

This interlocutor proceeded entirely on the footing, that the pointing was only inchoated in June, and that it could not be completed after the death of the common debtor. *See* POINDING.

No 5.

*A& Montgomery.**Alt. Wight.*

G. F.

Fac. Col. No 9. p. 212.

1784. *March 10.* SIR ARCHIBALD GRANT *against* WILLIAM SHERRIS.

SHERRIS, the tenant of a farm belonging to Sir Archibald Grant, had been, in an action founded on the act of sederunt 1756, decerned to remove from his possession at Whitsunday 1783; but having previously sown his own corn, he became entitled to reap the crop of that year, for which one half of the rent was payable at the ensuing term of Martinmas, and the other at Whitsunday 1784.

In November 1783, the landlord presented a petition to the sheriff of the county, setting forth, That the tenant had already sent part of his corn off the farm, and craving warrant "for immediate sequestrating, and also roup- ing as much of the crop as would pay the rents claimed, credit of the roup price being given to Whitsunday next, the last conventional term of pay- ment."

The sheriff ordered the petition to be served on the tenant, who failed to make any appearance; upon which he awarded the sequestration, but con- fined his warrant for rousing to such part of the corn as was equivalent to the rent "already due and payable."

The landlord brought the sheriff's judgment under review by bill of advo- cation; when the following interlocutor was pronounced by the Lord Ordi- nary on the bills: "Having considered this bill of advocacy, the LORD OR- DINARY is of opinion, that the sheriff of Aberdeen has committed no iniquity; and therefore refuses the bill."

The landlord reclaimed to the Court; but no answers to his petition were given in, the tenant having still declined to appear.

The Court desired, of the sheriff's-depute of the several counties, informa- tion concerning the practice in such cases. From their reports it appeared, that, in general, it was not customary to grant warrant for selling the subjects of the hypothec before the term of payment, though in some counties this had been done. The interlocutor of the Court, which did not seem to have been influenced by these reports, was the following:

"THE LORDS remit to the Lord Elliock, Ordinary, to remit the cause to the sheriff, with this instruction, That he grant warrant to roup as much of the corns sequestrated as shall be sufficient to pay the whole hypothecated

No 6.

A landlord may, *currente termino*, not only seques- trate, but likewise roup the hypothec- ated effects of his tenant, if insolvent.

No 7. rents and expenses; the produce of the roup to be lodged in the sheriff-clerk's hands, subject to the further orders of the sheriff."

Lord Ordinary, *Elliock.*

For the Petitioner, *Solicitor-General.*

S.

Fol. Dic. v. 3. p. 291. Fac. Col. No 3. p. 5.

1784. *June 25.*

ROBERT DOW *against* JAMES HAY.

No 8.
Found in conformity with the above.

Dow was the tenant of Mr Hay in a possession, the rent of which was partly payable in victual betwixt Christmas and Candlemas, and partly in money, on 5th July.

The tenant's credit having become suspected, the sheriff, in consequence of a petition preferred by the landlord, granted warrant on 10th November preceding, "for sequestrating the defender's corn, cattle, and other effects, and appointed a sequestrator, with power to cause an inventory and apprisement to be made; but without prejudice to the defender's applying to have the sequestration removed, upon his finding caution for payment of the rents." And on 19th January, he "granted warrant to the pursuer, at the sight of the sequestrator, to sell by public roup the effects sequestrated; at least as much thereof as to pay the rents due, with the expenses of process, sequestration, and roup."

The tenant's effects having been rouped in consequence of this authority, he brought the whole proceedings, as being oppressive and illegal, under the review of the Court, by process of reduction.

Observed on the Bench, Though a landlord's right of hypothec ought always to be exercised with discretion, yet when his tenant fails in his circumstances, the landlord, *currente termino*, may justly sequester the stocking on the farm. In this power, that of rousing the subjects, especially the cattle, is implied; since the expense attending their preservation might otherwise, in the mean time, often become equal to their value.

The Lord Ordinary "having assoilzied the defender,"

THE LORDS, on advising a reclaiming petition and answers, "adhered to the interlocutor of the Lord Ordinary."

Lord Ordinary, *Elliock.*

Act. *H. Erskine.* Alt. *Crosbie.* Clerk, *Colquhoun.*

S.

Fol. Dic. v. 3. p. 291. Fac. Col. No 162. p. 253.