

An attempt was made to distinguish between hunting a destructive animal, such as a fox, which it was said to be lawful to follow wherever he fled; and hunting a hare, an animal who did no harm, and was no common enemy. But the Lords, indeed all of them, except Lord Covington, laid no weight upon this distinction.

1777. *August* . PROCURATOR-FISCAL of DUMBARTON *against* M'GREGOR.

THE Procurator-Fiscal of Dumbartonshire, 9th September 1776, brought a complaint before the Sheriff against Robert M'Gregor, gamekeeper to Mr Speirs of Ellerslie, on the Act of Q. Anne, p. 1, § 4, c. 13, for shooting a hare. The Sheriff, 28th January 1777, found M'Gregor liable in the statutory penalty of L.20, and in expenses. M'Gregor suspended. The Lord Monbodo, August 1777, found the letters orderly proceeded: and the Lords adhered.

HYPOTHEC.

1776. *June 25.* SWINTON of MANDERSTON *against* STEWART.

THE Lords found, that a master's taking the tenant's bill for the rent, does not loose the hypothec.

1777. *February 17.* ROBERTSONS *against* BOSWELL.

BOSWELL, factor for Miss Watkins of Skedsbrish, apprehensive lest her hypothec on the stock and crop of Robertsons' tenants in the lands of Skedsbrish, lying in the parish of Gifford, should be evaded, applied, 22d September 1770, by summary petition, to the Sheriff of Haddington, for "a warrant to inventory and sequestrate the whole cattle, corn, and hay on the lands, for part of £95 of arrears, and security of the present year's rent, being £70, and expenses of application."

Upon this petition, the Sheriff immediately granted warrant, authorising the sequestration as craved. This was executed upon the lands, and intimation made, and a schedule left with the Robertsons' herd. After the sequestration had continued for three months, Mr Boswell gave in a second petition, 14th December 1770, to the Sheriff, setting forth the former; and that only a partial payment had been made of £28; and that he had reason to suspect that the

tenants were embezzling and disposing of their goods so sequestrated; therefore, praying "a warrant to the clerk and officer of Court, to roup the effects sequestrated, for payment of the arrears of rent due at Martinmas last, and expenses; and to continue the sequestration on the over stock for security of the next half year's rent, from Martinmas to Whitsunday, now current."

Upon presenting this petition, the Sheriff, at his house of Elvingston, immediately granted warrant to the clerk of Court to roup the stock and crop, in terms of the prayer of the petition, and to report his procedure; and, further, ordained intimation of the roup to be made at the market of Haddington, on the market day, and at the doors of the kirks of Haddington, Gifford, Salton, and Bolton the Sunday preceding.

This deliverance being signed on Thursday,—on Monday after, the procurator for Mr Boswell reported to the Sheriff, that the next day, the 19th, being Tuesday, was fixed for the roup, and that intimation had been made, as ordered, except that no intimation was made at the kirks of Gifford and Bolton, there being no divine service there. Upon this minute the Sheriff granted warrant for the roup on the 19th, and it proceeded accordingly.

The Robertsons brought an action of damages for these proceedings: they called Mr Boswell, Mr Gray, the Sheriff, and officers of Court. Gray having died, they proceeded against the others.

They insisted, in the *first* place, That a warrant to sequester, granted *de plano*, was wrong; that the petition ought to have been intimated, and the warrant given *causa cognita*. The Lords laid no weight upon this, practice being different. They insisted, *secundo*, That the sequestration ought only to have been for the current rent, not for arrears where the hypothec was elapsed; see 4 *New Coll.*, p. 215. The Lords thought so too; at the same time it was alleged, that the practice was to give the warrant even for arrears, because that the hypothec upon corn was perpetual, and even upon cattle lasted three months after the term of payment. They insisted, *tertio*, That the warrant for roup ought to have been granted in a court, whereas it was granted by the Sheriff at his own house of Elvington. The Lords laid no weight upon this; but they thought the warrant for rousing ought to have been intimated to the party, which it never was, neither did they know any thing of the matter until all was sold: they thought the roup too soon after the intimation at the church doors, especially as Gifford and Bolton, the two nearest churches, were omitted; so that, upon the whole, though they assoilyied the Sheriff and officers of court, they found Mr Boswell liable in damages and expenses; 17th February 1777.

[It appeared that things sold at an under value.]

1777. July 10. JOHNSTON, SYME, and SCOTT *against* GEORGE WARDEN.

"THE expense of repairing houses within the burgh, when it is authorised by warrant of the Dean of Guild, is secured by an hypothec on the house repaired, *ne urbs ruinis deformetur*; but he who repairs without such warrant, and relies on the faith of his employer, has no security on the subject itself." So says Mr Erskine, p. 425, § 34; and he cites Home, No. 3, and 11 *New Coll.*, No. 86.