No 31. 1688. *July* 28. LAMINGTON *against* JAMES OSWALD.

FOUND, that the receiver of thirty-eight bolls of corn, of a crop nineteen years before, from a tenant, was liable to the master *jure hypothecæ*, for the rent of that former year, if not exceeding the value of the bolls received, unless it were made appear, that corns and goods were then left upon the ground sufficient to satisfy that year's rent. But there was some speciality in the case, and other reasons concurred.

Harcarse, (HYPOTHECATION.) *No* 704. *p.* 145.

No 32. 1700. *June* 25. SALTON *against* CLUB.

A SUBTENANT being pursued by the landlord upon his hypothec, not only for the rent of the farm which he possessed, but for the whole tack duty owing by the principal tenant, the LORDS found, that the whole fruits growing upon the subset ground were impignorated to the landlord for the rents, as well as the fruits and goods upon the rest of his ground, unless he had accepted him as subtacksman.

Fol. Dic. v. 1. *p.* 417. *Fountainhall.*

*** See this case No 13. p. 1821.

1708. *June* 30.
WILLIAM SELKRIG, Writer in Edinburgh, *against* JOHN FRENCH, Maltman in Glasgow.

No 33. A person who, intimating his right to a tenant's moveables and household plenishing, by an instrument of possession, debarred the proprietor from poinding them for his year's

IN the action at the instance of William Selkrig, against John French, for payment of L. 80 Scots, as a year's rent of a house in Glasgow pertaining to the charger, and set to William Drew, innkeeper there, to whose moveables and househould plenishing John French had right by disposition intimated by instrument of possession, and debarred William Selkrig from poinding the same, for his year's rent, by virtue of his hypothec;

Alleged for the defender; He could not be liable for the year's rent; because, albeit he, as creditor to Drew, took a disposition to the household plenishing, and got an instrument of possession, yet he never intromitted with the same; but did only, by virtue of his disposition, oppose the pursuer's poinding

thereof, after they were removed out of his, the pursuer's house, into another, where they were lodged before the defender acquired right thereto, who was not bound to know that any privilege of hypothec was competent to the pursuer; and though a legal hypothec may furnish a title to detain, or even recover goods while extant, no person who hath either *bona fide* acquired and disposed of them, or who never intromitted, although he had a title to intromit, can be overtaken on that head. *2do*, The defender cannot be liable for the rent upon the account of his producing to the messenger the disposition and instrument of possession; seeing, if the same could not debar the pursuer from poinding, he might have proceeded; and if the disposition was good and valid, there is no reason to make the defender liable.

No 33. rent *jure hypotheca*, and did back-let the goods to the tenant, found liable to the proprietor for the rent, although the poinding was to have been executed in a house not belonging to him, to which the goods had been removed before granting the disposition.

Answered for the pursuer; There being a manifest collusive design in French to cover Drew's possession by the disposition, as appears from the instrument of possession containing a back-tack of the goods set to Drew; the intimation of French's right to the messenger the very same day that Selkrig charged Drew; and the stopping his poinding upon pretext of the disposition; French's attaining possession by getting the key of the house wherein the goods were, back-setting them to Drew, and allowing him to possess, was upon the risk of French, who, having got into possession of the goods, disposed thereof by setting them in back-tack to the common debtor, and debarred Mr Selkrig, is to be held as intromitter therewith, and consequently liable for the rent for which they were hypothecated; since it is by his own fault and fact of setting a back-tack to the debtor, that he did not intromit. It is of no moment to pretend that the poinding was to have been executed in another house than Selkrig's; for wherever a tenant's goods are carried, they are still affected with the right of the hypothec. *2do*, It is trivial to allege, that the defender could not hinder Selkrig to go on in his poinding; because the messenger was actually scared and hindered from proceeding after production of the disposition, least he should incur the guilt of a riot; and it was not the messenger's business to quarrel the disposition, there being a legal remedy.

THE LORDS repelled the defences, in respect of the answers.

Forbes, p. 255.

1723. *November.* CUNNISON *against* STEWART.

No 34.

IN a tack of burgh acres where it was alleged to be the custom to sell the corn directly off the ground to the inhabitants of the burgh, the buyers were not found subjected to the hypothec; and here the tenant had been a year out of the ground, and bankrupt before intenting of the action. See APPENDIX.

Fol. Dic. v. 1. *p.* 418.