

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 poiding, 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 poidings 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 poider 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 poiding 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 poided 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 poided for another's debt, could not bring them back after the poiding was completed, but behoved to sue.