

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

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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