

No 49.

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, **assoilzied** 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.

No 50.

1748. July — ALISON *against* The Creditors of CAMPBELL.

The Court found a landlord, *in prædio 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 prædio 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.