

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 roup'd 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.*