

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 consignment 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.