

No 43.

the product of their fishing ; and if it were otherways, that the heritors of salmon fishings should not have that privilege, then the tacksmen might sell and put away the fishes, and so render all salmon fishing altogether useless and unprofitable ; and where a party has right by tacit hypothecation, it is not taken away by selling of the subject, in a public market, because the effect of tacit hypothecation is, that it makes it to be the party's own, without tradition or delivery ; so that a tenant's selling the product of the ground, fishing, or others, can no more prejudice his master of his right of tacit hypothecation, &c. to a year's rent, than if he were selling his master's goods in a public market, *quia jus pignoris sive hypothecæ ita rei annexum est, ut debitor nec rem alienando neque alteri postea obligando possit creditore aufere* ; Leg. 15. Cod. De pignor hypothec. Perez. in lib. 8. Cod. Tit. 18. No 9. ; and which is clear by several decisions in our law, and particularly Hay against Elliot, No 26. p. 6219., where the buyers of corn in public market, were found liable to the heritor for a year's rent, upon the account and privilege of tacit hypothecation. And the 4th July 1667, Cuming of Altyr against Lumisden, No 40. p. 6237., where, in the case of a salmon fishing, the Lords found the donatar of the tenant's escheat liable to the master for the tack-duty, by virtue of the tacit hypothecation. THE LORDS repelled the reason of suspension ; and found the heritor hath an hypothec in the fish for his yearly rent ; and therefore assoilzied from the reduction, and found the letters orderly proceeded.

*Sir P. Home, MS. v. 2. No 875.*

1723. November.

CUNNISON against SOMERVILLE.

No 44.

THE British statute, 8vo *Annæ*, entitled ' An act for the better securing of rents, and to prevent frauds committed by tenants,' was found not to extend to Scotland. See APPENDIX.

*Fol. Dic. v. 1. p. 419.*

1735. December 3.

THOMAS LOWRIE, and the other CREDITORS of David Maclellan, against JAMES BURNS, Assignee to certain Journeyman Wrights.

No 45.

Workmen have no real right or preference to other creditors, on account of their reparations done to a house.

DAVID MACLELAN, proprietor of a house at the head of the Cowgate, employed some journeymen wrights to repair it, and thereafter he disposed the same, under reversion, to the said Thomas Lowrie ; in which he was infeft, for relief of some obligations in which he was engaged as cautioner with him. Maclelan having soon thereafter failed in his circumstances, his creditors adjudged, and, among the rest, these journeymen wrights for some wages due to them. In a ranking of the creditors, James Burns, as assignee to the journeymen, craved to be preferred on the said tenement. And the topics upon which he