

S E C T. II.

Extent of hypothec upon stocking.

1672. December 11. CRICHTON against EARL of QUEENSBERRY.

WILLIAM CRICHTON pursues the Earl of Queensberry for spuilzie of a flock of sheep, who *alleged* absolvitor, because the sheep having been pastured upon lands which the pursuer had in tack of the Earl, and he having removed his goods off the ground before Whitsunday, without paying the Whitsunday's rent, and having driven the same to another room that he hath wadset of the Earl, he did *de recenti* within 24 hours, upon the first notice of the removal, cause drive the goods back to the ground again, which he might lawfully do, by the privilege of all masters of the ground who have a hypothec on the crop and stock of the ground for the rent. It was *answered*, That this hypothec, albeit it might allow the master of the ground to detain the goods on the ground, yet not to drive them back off another ground, which ought to have been done, not *via facti*, but by some sentence or authority.

THE LORDS found the defence relevant, for they considered that the power of retention without recent recovery, would be of no use, unless the master kept a watch upon his tenants, which were impossible.

Fol. Dic. v. 1. p. 417. Stair, v. 2. p. 132.

No 8.

Hypothec of the goods on the ground, for the proprietor's rent, was found to give him right not only to retain the goods there, but to bring them back, if carried away.

1676. February 9. PARK against COCKBURN of Ryslaw.

A TENANT having sold nine score of sheep, and the same being carried off the room where he was tenant; the master of the ground, by warrant of the sheriff, as having therein the right and interest of a tacit hypothec, did seize upon the same.

THE LORDS found, That neither the master nor the sheriff, without citing the party, could seize upon the said goods, not being upon the master's ground, nor give warrant to that purpose; and yet seeing *quævis causa excusat a spolio*, they restricted the pursuit to wrongous intromission, and allowed to the master his defence for retention of the goods, until he should be paid of his year's duty.

No 9.

Reporter, *Newbyth.*

Clerk, *Hamilton.*

Fol. Dic. v. 1. p. 417. Dirleton, No 329. p. 158.