

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.