in the house that was necessary; which must be understood to be any small things that were necessary for her subsistence. No 46.

THE LORDS found, That Craw, the defender's factor, not having voluntarily produced the disposition, but that the same was produced at the pursuer's factor's desire, and when produced, Craw refused to take instruments thereupon; therefore found, That neither Manderston the constituent, nor Craw the factor, were liable for any of the sums acclaimed.

Act. *Ja. Graham & Pat. Grant.* Alt. *Ro. Dundas* Advocatus. Clerk, *Justice.*

Edgar, p. 56.

1737. *January* 21. CRAWFORD *against* SIR JOHN STEWART.

No 47.
What competent to the heritor upon his hypothec, in the case of a poinding by a creditor.

FOUND, that a creditor offering to poind a tenant, may be stopped by the heritor, unless the creditor offer sufficient security for the rent, if the term of payment of the rent be not come; and unless he offer payment of the rent, if the term of payment be past.

Found, that a poinder offering security to the heritor as aforesaid, *currente termino*, has right to insist for assignation to the rent and hypothec, and may so qualify his offer; nor will it be a good answer for the heritor, that he cannot be obliged to assign the hypothec in prejudice of his own debt of arrears due to him for former years; for, in general, no such objection is competent against assigning, but to one who has himself affected the subject for that debt, in prejudice whereof he refused to assign.

Found also, that corns are only hypothecated for that year's rent in which they grow.

N. B. The hypothec upon corns lasts as long as the subject is extant. The hypotheo upon the stock, called the general hypothec, lasts only till the last term of payment of the rent, and for three months thereafter, as was found in Mr Robert Hepburn's case in January 1726, No 11. p. 6205.

During the currency of the term of payment of the rent, the master may stop a poinder, if security be not offered by the poinder, notwithstanding the poinder leave sufficiency of fruits on the ground or in the barn-yard, as was found in Scot of Harden's case in June 1736, because, by many accidents, these may not be remaining at the term of payment; but if the term of payment of the rent is past, it is enough if the poinder either offer to pay the rent, or leave sufficiency of fruits behind. See No 20. p. 6216.

Where the offering security is enough, it is not necessary that there be also

No 47. sufficiency left on the ground, as was found in the present case between Mr Crawford of Auchinames, and Sir John Stewart of Allanbank.

Kilkerran, (HYPOTHEC.) *No* 1. *p.* 271.

*** See Clerk Home's report of this case, No. 3. p. 6193. *voce* HYPOTHEC.

1750. *November* 7.

ANDERSON *against* The SHOEMAKERS of the Canongate.

No 48.
A poinding may be executed a year after the charge to pay.

THE shoemakers of the Canongate poinded the effects of John Anderson, one of their number, and their debtor, who pursued them in a spuilzie, on this, amongst other grounds, that the poinding was more than a year posterior to the charge,

The Lord Ordinary, 15th June 1749, 'Found the poinding was regularly 'executed; and thereupon sustained the defence of lawfully poinded.'

Pleaded in a reclaiming bill, legal diligence inchoate, if not followed forth within the year, expires: A summons falls if not brought into court; a denunciation is null, if not within that time of the charge.

Answered, It ought to be of no prejudice to the defenders, if this pursuer secreted his person and effects, so that they could not use diligence sooner; caption may be used after year and day of the denunciation; and so may forthcoming be raised at that distance after the arrestment; and there is no law nor custom limiting the time of using this diligence of poinding.

THE LORDS found there was no foundation for the action of spuilzie, and adhered.

Act. *H. Home.* Alt. *Lockhart.* Clerk, *Forbes.*

D. Falconer, *v.* 2. *No* 160. *p.* 184.

*** Lord Kames reports this case:

JOHN ANDERSON insisted in a process of spuilzie against the Incorporation of shoemakers. The defence was, lawfully poinded; to which the answer was, That the poinding is null and void, the charge for payment being given in the year 1740, and the poinding was not till the 1745; which, in effect, was poinding without a preceding charge, because a charge falls by the lapse of year and day. This point being controverted by the defenders, it was endeavoured to be made out on the pursuer's part by the following reasoning.

It is a general rule, that no inchoated step of execution does subsist, unless it be followed out within year and day. An execution of a summons falls, if not brought into court within year and day; and even after it is brought into