

The Lords (5th July) found that an agent has a hypothec in the writs of his client's lands in his hands not only against his employer but also against his creditors, contrary to the decision Creditors of Kirnan 10th July 1735 and 11th February 1736; 2dly, Found the money paid by him to the Sheriff on taking his client's infestment that he has no hypothec for it.

No. 16. 1750, Jan. 12. ANDREW BROOMFIELD *against* DAVIDSON.

JOHN TAYLOR got a tack from Davidson, his entry to be at Whitsunday 1740 and first term's payment Martinmas 1740, and the next Whitsunday 1741. In 1748 Andrew Broomfield came to point the tenant's crop, and Davidson claimed his hypothec for the rent that was due at Martinmas 1747 and Whitsunday 1748, and it was agreed that the crop should be disposed of till the matter was decided. Broomfield contended that the hypothec was only for the rent payable at Martinmas 1748 and Whitsunday 1749, that the crop could only be hypothecated for one year's rent, and it behoved to be the legal terms and not conventional terms that are the rule. Lord Milton found that Davidson had his hypothec for Martinmas 1747 and Whitsunday 1748;—and we adhered, and refused a bill without answers,—because as the rent paid at Martinmas 1740 and Whitsunday 1741 was the rent of crop 1741, for which rent alone the master could have a hypothec, and after it was paid the crop was liable to no hypothec, so the rent payable at Martinmas 1747 and Whitsunday 1748 behoved to be the rent payable for crop 1748, and which was agreeable to our decisions betwixt Crawford and the Tacksmen of Langtown (*supra*) Yet some of us differed, *inter quos* Justice-Clerk.

No. 17. 1751, July 18. ROBERT DALRYMPLE *against* EARL of SELKIRK.

EARL of SELKIRK, as creditor to Captain John Dalrymple, nephew to the late Earl of Stair, and brother to this Earl of Dumfries, adjudged from the Earl of Dumfries and the first Earl of Stair, as charged to enter to Captain Dalrymple, certain lands part of Earl of Stair's estate, wherein he had infest his nephew, held of the Crown, to qualify him for voting in elections; and having pursued maills and duties, Mr Dalrymple of Stair, as heir of provision to the late Earl, produced his rights to these lands and competed with him. Earl of Selkirk, on a diligence for recovering his author or debtor's rights, cited Robert Dalrymple, writer to the signet, who produced dispositions of the lands by the last Earl of Stair to Captain Dalrymple, with charters and sasines upon them, but claimed a hypothec for payment of the expenses of completing all these rights which he said he was employed by Earl of Stair to expedite, and kept the writs for his payment. Kilkerran, Ordinary, seemed to think the hypothec was not good in this case against the pursuer, who might use the writs *in modum probationis*, as we found in the Earl of Sutherland's case in a declarator of recognition of the estate of Skelbo,—but I observed that would not apply to the case for that the pursuer was using these writs not *in modum probationis* of a fact, but as his titles to the maills and duties, and as now his writs by his adjudication. The Ordinary and the Court were satisfied with the distinction, and therefore remitted it back to the Ordinary that he might sustain the hypothec.