

## H Y P O T H E C.

## SECT. I.

## Extent to which Corns are subject of Hypothec.

1611. November 9. WARDLAW against MITCHELL.

MR THOMAS WARDLAW having obtained decret against one called Mitchell, in the Gellettis, and thereupon having arrested the said Michell's corns in his barn, and stacks in his barn-yard, and his horse and oxen being upon the said roun, affixed tickets of the arrestment upon the barn door, and one of the stacks. Thereafter the said Mr Thomas pursued Robert Gray of Craigly, and the said Mitchell for his interest, for breaking of this arrestment, and intromitting with his saids corns and goods. Robert Gray excepts, That he could not be pursued to tyne his escheat for breaking the said arrestment, which was not intimated to him; but that the most that could be craved of him was, to pursue him to make the said goods furthcoming. Which exception was repelled, in respect of the pursuer's reply, offering him to prove, that lawful intimation was made to the said Robert Gray of the arrestment, personally, upon the 21st March 1611. The defender *duplied*, That the said corns and goods were disponed to him upon the 20th March, for payment of bygone farms of the said lands, addebted to him by the said Thomas, for the which he was privileged before all other creditors. The pursuer *answered*, That the Master of the ground had no privilege for his farms, but of the present crop and year; next, that the assignation of the goods to Robert Gray was simulate, the tenant retaining the possession, long after the arrestment, by threshing and disposing upon a part of the corns, and labouring the horses and oxen in his plough and work; because the pursuer offered him to prove, that he made offer to the said Robert Gray, at the time of the intimation of the arrestment to him, to make him payment of all the farms which he would swear the tenant to be owing.—THE LORDS thought, that unless particular intimation had been

## No 1.

The proprietor of the ground has no privilege for his farms, or preference to creditors prior to him in diligence, but for the present crop.

No 1.

made to Robert Gray of the arrestment, he could not be pursued for any farther, but to have made the arrested goods furthcoming. They found also, that the master of the ground was only privileged, and to be preferred to other creditors for the farm of the present crop, and not for the farm of any preceding years, for the which he could not poind without decret and liquidation; neither could he hinder the execution of any other man's decret who had prevenit him in diligence, and therefore repelled the defender's allegiance, and admitted the summons and reply to the pursuer's probation.

*Fol. Dic. v. 1. p. 416. Haddington, MS. No 2302.*

1623. July 25.

HAY against KEITH.

No 2.

The crop and  
corns grow-  
ing in any  
year, remain  
ever affected  
and subject  
to the land-  
lord for that  
year's rent,  
for which  
rent he is  
preferable to  
all creditors,  
though he do  
no diligence,  
and many  
years inter-  
vene.

IN an action pursued at the instance of ——— Hay, son to the old Lady Errol, assignee constituted by her to the duties and farms of the lands whereof she was liferentrix, of the crop 1616, against Nathaniel Keith, who having the gift of escheat of the tenant, possessor of that land, by virtue whereof, and of a general declarator obtained thereupon, and of a special declarator thereafter following, was convened, as he who had intromitted with the corns growing upon the said lands, by virtue of the escheat of the said tenant, to make payment to the pursuer, as assignee to the master of the ground, of the farms of that year wherein the tenant was addebted, seeing he had meddled with the tenants whole corn growing that year.—THE LORDS found, that albeit the said donatar had not intromitted with the said crop, and the tenants growing corns, the year foresaid, by his immediate intromission of the ground, but that any intromission which he had was by virtue of a special declarator, obtained against some other persons, who were pursued as intromitters with a special quantity of the rebel's corns, and against whom he had recovered sentence for the prices of the corns so intromitted with by them, that not the less the donatar remained obliged to pay that year's farms to the master of the ground, of the readiest of that which was contained in his sentence; in the farms of the which crop, the master was found to be preferred to the donatar, or to any other creditor of the farmer, albeit he had poinded the same; and notwithstanding that the master of the ground had used and done no diligence against the tenant for his farm, and there had intervened diverse years thereafter, since the crop controverted, and before the obtaining of the donatar's sentence, and payment by virtue thereof, viz. seven or eight years, during the which space the master did nothing to recover payment of the farm, which was not respected by the Lords; for they found, that the crop, and corns growing that year, remained ever affected, and subject to the master for that year's farms, wherein he ought to be preferred to all creditors or donatars.