

1642. June 29.

L. POLWARTH *against* ———

THE L. of Polwarth pursuing one who had intromitted with certain nolt, and other goods, being upon his lands of ———, which were set by him to a tenant for payment of the farm-duty in victual, for which the said lands were set to that tenant, of that crop which came last off the ground, shortly after the terms of payment were past;—and the defender *alleging*, That she had poinded the said goods, by virtue of a sentence recovered against this tenant, for debt owing by the tenant to her; and that, at the time of the poinding, she had left the tenant in that case, that the room was fully sown, and the corns growing thereon, which corns, thereafter in the harvest, were led and stacked by the tenant in his barn-yard, upon the said lands, whereby the pursuer had within the room as many corns as might have paid him, both of that crop whereof the corns grew, and for the farms of the crop preceding, which is now controverted; so that she ought not to be compelled to render back again the said goods, lawfully poinded for a just debt, seeing the master might have been otherwise satisfied by the foresaid subsequent crop;—THE LORDS having heard the parties reasons on either side, they found, that the master of the ground had a preference for his farms of all the tenant's goods, being upon that ground; and albeit the corns be *primo loco* hypothecated to the master for his farms, yet they found the same hypothecation did also extend to any other goods belonging to the tenant, being upon that ground; in respect of which privilege, they found, that the master ought to be preferred to any other creditor of the tenant's for that year's farm, and therefore repelled the allegiance founded upon the poinding, seeing the poinder did not allege, that, at the time of the poinding, she left as many corns, and other goods, upon the ground of the lands, as might have been sufficient to have paid the master his farms for that year; for they found the sowing of the subsequent crop was not a sufficient cause to have staid the master to seek payment of the immediate preceding crop, whereof the terms were then past, against any who had meddled with the tenants goods. And so the LORDS found, that the master had a tacit hypothecation for the tenant's farms of the immediate bygone year, not only in the corns which grew upon the ground that year, but also in the tenant's other goods, against any other intromitters therewith, whether creditor, or other whatsoever.

Act. ———

Act. Lawrence Oliphant.

*Fol. Dic. v. i. p. 418. Durie, p. 897.*

1667. February 2.

COUNTESS OF TRAQUAIR *against* GRANSTON.

THE Countess of Traquair being infest in liferent in the lands of Shillinglaw, and others, and having right to the Whitsunday's duty 1666, obtaining a de-

No 27.

Tho' corn is the principal subject of hypothec, the other goods are also subjected to the hypothec *secundo loco*; and therefore a poinder of cattle was found liable as intromitter, not having left, at the time of the poinding, corns and other goods sufficient to satisfy the hypothec.

No 28.

Found, that a subtenant's stocking is