

1677. *January 11.* COMMISSARY OF ST ANDREWS *against* WATSON.

No 29.

THE LORDS sustained a pursuit, at the instance of the master of the ground, against those who had bought, from his tenant, his corns and other goods, when the pursuer had a tacit hypothec.

Reporter, *Glendoich.*

Clerk, *Mr John Hay.*

*Eol. Dic. v. 1. p. 417. Dirleton, No 420. p. 209.*

\* \* Gosford reports the same case :

IN an action at the Commissary's instance against Watson, for the price of certain bolls of victual sold to him by his tenant, who immediately went to Ireland and disposed upon his stock that laboured the ground, without payment of the tack duty he owed his master, as having *jus tacitæ hypothecæ* to the tenant's goods for a full year's rent, it was *alleged* for the defender, That he being a simple country-man, and having *bona fide* bought and made payment for the victual he received, he could not be liable to make double payment upon the pretence of any such law, neither public, nor intimated to him before he made a bargain with the tenant ; and if, upon that ground, the action could be sustained, it would destroy all trade and commerce amongst neighbours. It was *replied*, That *jus tacitæ hypothecæ* was received for an universal in this kingdom, as was decided in two cases, one in the 29th June 1642, Polwarth against ———, No 27. p. 6221. ; and another on 29th March 1639, Dame Margaret Hay against Elliot, No 26. p. 6219. both observed by Durie, where corns sold by tenants in a public market, the buyers were found liable to the masters for a year's duty.—THE LORDS did repel the defence, and found the buyer liable ; and that all corns, cattle, and goods, possessed by the tenants for the last year's duty, were liable to the master *jure tacitæ hypothecæ*, and that he had *actionem hypothecariam* against all singular successors, by emption or assignation, albeit they were taken off the ground.

*Gosford, MS. No 934. p. 614.*

1678. *June 11.* SEOT of Ancrum *against* ———.

THE LORDS decerned, &c. to give him back corns they had bought from his tenant, because his year's duty was resting, and the corns were tacitly hypothecated to him as master of the ground.

No 30.

*Fol. Dic. v. 1. p. 410. Fountainball, MS.*