The Lords found that upon supposition that the Lady did not employ Mr Lorimer that he could not plead his hypothec against her.—(17th February 1736.)

No. 4. 1736, June 29. SIR JOHN RUTHERFOORD *against* SCOTT.

THE Lords sustained the defence that the defender left as many goods as would satisfy the rent, and that these goods were intromitted with or poinded by the pursuer the master, though for another debt, and therefore adhered to the Ordinary's interlocutor.—(20th June 1735.)

The Lords altered the former interlocutor of 20th June, and repelled the defence that as many goods were left as was sufficient for that year's rent, in respect of the answer that there did not remain as many at the term of payment, and repelled the reply that these remaining goods were intromitted with by the master himself, in respect he intromitted with them by a lawful poinding for former rents, albeit he had no hypothec for these former rents. 29th June 1736 Altered this interlocutor, and adhered to the former of 20th June 1735. I was absent in the Outer-House when the two first interlocutors of this day were pronounced, and have them only by report, but the two about the hypothec (See No. 5.) were delayed till 12 o'clock.

No. 5. 1736, July 22. PRINGLE *against* SCOTT of Harden.

THE question put was, Whether *currente termino* a master may by virtue of his hypothec stop a poinding of his tenant's cattle till security be given him for his rent, notwithstanding there are then corns sufficient for payment of his rent, or not? and it carried not. For the interlocutor were Royston, Newhall, Minto, Haining, Dun, Monzie, Easdale. Against it were Milton, Drummore, Shewalton, Coupar, Leven, and the President, but he had no vote, and Murkle did not vote. (*Vide* 20th June, Sir John Rutherfoord, *supra.*)—29th June 1736, This interlocutor altered and the reverse pronounced, though none that were for the last interlocutor altered. We did not determine the specialty mentioned in Harden's petition. 22d July 1736 The Lords adhered to the interlocutor of 29th June.

No. 6. 1737, Feb. 18. P. CRAWFURD *against* TACKSMEN of LANGTOWN.

THE Lords unanimously found, that the crop 1736 was not hypothecated for the rent 1735. 2dly, We also found, that for the crop 1736, whereof the term of payment was not come, both the offers made by the creditor were sufficient, viz. a bond with sufficient caution offered to be delivered to the master himself; 2dly, Consignation of Bank notes in the Sheriff's hands,—which were *separatim* relevant, for the Bank notes would not be a good payment, yet they are good security, and the Sheriff is the County Judge, and the proper Judge in poindings long before the institution of the Session, 21st January.—18th February 1737 The Lords adhered. *Vide* 15th November, (No. 7.)

No. 7. 1737, Nov. 15, 29. P. CRAWFURD *against* TACKSMEN of LANGTOWN.

IN this case, (which see No. 6.) the first point decided was the defence of steel-bow. Arniston and I and others doubted whether the defence might not be good, if there was

proper steel-bow. Arniston restricted his doubt to the steel-bow straw and corn; but as we agreed, that here there was no steel-bow legally constituted, we adhered to the Ordinary's interlocutor repelling the defence of steel-bow. But before answer whether liable *in valorem* or universally, and whether the cattle remained hypothecated for rent 1735, (which would not be determined if they are liable universally,) allowed a diligence for proving the way and manner of stopping the poinding, and whether there was any violence, and the degree thereof. 29th November, Refused a reclaiming bill without answers.

No. 8. 1738, Jan. 31. EARL of SUTHERLAND *against* MR D. COUPAR.

THE Lords found, that notwithstanding Mr Coupar's hypothec Earl of Sutherland had a title to oblige him to produce these writs *in modum probationis*, though that was in order to prove recognition.

No. 9. 1738, Dec 22. YORK-BUILDINGS COMPANY *against* DALRYMPLE, &c.

THE only reason why these papers are kept, is because of the question of the right of retention pleaded by Mr Fordyce, which was repelled.

No. 10. 1742, June 29. ROWAN *against* BARR.

THE Lords found funeral expenses preferable to the landlord's hypothec for rent agreeable to L. 14. § 1. L. 45. *D. De Rel. et Sumpt. fun.*

No. 11. 1743, Feb. 10. TOD *against* MONTGOMERY of Macbiehill, WELSH, &c.

THE Lords were of opinion, that a master was not bound to have a person attending at poindings of his tenant's goods by their creditors, with powers to receive and on payment to discharge his rent and hypothec, and far less with powers to assign to the creditor poinder upon such payment; and therefore in this case Macbiehill having empowered Welsh on payment to discharge, and which Welsh offered to do, but the creditor would not pay without assignment, whereupon Welsh stopped the poinding for which he is now sued,—the Lords assoilzied the defender, and found expenses due. They also thought that a receipt for the rent to the creditor would have been equal to an assignment.

No. 12. 1745, June 25. CURRIE *against* CRAWFURD.

THE question was, Whether a tenant's cattle being poinded the heritor could next day bring back the goods? upon the footing of the case 11th December 1672, Crichton against Earl of Queensberry, (DICT. No. 8. p. 6203.) The Lords altered the Ordinary's interlocutor, and found he could not bring back. I was at first of a different opinion, but altered my opinion on a new consideration, that even a proprietor whose goods were erroneously poinded for another's debt, could not bring them back after the poinding was completed, but behoved to sue.