

in the common law of Scotland. And being so fixed, no reason can be assigned why it ought to be overturned. Were its conformity to the general commercial law of Europe to be deemed a criterion, it could not be overthrown, since, England excepted, the right of hypothec to the extent now claimed seems to be recognised by all the trading states; and in Holland, in particular, it is undoubtedly admitted. At the same time, it is evident, from what has been already stated, that this question never can arise in our courts, but between Scotsmen, with respect to furnishings made at a home-port.

The Lord Ordinary sustained the claim of hypothec. But

The Court, on advising a reclaiming petition against that interlocutor, with answers, as also a case transmitted for the opinion of English counsel, with the opinion, stating the law and practice of England thereon, found, That Wood and the other furnishers had no hypothec or right of bottomry on the ship in question.

And to this judgment, after an intermediate contrary one, the Court finally adhered by two successive interlocutors.

N. B. The Court, at the same time, decided in like manner a similar question between John Syme, and Reynold Pohl in the right of Gavin Kempt.

Lord Ordinary, *Braxfield.* For Hamilton, *Rolland, Blair, Ross.*  
 Alt. Dean of Faculty, *M'Cormick.* Clerk, *Menzies.*

*Fol. Dic. v. 3. p. 296. Fac. Col. No 40. p. 65.*

\* \* \* This cause was appealed.

THE House of Lords, 15th June 1789, " ORDERED and ADJUDGED, that the appeal be dismissed, and the interlocutors complained of, confirmed.

## SECT. IX.

Whether Hypothec affected by Sequestration upon the Statutes relative to Bankruptcy.

1772. November 24.

HENRY BAIRD, Tacksman of Egypt, and HUGH FRASER, Factor appointed by the Court of Session on the Sequestrated Estate of the said HENRY BAIRD; against THOMAS BROWN, late Proprietor, and CHARLES GORDON, Writer to the Signet, now Proprietor of the Estate of Braid.

THIS being a question that turned upon the interpretation of the late statute, in a case where, subsequent to a sequestration of a tenant's personal es-

No 69.

No 70.  
 Sequestration  
 awarded up-  
 on the te-  
 nant's appli-

**No 70.**  
 cation, in  
 pursuance of  
 the act 12th  
 Geo. III. cap.  
 72. found  
 to bar se-  
 questration  
 at the land-  
 lord's in-  
 stance, *salvo*  
*tamen jure*  
*hypothecæ.*

tate under the authority thereof, the master had obtained a sequestration from the Judge Ordinary in security of his hypothec.

“ Find the sequestration by the sheriff after the sequestration from this Court was improper; but find that the master's right of hypothec remains entire; and he may make the same effectual in the same manner as in the case of poiding.”

Act. *Ja. Boswell.*

Alt. *McLaurin.*

Reporter, *Gardenston.*

Clerk, *Tait.*

*Fol. Dic. v. 3. p. 292. Fac. Col. No 31. p. 85.*

1780. *June 21.*

CREDITORS OF WRIGHT *against* WILLIAM KER.

**No 71.**  
 Power of a  
 factor on a  
 sequestrated  
 estate, in dis-  
 posing of the  
 stocking of a  
 farm, before  
 the issue of  
 the lease.

WRIGHT was tenant to the Duke of Roxburgh, by a lease which expired at Whitsunday 1781.

Some weeks before Whitsunday 1780, Wright applied for a sequestration of his effects, under the act of Parliament 1772. A factor was appointed, who advertised a roup of the stocking on the 22d of May. Of this procedure, Mr Ker, the Duke of Roxburgh's commissioner, complained by bill of suspension; and

*Pleaded,* A landlord has a right to insist that the farm shall be sufficiently stocked, and to prevent the stocking already introduced from being carried away. And this right of retention, if competent to him against the tenant, must be equally effectual against the tenant's creditors.

*Answered,* In security of a year's rent, the landlord has a right of hypothec; but in every other respect, the prestations claimable by him are of the nature of ordinary debts, and must be made effectual in the common course of legal diligence. Hence the creditors of a tenant are intitled to attach the stocking on the farm, if the landlord's hypothec is not thereby infringed; Erskine, b. 2. tit. 6. § 61. 62. And the right accruing to them from a sequestration, is precisely the same as if each individual had followed out a poiding of the effects falling under that diligence.

“ THE LORDS refused the bill.”

Lord Reporter, *Hailes.*

Act. *Hay Campbell.*

Alt. *Maclaurin.*

Clerk, *Mackenzie.*

*C.*

*Fol. Dic. v. 3. p. 292. Fac. Col. No III. p. 208.*

1781. *August 10.*

GEORGE BUCHAN of Kello, Esq. *against* THOMAS NISBET, and Others, Creditors of James Bogue, Tenant in Kello.

**No 72.**  
 The land-  
 lord's right  
 not affected

MR BUCHAN having obtained a sequestration of Bogue's crop and stocking, a general sequestration of his personal estate was afterwards obtained by the