

built before any requisition made to him to concur in the building. I thought the defence well founded in terms of the statute. But because of a practise in 1679 Seaton against Seaton, (Dict. No. 2. p. 10,476.) I repelled it so far as might extend to the expenses it would have cost him had he actually concurred in building a sufficient dike. But Wright having reclaimed, the Lords thought the former decision wrong, and therefore found the action not now competent; and on the 28th they adhered without answers.

No. 3. 1739, July 3. DOUGLAS *against* PENMAN.

THE Lords considering the extent of these grounds, the one six acres and the other eight, found that it is not comprehended within the act of Parliament.

No. 4. 1744, July 24. ROBERTSON *against* MAJOR ROBERTSON.

THE question was, Whether the act 16, Session 7, King William, included fruit trees as well as barren planting? The President was exceedingly clear that it did not. However it carried by a good majority (and I thought rightly) that fruit trees are included, and therefore we adhered to our former interlocutor.

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POINDING.

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No. 1. 1734, July 30. FERGUSON of Auchinblain *against* JOHN DICK.

THE Lords sequestrated the crop, and remitted to the Ordinary on the bills in time of vacance to name the sequestrator.

No. 2. 1736, Jan. 28. DRUMMOND *against* MOWBRAY.

THE Lords thought it no nullity that the registrate bill bore no special warrant to poind, but only for all executorials necessary after a charge first given.

No. 3. 1736, Feb. 13. MUIRHEAD *against* PROVOST CORRIE.

THE Lords thought that letters of open doors are not necessary to open locked presses or chests. They also thought that Gordon warrantably stopped the poinding. But they found that the poinder having done all that on him lay, they preferred him to the debt in question upon which no sequestration had been obtained. They seemed also to think that a possessor of goods is not bound to assist in poinding or opening doors, but only to suffer the messenger to do it. But here it appeared by the execution that the messenger really was stopped.