, that is to a reward, but I thought they should be kept *indemnis* as to all that it cost them, and consequently to any price paid, because thereby alone the subject was preserved; and I thought that would hold in things taken by thieves, robbers, or pirates; and 2dly, I thought there was too much difficulty in all the points to subject the defender to expenses. Against the interlocutor as to the L.10, were President, Justice-Clerk, Milton, and I; and against expenses were the same four, and Dun and Woodhall. Leven was not present, nor Haining.

No. 2. 1752, Feb. 28. SUTHERLAND of Meikle Torbell *against* MONRO.

SUTHERLAND in April 1746, having by Earl Sutherland's order taken a good many cattle from M'Kenzie of Ardloch, Monro, as a creditor of his, pursued him for the value, and he having pleaded the indemnity;—replied, not good either as to cattle yet extant, or sold and whereof the defender retained the price. We found, that if Ardloch was engaged in the Rebellion, there lies no action; for we thought the property in that case was transferred in the same way as *in justo bello;* and as the pursuer seemed almost to admit that he was engaged, we went no further, but remitted to Strichen, Ordinary, to proceed accordingly. But if he was not in the Rebellion, we thought there lay a *rei vindicatio* of the goods extant, but as to cattle destroyed or sold, though the defender have the price, the President doubted, as I did, because the taking is not only pardoned, but justified and approved, and therefore there can be no enquiry into that fact. The Ordinary assoilzied him, and found no expenses. But on a reclaiming bill we found, 28th February, the pursuer liable in full expenses.

PROCESS.

No. 1. 1733, Dec 7. ANN SEMPLE, &c. *against* JOHN SEMPLE.

IN respect there was no circumduction but a new term assigned find the contract not proven.

No. 2. 1734, June 25. GRAY and CORBETT *against* GRAY.

See Note of No. 1. *voce* PERSONAL OBJECTION.