

**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

creditors upon act 12th Geo. III. Upon this a competition took place, and Mr Buchan applied by summary petition to the Court, praying "to find that the subjects sequestrated by the sheriff, for security of the landlord's hypothec, are not affected by the sequestration awarded by the Court, nor fall under the management of their factor; and that the landlord is at liberty to proceed under the sequestration of the sheriff, leaving it to the factor to be heard before the sheriff upon any other competent ground."

THE LORDS, upon advising the petition with answers, granted the prayer of the petition.

Act. G. B. Hepburn      Alt. H. Erskine.

D.      *Fol. Dic. v. 3. p. 292. Fac. Col. No 83. p. 139.*

See Nisbet & Co.'s Trustee, petitioner, 10th December 1802. *voce* TACK.

Landlord's hypothec in competition with the Crown. *See* KING.

*See* TACK.

*See* SEQUESTRATION.

*See* APPENDIX.

No 72.  
by a seques-  
tration at the  
instance of  
creditors.