

in steelbow with a room, became the tenant's in such set, as he was not obliged to render the same oxen again, but as many as good, or the price thereof, and had power to sell or dispone upon the steelbow oxen at his pleasure; whereby it would appear that they were not the master's goods, but that he had only right to the price thereof after the expiring of the set. Others thought, that the tenant had only the use of them, and not the property; in so far as, if the tenant went to the horn, the steelbow goods would not pertain to the donatar of his escheat, but, on the contrary, they would belong to the donatar of the master's escheat going to the horn; likeas they would fall under the master's testament. And albeit it was *alleged* by this defender, That they were confirmed in the defunct's testament, yet the LORDS found that the heir should have a yoke of them as heirship.

No 5.

*Fol. Dic. v. 1. p. 364. Haddington, MS. No 1636.*

1611. *January 19.*REID *against* THOMSON.

THE shell of a salt-pan found not to be heirship, but to appertain to the executors by a decreet of the Commissaries of Edinburgh, produced before the Lords by Mr Humphry Blenschiel.

No 6.

*Fol. Dic. v. 1. p. 365. Haddington, MS. No 2106.*

1793. *June 19.*DAVID HEPBURN *against* WILLIAM SKIRVING.

WILLIAM SKIRVING, as heir of James Skirving his brother, intromitted with part of his moveable effects. David Hepburn, in right of his wife, who was sister of James, and one of his nearest in kin, brought an action against William, to make him account for her share of the executry of her deceased brother.

In accounting the defender *insisted*, that he was entitled to retain, as heirship moveables, a plough of horses, and an ox, a cow and a bull.

The pursuer denied his right to a bull, and quoted the following authorities, in order to show that he was only entitled to one horse; Balfour's Practics, p. 234; 1474, c. 53.; 10th November 1575, Lord Drummond, No 4. p. 5386.; Erskine, b. 3. tit. 8. § 17.

The defender, on the other hand, *argued*, *imo*, That the heir was entitled to a yoke of oxen; Stair, b. 3. tit. 5. § 9.; Bankt. b. 3. tit. 4. § 6.; and that Erskine, b. 3. tit. 8. § 18. considers a yoke to be 'as many as make a plough,' and that therefore, from analogy, he was also entitled to a plough of horses; Stewart's Answers to Dirleton, p. 214.

*2do*, That he was entitled to the 'best of ilka thing,' and consequently to a bull, as being essentially different from an ox.

No 7.

The heir has right only to a single horse, and having got an ox and a cow, he is not entitled to a bull.