

Inhabitant with an Instrument of Possession, as to any Mails posterior to that Instrument, albeit the Disposer retained the natural Possession. 13 Feb. 1670 Blackwood contra Alexander. If the Movables belonging to a Tenant are not in the Places which are let, when the Landlord sues for Payment, he cannot lay Claim to them when they are in the Hands of third Persons, unless there has been some Fraud in alienating them to his Prejudice. See Loix Civiles &c. Tom. 3. Part. 3. Liv. 3. Tit. 5. Sect. 5. Art. 14. This Privilege on the Movables of Tenants belongs also to Landlords who have no Lease in Writing. For it is enough that these Movables are found in the House which is held by Lease, to appropriate them to the Landlord, See Loix Civiles &c. Ibid. By the Civil Law, if there are several Tenants who occupy only one Apartment or other Portion of a House, their Movables are engaged only for the Rent of what they occupy. And if they pay their Rent to the Tenant who let it to them, the Landlord will not attach the Rent which it was in their Hands; can pretend Nothing either on their Movables, or on their Rents: For they may pay their Rent to the Persons who let the Lodgings to them; altho' if they pay it to the Landlord of the House, it will be a good Payment, if the Tenant owes him a Rent. L. 11. § 5. ff. de pig. act. If a Tenant takes into the House which he rents another Person giving him his Lodging gratis, the Movables of the said Lodger will not be engaged for the Rent of that Part of the House which the Tenant accommodates him with. L. 5. ff. in quib. caus. pig. A Libel against Intruders with investa & illata in pradium in baronum for Payment of the House Rent, and the Exceptions against it, are much the same with a Libel against Intruders with the Fruits of the Ground for a Year's Rent, and the Exceptions against it mutatis mutandis. A Person who, without Matter his Right to a Tenant's Movables and Household, alienating them on Instrument of Possession, deprives the Master from pawning the same for his Year's Rent, pure hypotheca, and did bid set the goods to the Tenant: Was found liable to the Master for the said Rent, albeit the pawning was to have been executed in a House not belonging to him, whether the goods had been removed before granting the Disposition. See Juno 1700 Selbrig contra French. Because a plain collusive Design to cover the Tenant's Possession by the Disposition appeared from the Instrument of Possession containing a Catchword of the goods set to him, the Intimation of the Disposition the very same Day that the Master charged the Tenant, and the Stop in the Master's pawning in Pretext of the Disposition.

If a labouring Tenant (whether Mailer or Farmer) paying Rent immediately to the Master die upon the Ground, his Master hath Right to the best of the Horse or Cows belonging to him at his Death, called a Hereweal. See supra pag. 50. A Lady Sheriff was found inhibited to claim a Hereweal

from the Representative of a Tenant who possessed the Land in Hereweal i.e. had therewith goods delivered to his own Number and Kind at the 1st of the Year. But no Hereweal is due when the deceased Tenant was warned and decreed to remove. See Lib. 2. Tit. 9. §. 80. If a Hereweal be taken, the Tenant Successor cannot be removed for a Year. 20 March 1629 L. Affleck contra Matthe Gair. Ibid. Lib. 2. Tit. 9. §. 17.

The Master may put and maintain his Tenant in Detention of the Subject set. during the Years of the Tack or be liable to him for the Penalty therein and for Damage and Interest thro' not Performance. 19 per C. 24. §. 4. ff. loc. con. But a Tack of several Tenements within Burgh whereof the Entry was released to be stallion anterior to the Tack, was found not to oblige the Seller to give the void Possession to the Tacksmen, because the declaring the Entry to be at a Term before, imported that the Tacksmen was to have only the Walls and Ditches, and not the natural Possession. But if the Tacksmen purpurs for Walls and Ditches, or upon a Writing used by him in the Seller's Name were decreed, the Seller would be obliged by his Warrandice to make up the Damage. 3 Feb. 1685 Maxwell contra Montgomery. Nor is the Seller of a House within Burgh bound to make the same void and deliver the Keys to the Tenant precipitously at the Term of Entry, where it is the custom of the Place not to remove peremptorily at the Term. 7 January 1670 Her contra Downie.

The Seller hath Action competent to him against the Tenant for the Tack Duty after the Terms of Payment are elapsed. L. 2. C. 17. C. de locato. But Annual Services as the winning and leading of Reats sheering and cleaving of Corn &c. are not due unless required in due Time. per. Feb. 1624 Carnousty contra Keith. Ibid. Super pag. 736. In which Action for Payment of the Heritors Rent, it is sufficient for him to libel and prove prout de jure the Tenants Detention and Worth of the Land as it was in Use to pay immediately before and after the Tenants Possession without being burdened to prove an Agreement with the Tenant for a particular Rent: Because to put the Master to prove such an Agreement, were to refer the Quantity of the Rent to the Tenant to prove which would be of dangerous consequence to all Heritors who mostly have no Tacks in Writ. But the Tenant may except upon a less Duty and prove the same, to make him no further liable. 3 July 1674 Young contra Cockburn. But a Tenant cannot safely pay Rent to his Master before the Term least if his Master should be deprived before the Term, the Tenant be obliged to pay it again to a singular Successor. 12 June 1629 Gray contra Campbell. 24 Novemb. 1629 Endray contra L. Lauriston. The Master has Action not only against the Tenant, but also against the Subtenant for Payment of his Rent. And tho' the Subtenant's Rent Duty be less than the Principal Tenant's, the Heritor may pursue him as Possessor for the whole, leaving him to recur upon Warrandice against the principal Tacksmen. 5 Feb. 1667 Lady Fraquair contra Howatson. Nor is Payment by the