

that produce only these, and little or no Corn. But the Master of the Ground hath no Hypothec of *invecla et illata* *Stair* *Fac.* The Fruits of the Ground are liable to this Hypothec, tho' there remain other goods sufficient to satisfy the Years Rent. 25 March 1629 *Lady Dun and her Heir* contra *L. Dun*. For the other Goods may be necessary for ^{providing and} labouring the Ground, and the Heritor is not obliged to lay it wast. And therefore may purchase Intromitters with the Fruits. The Master hath not only Power to retain these Fruits and Goods upon the Ground, or to stop summary pendens at the Instance of the Tenant's Creditor, unless so many Corn or other Goods be left beside the household Menishing as may satisfy the Farm 3 Feb. 1629 *Hayes* contra *Heith*. But he may at his own Hand bring them back to receipt when carried off. 21 Decemb. 1672 *Brighton* contra *E. Queensberry*. For otherwise the Hypothec were use less, it being impossible for any Master to keep a constant Eye on all his Tenants' Motions. But it is unwarrantable for the Master of the Ground to bring back the Goods ex intervallo in which case of his Neglect to recover them recently, the Intromitters are only liable to him for the Years Rents in Proportion to the Goods carried off, if there were not other Goods left upon the Ground sufficient for payment thereof. 9 Feb. 1676 *Cart* contra *Lockhart* of *Russell*. Action was found competent to the Master for Payment of his Rent, both against the immediate Intromitter with the Corn and Goods, and the mediate Intromitter with the Prices thereof, at Donatory of the Tenant's Escheat, by Virtue of a special Declarator obtained by him against the immediate Intromitter, either of whom he may pursue at his Option. Action is also competent against other Creditors of the Tenant Intromitters by lawful pouding, without Necessity to discuss first the Tenant or his Representatives; tho' no Diligence was used or Action moved by the Master for 7 Years 25 July 1628 and 9 Feb. 1629 *Hayes* contra *Heith*. Nor was it held sufficient to exoner a Tenant's Creditor who had pouded his Goods, that the Ground was left fully sown and the Corn thereon at the Time of the pouding; which thereafter were reaped and stowed in the Tenant's Barnyard and sufficient to pay the Farm both of that and the preceding controverted Year: Seeing the Hypothec for the preceding Years Rent, affected that Year's Crop, and the Tenant's other Goods upon the Ground when it fell due, and the present Crop stood liable for the present Years Rent 25 June 1642 *L. Polworth* contra *L. Polworth*. But the Master of the Ground hath Power only to hinder pouding for personal Debts or to claim Payment of his Rent, ^{from pouding} by such pouding, and not to stop Creditors from pouding the Ground for debita fundi real Debts by Letters of pouding the Ground. For if such Pouders were not secure, they could not safely apprise so much Land as might satisfy the Remainder of their Debt more

is recovered out of the *Alouables* *Nais* *Lib. 4. Tit. 25. S. 2. 6.* The Lords were of Opinion that it should not into an Interlocutor, that *Steebow* Goods delivered by the Master to his Tenant at the selling of *Lives* might be pouded for the Tenant's Debt by his Creditors; and that the Master would have Action only for his Allowance at the Time appointed for Delivery thereof. Because *Steebow* Goods became the Tenants, and these being either Corn or Cattle changed every Year, those delivered by the Master to the Tenant could not probably extend for a Course of Years in Respect of the Alteration 29 Novemb. 1629 *Tumbul* contra *Jes of Lavers*. But *Steebow* Goods given by one to his Tenant to be restored again at the End of his Term, were declared to belong to the Donatory of the Master's single Escheat, and not to his Heirs or Executors, albeit the Master died before the Job of the Sale and Process of Declarator was sustained against the Tenant several Years before the Job of the Sale, at which Time only the Tenant was obliged to deliver the Goods 2 Decemb. 1628 *Lanfer* contra *Lady Boghall* 10 July 1629 *V. of Belhaven* contra *Lady Luth*. Tho' the Master is preferable for a Years Rent to any Creditor of the Tenant affecting by Diligence his Goods or Cows of that Year, in so far as they be as many behind as will pay the Rent, yet the Master being in one Year ~~only~~ for a preceding Years Debt, is not obliged to divide his pouding pro rata to satisfy the Farms of that Year when the Corn were pouded, but may recover Payment of the said Farm from other Intromitters with the rest of that Years Crop notwithstanding his own pouding 29 March 1639 *Hay* contra *Elliot*. *Cart* what hath been said it is clear that a Masters Hypothec both affect his Tenants Corn and Goods only for the Rent of that Year, these Corns grow or Goods were on the Ground, and not for bygone Rents of other Years *Nais* *Lib. 1. Tit. 8. S. 15. Lib. 4. Tit. 25. S. 3.* that Commerce be not thereby hindered. Nay, if the Master should suffer the Rents of several Years to be over unpaid, he will have no Hypothec for the same, tho' amounting to but one Years Duty, for the Hypothec secures only the present Years Rent. *Stewart* Answers to *Diret* *Deuots* *Tit. Faut* Hypothec. In a Competition betwixt a Tenant who has pouded his whole Corn before the Masters Rent was paid, and one deriving Right to the said Rent by Assignment from the Masters apparent Heir, the Assignee was found to have his Hypothec for the Years Rent, as his Cedent the apparent Heir would have had 23 July 1707 *Wedderburn* contra *Moss*. The Hypothecation of Fruits and Goods for the Masters Rent was extended to prefer a Town for their Sack Duty of their Customs, to a Creditor of the Townsman there of who had arrested in his Inducksmans Hand: And the Town was found to have immediate Action against the Inducksmans, unless he had bona Fide paid before to the principal Townsman 21 January 1663 *Anderson* and *Provan* contra *Town of Edinburgh*. It was extended also in *Fraser*

Crop