

HYPOTHEC.

1735. *February 20.* GARDEN of Troup *against* DR GREGORY.

HYPOTHEC not pleadable by cautioners for the tack-duty against an arrester, without an assignment, not even though paid by them.

No. 1

1735. *December 4.*

CREDITORS of M'LELLAN *against* BURNS and OTHERS.

JOURNEYMEN employed in building and finishing a tenement have no hypothec nor preference for their wages, nor action *de in rem verso*, and therefore an infertment for relief of debts preferred to them, though some of the work was after the infertment.

No. 2.

1736. *February 17.* NIEL M'VICAR *against* LADY KIRNAN.

HYPOTHEC of writers in their clients' writs sustained in land rights, but only against their employer. *Vide* No. 15. *infra*, where the contrary was found.

No 3.

1736. *June 29.*

SIR JOHN RUTHERFOORD *against* SCOTT of Bonchester.

A MASTER pursuing for his rent one who intromitted with and poided the tenants' goods; the Lords sustained the defence, that the defender left

No. 4.

No. 4. as many goods as would satisfy the rent, and that these goods were intromitted with and poinded by the pursuer for another debt. Indeed, they once altered this interlocutor, and repelled the defence, in respect of the answer, that at the term of payment of the rent there did not remain goods sufficient for the rent, and repelled the reply, that these goods that were left were intromitted with by the master the pursuer, in respect he lawfully poinded them for former rents, though he had no hypothec for these rents; but thereafter they returned again to the first interlocutor, and sustained the defence above. (See DICT. No. 35. p. 6226.)

1736. July 22. PRINGLE *against* SCOTT of Harden.

No. 5.

UPON the question, Whether *currente termino* a master may upon his hypothec stop poinding of his tenants cattle till security be given him for his rent, though there are then corns on the ground sufficient for payment of his rent? First it carried that he could not in that case stop the poinding; but thereafter that interlocutor was altered, and it carried that he could stop it. (See DICT. No. 20. p. 6216.)

1737. February 18.

PATRICK CRAWFURD of Auchnemes *against* The TACKSMEN of Langtown.

No. 6

EACH crop is hypothecated only for the rents of that year or crop, but not for rents of a preceding crop, though only payable the year after, (but as to the cattle, not decided;) and therefore a poinding in October 1736 of the crop then in the yard, could not be stopped upon the hypothec for the rent of the crop 1735, though it was by paction payable only at Candlemas and Lammas 1736. *2dly*, The creditor having for the master's security of the rent of that crop 1736, not then fallen due, offered to the master himself a bond with sufficient caution, and also to consign bank notes to the value in the Sheriff's hands; the Lords found the offers *separatim* sufficient for the master's hypothec for that crop.—Affirmed in Parliament. *Vide* Information Turnbull of Houndwood, and Cockburn, against these Tacksmen, 25th January 1749. (See No. 7.)

1737. *November 29.*

PATRICK CRAWFURD of Auchnames *against* The TACKSMEN of Langtown.

No. 7.

MOST of the Lords thought, that where there is proper steelbow, whether in corn, straw, or others, the master may stop poinding for his steelbow as well as rent; but the goods appearing plainly to be the tenant's property, and put into the form of steelbow, to give the sellers, who were creditors to the tenant, a sort of security in them, or rather to cover them from the diligence of his creditors; the Lords found the steelbow not duly constituted, and repelled the defence.—Affirmed in Parliament as above, (No. 6.) *Vide inter eosdem voce* POINDING. (See DICT. No. 3. p. 6193.)

1738. *January 31.*

EARL of SUTHERLAND *against* MR DAVID COUPAR.

No. 8.

WRITERS, notwithstanding their hypothec in their clients writings, yet being called as havers by third parties, they must exhibit them *in modum probationis*, even though in a recognition of the client's estate. *Vide* Robert Dalrymple's Case, No. 17. *infra*. (See DICT. No. 52. p. 6247.)

1738. *December 22.*

YORK-BUILDINGS COMPANY *against* DALRYMPLE, &c.

No. 9.

THE Lords found, that Robert Dalrymple, agent for the York-Buildings Company, is entitled to a hypothec on the writings now exhibited for his disbursements, and a reasonable recompense for his pains according to the labour it will appear he has bestowed to the date of this interlocutor, but not to a fixed salary of L.100 sterling *per annum*, (which had been annually allowed in his former accounts with the Company) or arrears thereof; and that Mr Fordyce, cashier for the Company, has no hypothec or right of retention of the debts or instructions thereof affecting the Company's estates or conveyances of the same, taken by him in name of and for the behoof of the Company, for the balance of his accounts laid out in acquiring the said debts and other affairs of the Company, reserving his action against the Company as accords.

- No. 10. 1742. *June 29.* ROWAN *against* BARR.
 HYPOTHEC for rents postponed to funeral charges. (See DICT. No. 16 p. 11852.)
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- No. 11. 1743. *February 10.*
 TOD *against* MONTGOMERY of Macbiehill, WELSH, &c.
 AN heritor's factor stopping pointing of the tenant's goods, the creditors offered payment on assigning the rent and hypothec, but the factor or doer offered a receipt but had no power to assign, whereupon the creditor pursued a deforcement; but the Lords assoilzied, and thought the receipt of the rent to a creditor would imply an assignation; *2do*, Many doubted whether the heritor was bound to have a factor present with powers even to discharge, and that the creditor should offer the rent to the heritor himself. (See DICT. No. 36. p. 6228.)
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- No. 12. 1745. *June 25.* CURRIE *against* CRAWFURD.
 THOUGH a landlord may *ex incontinenti* drive back cattle pointed from his tenant in right of his hypothec, yet he cannot bring them back next day. (See DICT. No. 12. p. 6206.)
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- No. 13. 1747. *June 19.*
 M'KENZIE of Rosehaugh *against* CRICHTON and HAY.
 WHETHER there is any hypothec with us in rural tenements? Lord Kilkerran found that there was none, but on a reclaiming bill, we seemed to agree that there was a hypothec in the *instrumenta fundi*. Lord Arniston said, that by practice in the country it is also claimed in household furniture, but as no precedent that applied was mentioned on either side, we did not decide; but remitted to the Lord Ordinary to enquire for one mentioned by Lord Tinwald since 1740, but he did not remember the names.
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- No. 14. 1747. *November 20.* SIR JOHN HALL *against* NISBETT of Dirleton.
 AN heritor whose rent is payable in victual betwixt Yule and Candlemas, may for payment of his rent stop his tenant's creditors from pointing, though caution be offered him for his rent, which he is not then bound to accept of. (See DICT. No. 37. p. 6228.)