

after the Decease of the several Diserenters. Nor was the said essential Validity supplied by 40 years Possession after Extinction of the last Diserent. Since Prescription could not alter the Nature of the Right, by making a personal Obligation become real, altho' it might have supplied the Defect of solemnity, as the Want of Witnesses or the like 17 July 1680 Oswald of Fingleton contra Roy. Where a Feud was granted to one his Heirs and Successors for 5 years, and after that space for other 5 years, and so forth from 5 years to 5 years forever, which the Letter obliged him and his Heirs to warrant to the Receiver and his Heirs and never to remove them, the Feud was sustained to produce Warrantice against the Heir of the Letter, who could not object its wanting a Term of Feud, albeit a singular Successor might make that Objection 26 July 1681 Brechtan contra L. Airlie.

Persons may set Feuds of what they have Right to and a Power of Administration either directly or by a special or general Commission containing Powers to do Matters of great Importance Sair Lib. 2. Tit. 9. §. 3. The King his Heirs and Factors, cannot set Feuds for longer Time than their Office continued Lewis Feud. Lib. 2. Tit. 10. §. 1. Tho' without Detriment to the Minor. Sair Lib. 2. Seeing he hath thereby this Prejudice, that it abridgeth him of the free Disposal of his own. But Churchmen, tho' upon the Matter their Administrators, were allowed to set Feuds of their Benefices under certain Regulations: The Law is not think fit to trust a certain Person or set Corporation, with the Disposition of Estates held in Right of the Church; and therefore by Way of Restraint appointed the Assent and Confirmation of others without which their Grants should not be valid against the Successors. Thus Bishops are allowed to set Feuds of their Benefices with Consent of their Chapter for 19 years; and inferior Clergy with Consent of the Patron for their Lifetimes, and 5 years thereafter Act. 4. Par. 22. Junct. Act. 15. Par. 23. §. 6. The Consent being obtained either before or after the Selling c. 20. X. de jure patron. M'henzie observes on Act. 20. Par. 19. §. 6. Because it was thought the Patron's Interest to see to the right Administration of the Benefice; that upon the present Benefic's Death he might be better find an able Man to supply the Cure. But a College was found not to be comprehended under Beneficed Persons, and so not to be excluded from setting long Feuds; yet their Obligation to renew a Feud perpetually, was found not obligatory, unless there was an equivalent cause onerous for which the Obligation was granted 19 July 1669 St College of Aberdeen contra Town of Aberdeen. Inferior Beneficed men may without Consent of the Patron set Feuds of their Benefices for three years, and Feuds set by them for more than three years stand good for three years 18 July 1669 Johnston contra Glasgow. Nor is it necessary that such Consent of the Patron to a longer Feud be insert in the Feud itself

itself, or be declared expressly by his subscribing the Feud, but his subsequent tacit Consent or Homologation sufficient, as by his accepting a Right of the Feud 19 January 1669 S. Altho' contra Robertson.

A Seller of Lands in the Country, hath a tacit Hypothec or legal Pledge for the immediate last years Rent, on the Fruits and growth of the ground, and those not satisfactory, on the Fruits upon the ground the same when that years Rent shall be due c. 4. pr. ff. in quib. cas. p. vel hyp. tac. For Law presumed bygone Rents to be paid. And the Feudor will be preferred actione hypothecaria, either to a personal Creditor of the Tenant who hath affected his Feud by himself, or to a Stranger who bought them 11 January 1577 Commissioner of St. Andrews contra Weldon Feud by Direct. Even in a public Market who should know the Condition of the Person he dealt with Sair Lib. 1. Tit. 12. §. 15. M'clenachie just. Lib. 2. Tit. 6. §. 12. The Buyer of a Tenant's Corn in public Market at Christmas was made answerable for the Rent of that year rep. albeit there were so many Corn extant to be sold as would have satisfied the Farm and sown the Feud, unless there had been so many extant at Candlemas, when the Farm was payable and the Matter was set out 29 March 1577 Kay contra Elliot. Which Hypothec for the last years Rent affects the Corn upon the ground even in Possession of a Subtenant, tho' his Feud Duty was less than what is payable by the principal Tenant 5 Feb 1667 Lucy Fraquiere contra Howatson. And the Law Sair (Ling. Lib. 2. §. 2.) and Sir James Stewart (Consent to Direct. Doublet Int Hypoth.) seem to think it too great a Hindrance to Commerce, to extend this Hypothec against Buyers in public Market, who are not obliged to enquire if the Seller of the Fruits there be Tenant in the Land where they grow. Nor should his asserting the contrary, secure the Buyer, if the Fruits set in Market were hypothecate. So that what a Tenant expecteth to sell in public Market should be liable to no Backcall from the Master, propter favorem commercij et fidem for publici. The Author of Les Loix civiles c. 1. Tom. 1. Part. 1. Liv. 3. Tit. 5. Sect. 5. Art. 92. is of the same Opinion, that he who in a Market buys Corn of a Farmer, cannot be sued by the Proprietor of the ground where the Corn grew for Payment of the Rent of his Farm, because he might have taken care of his Payment. Law gives the Proprietor of an Estate that is farmed, preference out of the Rents that grow on it for Payment of his Rent; Altho' the Lease make no Mention of it or tho' there be no Lease in Writing; because these Fruits are not so much his Pledge as his Property, till he has got Payment of his Rent, and it is enough that it appears, that the Fruits he lays Claim to are the Produce of his ground Les Loix civiles c. 1. §. 1. By Fruits of the Ground we are to understand, not only Corns, but all Things out of which vicesage Fishes can be taken as Sticks, Sticks, Pigs, Lambs, Herbs, Roots, Milk, Butter and Cheese Sair Lib. 4. Tit. 2. §. 2. For there are many Grass Rooms in Scotland, that