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It is a confessed point, that the landlord has a real security upon the stocking for three months after the term of payment ; that security remains till the last hour of the three months. If the landlord should attach the goods upon the last day of the three months, either by a poinding or by a sequestration, he undoubtedly is secured against any creditor pretending to compete with him ; and yet if, a few hours before, the tenant should deliver over the goods to another creditor, and the same are carried off by him, the landlord would be entirely disappointed, if the suspender's doctrine was well founded, and the other creditor would be secure, notwithstanding he got possession of the goods by a fraudulent concert with the tenant, because he did not vindicate his right against the intromitter within the three months, notwithstanding that, under the fore-said circumstances, it was a thing not in his power to effectuate.

Such can never be the law. There is plainly a manifest difference betwixt the landlord's attaching the *ipsa corpora* of the stocking, and securing the same for his payment, and prosecuting his claim against a third party, who may have subjected himself in payment of the rent in consequence of his intromissions with the hypothecated subjects.

The charger knows of no law that would hinder him to bring his action against the poinders in this case, even at the distance of eight years, and they would certainly be much benefited by that delay, because, in place of paying the value now, they would only pay it eight years hence. At the same time, they are in a mistake in supposing that it follows from the charger's doctrine that he is in a better situation by delaying diligence till after the three months, than by insisting in it, contrary to the maxim, that *jura vigilantibus subveniunt*. The very reverse is the case ; because, till the three months are elapsed, the landlord's real security does remain ; so that he will be founded in a *rei vindicatio* against the possessors of the goods ; whereas, by delaying till after the three months, he has no other security than a personal action for payment against the intromitter, and, if he should be insolvent, his rent is lost.

THE COURT considered the case of Rorison against Shaw, No 14. p. 6211. where the point was determined, to be narrower than the present. And, in respect of the long *mora* on the part of the landlord,

“ THE LORDS sustained the reasons of suspension.”

Act. *M^eQueen.*Alt. *Crosbie.*Clerk, *Campbell.**Eol. Dic. v. 3. p. 292. Fac. Cal. No 185. p. 108.*

1780. Dec. 4.

ROSS M'KYE against NABONY.

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In considering
the value of
the stocking

NABONY possessed a farm belonging to Mr Ross M'Kye, which consisted of several large inclosures laid down in grass, and instead of stocking it with cattle of his own, admitted those of others to pasture on it.

Mr Ross M'Kye, apprehensive that in this manner his right of hypothec would be rendered ineffectual, it being understood that cattle so taken in were not subject to it; Erskine, b. 2. tit. 6. § 63.; Brown against Sinclair, No 10. p. 6204, brought an action of removing, on this ground, against the tenant.

The defender urged the propriety of the measures adopted by him, as agreeable to the nature of the subject let, and the practice of the country; and farther insisted, that the value of his property on the farm was fully adequate to the landlord's security.

Of this last averment a proof was allowed, in which the defender having failed,

“ THE LORDS decreed in the removing.”

Lord Ordinary, *Branfield.* *Alt. Maclaurin.* *Alt. D. Armstrong.*

C. *Fol. Dic. v. 3. p. 293.* *Fac. Col. No 128. p. 234.*

1781. February 15. *MACDOWAL of Castle-semble against JAMIESON.*

IN September 1777, Jamieson, who was a creditor to Robert Stewart a tenant of Castlesemble's, executed a pointing of certain cattle belonging to Stewart that were on the farm; upon which the landlord brought an action of spuilzie against Jamieson, who

Pleaded in defence; A landlord's hypothec on the stocking of his tenant's farm, unless extended by sequestration to the individual parts that compose it, is purely general, and imports only a right in it as an *universitas* merely, without any respect to its amount being greater or less. Hence it is clear, that, if no sequestration have been used, the tenant may dispose of any part of it by sale, which will be effectual to a *bona fide* purchaser: and if, by a voluntary sale, a purchaser may thus acquire the property of stocking, it surely cannot be denied to an onerous creditor, who has followed out the legal course of diligence.

Answered for the landlord; Though the premises in this argument are admitted, the conclusion does not follow. The case of a creditor is different from that of a *bona fide* purchaser. For a creditor attaches, by legal diligence, the right of his debtor, *tantum et tale*, precisely as it stands in the debtor's person; subject for example, as in the present case, to his landlord's claim of hypothec.

THE LORDS found the defender liable to the pursuer for the value of the goods carried off, and intromitted with by him.

Lord Ordinary, *Ellicock.* *Act. W. Wallace.* *Alt. Baillie.* *Clerk Mensies.*

S. *Fol. Dic. v. 3. p. 291.* *Fac. Col. No 37. p. 67.*

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on a farm, as sufficient for the landlord's security, cattle admitted to pasture, not being subject to the hypothec, are not computed.

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The landlord's right of hypothec over stocking, although not applied by sequestration to individual animals, was found preferable to the claim of a pointing creditor.