

troverted principle, both in the common law and ours, that all goods brought into houses within burgh are under a tacit hypothec to the heritor for security of his rent, as appears from *l. 4. D. De pactis*, and observed by Dury to have been so decided, Dick against Lands, No 47. p. 6243.; otherwise landlords would be very insecure, it being on the faith of the *invecta et illata*, that they set their houses, without examining whose property they are; yea, in grass rooms, it has been extended to goods put in only for pasture; but here the plenishing belonged to Sir George, who took the house, and his disposing it to his Lady cannot take away the hypothec; and as for his ticket, it was no innovation, but only a liquidation of the rent. THE LORDS inclined to find the sequestration of the plenishing could not be loosed without caution for the rent simply, without any such quality and condition as was annexed here, and that the furniture *et omnia invecta* stood hypothecated for the house-mail; but in regard it was thought hard to detain the daughter's wearing-clothes on that ground, the LORDS superseded to give answer to that point, till it were tried, if the plenishing besides would be sufficient to pay the rent, without the wearing-clothes.

Fol. Dic. v. 1. p. 419. Fountainhall, v. 2. p. 183.

1745. July 9. JACKSON against LIND of GORGIE and FALA.

DAVID JACKSON sadler in Edinburgh being creditor to Helen Ready, a poor woman there, poinded her household goods; when compearance was made for William Fala taylor there, setter of the house, who insisted to detain the furniture for his hypothec, notwithstanding whereof the poinding proceeded and was compleated.

Fala gave in a complaint to the Sheriff, who found, 'that the defenders could not poind the goods and effects out of the house libelled, in prejudice of the pursuer's right of hypothec, unless actual payment had been made of the rent for which the goods stood hypothecated, or the same told down; and therefore found the defender liable instantly to restore the goods poinded, or make payment to the pursuer of the year's rent; and granted warrant to apprehend and incarcerate the defender until he should obtemper the sentence.'

Jackson being imprisoned, pursued the Sheriff and private party; and an enquiry being made into the practice of the Sheriff and Town Courts, and certificates returned by the respective clerks, the Lord Ordinary, 17th July 1744, 'having considered the certificates produced by Thomas Belshes, and George Lindsay, the one bearing, that when a complaint is entered before the Sheriffs of Edinburgh against any person for carrying off goods, in prejudice of the landlord's hypothec, the Court is always in use to grant summar warrant for replacing the goods, or paying the rent; and the other certifying, that it is the practice of the Magistrates of Edinburgh, when any person is

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convened before them for carrying off goods in prejudice of the landlord's hypothec, upon proper evidence thereof, to grant **summar warrant** for replacing the goods in the house, or payment of the rent due, **assoizied** the defender.

On a bill and answers, the LORDS adhered.

Act. H. Home.

Alt. W. Grant.

Clerk, Forbes.

Fol. Dic. v. 3. p. 292. D. Falconer, v. 1. p. 115.

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1748. July — ALISON against The Creditors of CAMPBELL.

The Court found a landlord, in *prædico rustico*, entitled to his tenant's furniture, without distinguishing whether it was in virtue of the hypothec, or the right of retention. In this case the tenant being possessed of valuable furniture, the landlord's claim, in a competition with the tenant's creditors, was restricted to the value of such furniture as was proper for an ordinary tenant.

IN February 1745, a question having occurred between the Creditors of Campbell of Keithick, tacksman of certain lands from Mr Stuart M'Kenzie of Rosehall, and his factor, whether or not the master's hypothec extended to the tenant's household furniture; the Ordinary, before whom it came, found, 'that the hypothec did not extend to the household furniture;' for which he gave this reason, when the petition against this interlocutor was moved, that, in *prædico rustico*, the hypothec extended only to the fruits; and that such he considered even cattle to be, as brought up and maintained upon the grass and fodder.

Upon advising this bill, the LORDS rather hesitated than gave any positive opinion. They however seemed to think, that though the hypothec might not extend to the household furniture, the master had a right of retention thereof, and some said that such to their knowledge was the practice; and as it was doubtful but there might be some decision upon the point, without appointing the bill to be seen, 'it was remitted to the Ordinary.'

Mean time the Court was clear, that as in this case Keithick was a gentleman, and whose household furniture exceeded that of an ordinary tenant, in no event, be it hypothec, be it right of retention, it could go further than to the extent of such furniture as might be suitable to an ordinary tenant: And the case having lain over till now, little further light was got, no former decision being to be found; and the Ordinary, in consequence of the hint given when the petition was remitted to him, having ordered an account of the furniture to be drawn out, distinguishing what appeared to be proper for an ordinary tenant, and what Keithick had as of a superior rank; and by that account, the furniture suitable to a tenant amounting to L. 318 Scots; the Ordinary of this date, without determining, whether it was hypothec or right of retention, 'preferred the factor to the extent of the said L. 318;' and the other creditors acquiesced.

Fol. Dic. v. 3. p. 294. *Kilkerran*, (HYPOTHEC.) No 6. p. 274.