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.