

No 35.

THE LORDS found, that the defenders, as lawful and onerous creditors to Thomas Thomson the tenant, having *bona fide* received the sheep in payment of their just debts, are not obliged to restore the sheep, or their values, to the pursuer, by virtue of his hypothec; in regard it appeared, that goods sufficient to pay the current year's rent were left upon the ground, which afterwards were intromitted with by the pursuer; and repelled the allegiance, that the same were poinded for former arrears, in regard the hypothec does extend to no more than the current year's rent; and, therefore, that the pursuer could plead no preference for former years against other lawful creditors, but according to his diligence.

C. Home, No 28. p. 52.

* * * See Pringle against Scot, No 20. p. 6216.

No 36.

1744. February.

A. against B.

THE heritor having a hypothec, and after the term is past, detaining the tenant's goods against a poinder, was thought not bound to assign, but only to discharge on payment; nor will the master be found fault with, should his servants, upon general order, stop the poinding, although payment be offered; because the heritor is not bound to be always present to grant a discharge, and it is the creditor's business to apply to the heritor and offer payment of his rent before he proceed to poind; and, therefore, the heritor pursued, as having unlawfully stopped a poinding on pretence of his hypothec, notwithstanding payment was offered to those, who, in the heritor's absence, stopped the poinding, on their giving a discharge, "was assoilzied, and the pursuer condemned in expenses."

Fol. Dic. v. 3. p. 292. Kilkerran, (HYPOTHEC.) No 3. p. 273.

No 37.

1748. June 2.

SIR JOHN HALL against NISBET.

IN an action at the instance of Sir John Hall of Dunglass *contra* Mr Nisbet of Dirleton, for payment of the debt in his horning, on this ground, that Dirleton had stopped his poinding in the month of January, notwithstanding an offer made of caution for payment of his rent, the LORDS found, November 20. 1747, "That the rent being barley, payable in kind, the offer of a responsible man as cautioner for payment of the farm-duty (or victual rent) *currente termino*, was not sufficient to entitle the pursuer to proceed in his poinding of the barley hypothecated for the defender's rent; nor to debar