

No 28.
liable to the
landlord's
hypothec, as
well as the
tenant's.

creet in her own baron court against Marion Howatson, and the relict and bairns of Andrew Johnston, for payment of the sum of 4000 merks proportionally; and that, for the Whitsunday's mails 1666, there is a pursuit to make furthcoming against Cranstoun of Olea, in whose hands the sums due to them were appraised;—it was *alleged*, There could be no process to make furthcoming; because it is offered to be proved; that the said Marion Howatson having only a subtack from Andrew Johnston her son, who was tacksman, she made payment of the term's duty to him, and obtained his discharge. To which it was *replied*, Not relevant, except it were alleged that she was subtacksman to the said Andrew, she made payment of the said term's duty to him, after the same pursuit at the Countess's instance against her; and as to the deceased Andrew his discharge of the said term's duty from the deceast Earl of Traquair, it is noways relevant, being before the term of payment, especially in prejudice of the pursuer, who is a singular successor, and who doth not represent the said Earl, and who unquestionably hath right to the teind-duty.—THE LORDS found, that a subtenant's goods were liable *codem modo* to the master, for a year's duty, as the tenant's goods are.

Fol. Dic. v. 1. p. 417. Newbyth, MS. p. 91.

* * * See Stair's report of this case, *voce* TACK.

1673. December 18.

FRANCIS RUTHVEN of Redcastle *against* ROBERT ARBUTHNOT Merchant.

No 29.
Found that
the goods of
a tenant of
any one year
cannot be
pounded, till
the rent for
that year be
paid, or as
much left as
will satisfy it.

REDCASTLE having pursued the said Robert, for his wrongous intromission with eighteen bolls of victual, belonging to one of his tenants, and carrying the same off the ground before the pursuer was paid for his year's rent, it was *alleged* for the defender, That his intromission was *auctore pretore* by virtue of letters of pouding directed against the tenant for not paying of his debt, which was greater than the avail of his goods pouded, and which corns being long since *bona fide percepti et consumpti*, he is not in law obliged to restore the price thereof. It was *replied*, That, by our law, all masters have *jus tacitæ hypothecæ* to all their tenant's corns or goods, for payment of that year's duty that the corns did grow, which being a real right, affects the same, and any singular successor, albeit they were pouded, or comprised, or sold in a public market, ought to make good the same.—THE LORDS did repel the defence, in respect of the reply, and found, that all tenant's goods, or corns, were hypothecated to their masters for one year's duty; and that the same could not be pouded, nor disposed of, unless they would offer to prove, that they left as much upon the ground as will satisfy the master.

Fol. Dic. v. 1. p. 418. Gosford, MS. No 652. p. 380.