

landlord cannot sequestrate while the tenant is going on in business ; for how can a tenant pay his rent, if he be not allowed the use of his crop? The case is different when a tenant becomes *lapsus*. If the landlord be entitled to sequestrate, he may roup, for otherwise the subject may be dilapidated. Cattle must be roused, for otherwise they will eat up their own value. As to the other point,—at common law, a tenant is bound to stock the farm ; and, if he does not, the landlord is entitled to call upon him to do it, to find caution, or to remove.

On the 25th June 1784, “ The Lords sustained the defences, and assoilyied ;” adhering to the interlocutor of Lord Elliock.

*Act.* H. Erskine. *Alt.* A. Crosbie.

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1784. June 29. WALTER M'DOWAL *against* JAMES M'DOWAL, &c.

#### SERVICE AND CONFIRMATION.

Possession of the Defunct's Moveables by the nearest of Kin vests him in the Rights of the Subjects possessed only.

[*Faculty Collection, IX. 255 ; Dict. 14,404.*]

KENNET. The Court has found a title by possession of *ipsa corpora*, or by confirmation, although partial ; but *here* no title at all would prefer nearest in kin.

BRAXFIELD. A number of decisions are quoted, but not to the purpose. In order to give an active title, confirmation is necessary. Intromission is a passive title, but no more.

ESK GROVE. This case was determined last winter ; *Gib.*

GARDENSTON. I doubt that we have already gone too far as to the vesting right in moveables ; but I am clear not to go farther.

On the 29th June 1784, “ The Lords preferred the nearest in kin.”

*Act.* George Currie. *Alt.* A. Elphinston.

*Reporter, Alva.*

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