

S E C T. III.

Landlord's power of Detention in virtue of his Hypothec.

- No 18. 1701. Nov. 11. Lord SALTON *against* CLUB.
- THE LORDS found that the offering of caution by the tenant for the year's rent does not take away the master's hypothec of the fruits, so as to warrant or authorise the tenant to carry the corns, at his own hand, off the ground; because, though it may be rigid in a master to refuse caution, yet *tutius est rei incumbere quam personæ*. *Fol. Dic. v. 1. p. 416. Fountainball.*
- *** See this case, No 13. p. 1821.
-
- No 19. 1731. July 2. SHARP of Hoddam *against* Dr MAXWELL.
- ONE having *currente termino* proceeded to poind a tenant's cattle, who was his debtor, notwithstanding the master interposed, insisting to detain the goods upon the ground, in virtue of his hypothec; in a process of spuilzie at the master's instance, the LORDS found the poinding could proceed, the creditor having left sufficiency of goods upon the ground to answer the hypothec; and found that the goods poinded were not liable to the hypothec, so far as extended to the debt in the horning, though the goods retained were afterwards disposed of by the bankrupt tenant.—See APPENDIX. *Fol. Dic. v. 1. p. 416.*
-
- No 20. 1736. June 30. PRINGLE *against* SCOT of Harden.
- A POINDING of a tenant's stocking being attempted in October, while the corn crop was wholly in the barn-yard, much more than sufficient for a year's rent; the landlord interposed, and refused to allow the poinding to proceed, unless the creditor would find sufficient caution for payment of a year's rent, which was a greater sum than the debt in the horning. In a process against the landlord for stopping the poinding, the LORDS found the defender, in virtue of his hypothec for the current year's rent, did warrantably stop the pursuer's poinding.—See APPENDIX. *Fol. Dic. v. 1. p. 416.*
- *** See Rutherford *against* Scot, No 35. p. 6226.
-
- No 21. 1737. January 21. CRAWFORD *against* STUART.
- AN offer of sufficient security, or consignation of bank notes, to the value of the rent, was found a sufficient answer to a landlord interposing upon his hypothec, to stop a poinding *currente termino*. *Fol. Dic. v. 1. p. 417. C. Home.*
- *** See this case, No 3. p. 6193.

S E C T. IV.

Process against Sub-Tacksmen and Intromitters, with Subjects hypothecated.—What if caution or payment has been offered by the Intromitters, or if sufficiency has been left to answer the rent.

1624. Feb. 3.

HAYS *against* KEITH.

No 22.

A DONATAR of single escheat, recovering by a special declarator the price of a tenant's corn from the intromitter, found liable to the landlord for the rent of that crop; and it was found that the landlord had his option to insist against his tenant, or the intromitter, or the donatar who received the price, and that none of them were entitled to the benefit of discussion.

Fol. Dic. v. 1. p. 418. Durie.

. See this case, No 2. p. 6188.

1624. March 31.

Lady DUN and her HUSBAND, *against* Lord DUN.

No 23.

IN an action pursued by the Lady Dun, and Sir John Carnegie, her spouse, against the Laird of Dun, as intromitter with the corns growing upon the lands of , pertaining to the Lady, pursuer, in liferent, which lands were possessed by a tenant, to whom the same was set for a certain farm yearly, and from the which tenant the defender had received all the corns growing upon the said liferent lands; and therefore he was pursued for payment of the farm, addebted to her therefor by the tenant; the defender alleging that the tenant foresaid, as he occupied the pursuer's lands, the crop libelled, so also he was the defender's tenant in other lands, the corns growing upon both the lands being led, as they were wont of before, to the barn and barn-yard, upon the ground of the excipient's lands; and at the term of payment he received from the tenant foresaid, delivery of his own farms by peck and boll, which he might very lawfully do, and had no necessity to know where the corns received grew, whether on the pursuer's liferent lands, or not;—this allegiance was repelled; for the LORDS found, that the corns growing upon the pursuer's lands, were hypothecated to her for her own farm; and that therefore, according to the quantity of the corns growing upon that ground, intromitted with by the defender, he should be answerable for the farm *pro tanto*; and where the defender further alleged, that at the time of his intromission, the tenant had as many horse, nolt, kine and sheep, as would have paid the pursuer her farm,

Intromitters with a tenant's corn are liable to the landlord *in valorem* for the rent of that crop; though they acquire the same for an onerous cause, and *bona fide*, not knowing it to be the corn of that farm.

The defence, that at the time of the intromission, with the corns, the tenant had as many cattle on the farm as would pay the rent, was