

1685. *January.* JOHN KEIRY *against* ROSS and ROBSON.

No 42.

FOUND, that masters have no hypothecation of cloth and manufacture in rustins, either for rents or feu-duties, unless by accident, as *invecta in urbanis* for house-rents. Here John Keiry was the King's collector of the feu-duty.

*Fol. Dic. v. 1. p. 418. Harcarse, (HYPOTHECATION.) No 522. p. 145.*

1687. *February.* MOLISON *against* SMITH and NICOL.

No 43.

FOUND, that the master of a salmon-fishing set in tack, had a hypothecation for his tack-duty, of the salmon taken and barrelled, as being *fructus aquæ*.

*Fol. Dic. v. 1. p. 418. Harcarse, (HYPOTHECATION.) No 523. p. 145.*

\*.\* Sir P. Home reports the same case :

GILBERT MOLISON having set a tack to James Peirie of a salmon fishing in Don, for payment of a certain tack-duty ; and after the expiring of the year, Peirie having sold and disposed the salmon to Adam Smith and John Nicol, without payment of the tack-duty, and Molison having obtained decret before the Bailies of Aberdeen, against Smith and Nicol, as intromitters with the salmon taken in his waters that year, for payment of the tack-duty, by virtue of the tacit hypothecation that the masters have of their tenants goods, for a year's rent ; and Smith and Nicol having suspended, upon the reasons, that the Bailies committed iniquity in finding the suspenders liable for the tack-duty by virtue of the tacit hypothecation ; because, albeit landlords of tenants within burgh, or other heritors of lands in the country, have that privilege, yet it is not so in fishings, especially in this case, where the fishes were not in the water, or in any corsehouses, but brought to the shore of Aberdeen, and bought in public market ; and if such a preparative were sustained, it would destroy all trade and commerce as to salmon fishing ; for a tenant and his master could collude in prejudice of the buyer, and the master could force the buyer to pay the price over again, which he had already paid to the tacksman. Also, it was not proved that the salmon bought by the suspenders were the individual fish taken in the charger's water. *Answered,* That it is a principle in our law, that the tenant's goods, especially the product of lands, and others, set in tack, are tacitly hypothecated to the master, for a year's rent, which ought to be extended to salmon fishings as well as other things, there being the same reason for both, and more in salmon fishings than in other things, because heritors of salmon fishings are many times necessitated to set the same to poor fishing men, who have no stock of their own, and to furnish them salt and casks for making and curing of the fishes, and can expect no payment of their rents, but out of