The Court pronounced this interlocutor:—

"Recal the Lord Ordinary's interlocutor of 2d July 1885: Find that the following defenders are or represent persons who at the date of the late Sir William Stirling Maxwell's death had been four years in his service within the meaning of the will mentioned on record, vizt.,"—then followed the names of about forty persons or their representatives, including one or two who had been employed for a few weeks in all on the Pollokshields estate or on the statute-labour roads—"Therefore assoilzie these defenders from the conclusions of the action and decern: *Quoad ultra* find and declare in terms of the conclusions of the summons against the whole remaining defenders: Find the defenders who have been assoilzied entitled to expenses, and remit," &c.

Counsel for Pursuers — Darling — Dundas. Agents—Dundas & Wilson, C.S.

Counsel for Defenders and Reclaimers—Rhind—R. K. Galloway. Agent—G. Hutton, Solicitor.

Counsel for other Defenders—Guthrie Smith—Rhind—Jameson—Fraser—R. K. Galloway—A. S. D. Thomson. Agents—George Hutton, Solicitor—F. J. Martin, W.S.—Brown & Patrick, Solicitors.

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*Wednesday, March* 17.

## SECOND DIVISION.

[Sheriff of Lanarkshire.

DONALD *v.* LEITCH.

*Lease — Sequestration for Rent — Discharge of Rent in Full under Error.*

A landlord granted a receipt for rent "less £7, 10s. for taxes." The amount which should have been deducted was only £3, 15s. *Held* that a sequestration by the landlord for £3, 15s., as being the balance of rent due, was competent.

*Lease — Sequestration for Rent — Sequestration* currente termino.

The landlord of a house which had been licensed as a hotel, petitioned for sequestration in security of the current year's rent, averring that the tenant intended to displenish the house. The tenant admitted that on the evening of May 27th, and before twelve noon on the 28th, *i.e.*, just before his occupancy for the current year had begun, he had removed a large part of the furniture, but he stated that he did so because he had no longer any use for it, having, as was the fact, failed to obtain, through no fault of his own, a renewal of the hotel licence, and he further stated, as was also the fact, that property to a considerable value was left in the house. *Held* in the circumstances that sequestration was competent.

*Lease—Rent—Abatement in respect of Partial Loss of Subject—Supervenient Law.*

A house called the D Hotel was let for a term of years, the missive of lease, *inter alia*, providing that "the hotel" should be put in good habitable order, that the licence then standing in the name of the landlord should be transferred to that of the tenant, that the tenant should be bound on the expiration of the lease to transfer the licence to any person elected by the landlord, and that if the tenant should be guilty of any breach of certificate the lease, in the option of the landlord, should expire. During the currency of the lease the hotel licence was lost, not through any fault of the tenant, but from a resolution of the licensing magistrates to withdraw hotel licences in the town. *Held* that the loss of the licence did not entitle the tenant to an abatement of rent.

In August 1884 James Leitch became tenant of the Dalziel Arms Hotel, Motherwell, belonging to David Donald, acquiring the right of the previous tenant under a missive of lease for five years from Whitsunday 1883 at a rent of £130 for the first year, £150 for the second, and £160 for each of the remaining years, payable half-yearly at Whitsunday and Martinmas. The missive bore, *inter alia*, that "the hotel" should be put into good habitable order, and "*Sixth.*—The license presently in the name of David Donald shall be transferred to the second party's (former tenant) name. The second party shall be bound to retransfer it to the name of any person elected by the first party (landlord) on the expiration of the lease, whether from the efflux of time or from any cause whatever. If the second party be guilty of any breach of his certificate the lease shall, in the first party's option, expire." The parties further bound themselves to execute a formal lease, and to insert therein all clauses "usual and reasonable in the circumstances."

Leitch paid the rent for the half-year due at Martinmas 1884. On 21st April 1885 his application for a renewal of the hotel licence was refused (as from Whitsunday following), and a public-house licence granted to him instead in consequence of a resolution by the magistrates to refuse all the hotel licences. On 24th May 1885 he paid the rent due at Whitsunday, under deduction of £7, 10s., being the amount, overestimated by one-half as ultimately appeared, of the landlord's share of the taxes. The receipt bore—"Received from Mr James Leitch the sum of seventy-five pounds, less £7, 10s. for taxes, being amount of rent due at Whitsunday 1885, for hotel and premises situated," &c. Over the stamp there was written "Paid £67, 10s."

On the night of the 27th May, and on the morning of the 28th, Leitch was in course of removing part of the furniture in the hotel to Glasgow when about 4 a.m. on the 28th he was stopped by Donald and a sheriff officer, who proceeded to restore the furniture to the hotel, and to inventory and sequestrate the whole furniture therein for payment of £3, 15s., the alleged balance of the past year's rent, and in security of £160 the current year's rent. This sequestration was withdrawn on 1st June, but on 2nd June a new petition for sequestration was presented praying for warrant to inventory and secure the whole stock, fittings, furniture, goods, and other effects, so far as subject to the landlord's hypothec, which were or had been in the said premises since Whitsunday 1884, in security and for payment of £3, 15s., being an unpaid balance of the half-year's rent payable at the preceding Whitsunday with interest and expenses; and the whole stock, &c., which were or had been in the

premises since Whitsunday 1885, in security and for payment first of the sum of £80, the half-year's rent to become payable at the ensuing term of Martinmas; and second, the like sum of £80 as the half-year's rent to become payable at Whitsunday 1886 with interest, the terms of Martinmas and Whitsunday being first come and bygone in these last two cases respectively before warrant to sell should be granted.

The Sheriff-Substitute (BIENNIE) granted sequestration as craved, but in respect of a caveat ordained the defender to lodge answers, and a record was made up. The following were the material averments and answers—"(Cond. 5) The pursuer has a right of hypothec over the whole furniture, goods, and other effects which are or have been in the subjects since Whitsunday 1884 for the balance of rent due at Whitsunday 1885, and also a right of hypothec over the whole furniture, goods, and other effects which are or have been in the subjects since Whitsunday 1885, for the rents to become due at Martinmas 1885 and Whitsunday 1886, with interest thereon as craved. (Ans. 5) Denied that pursuer has any right of hypothec for the half-year's rent of said subjects due at Whitsunday 1885, or any balance thereof, the whole of said rent having been paid on or about the 24th May 1885, and before the raising of the present action. *Quoad ultra*, and subject to the explanation contained in the defender's statement of facts, denied that pursuer's alleged right of hypothec extends over the whole of the furniture, goods, and other effects which are or have been on the subjects since Whitsunday 1885. (Cond. 7) The defender had resolved to remove the whole of his furniture and other effects from the subjects, and leave the same displenished; and on the evening of the 27th and morning of 28th May had lorries for the express purpose, as after mentioned, of removing the furniture to Glasgow, to be there disposed of by public sale. (Ans. 7) Denied, under reference to defender's statement of facts. (Cond. 8) The pursuer believes that the defender's statement that Messrs Duncan, Keith, & Buchanan had instructions to remove and sell the furniture is correct, and that early in the morning, about 4 o'clock of the 28th May, two lorries were standing in a lane at the hotel ready to be driven to Glasgow. The pursuer on learning that the defender was removing the furniture under cloud of night, instructed his agents to adopt proceedings to get this stopped. A petition was accordingly prepared craving interdict against the defender's proceedings, and also for sequestration and warrant to carry back. . . . (Cond. 9) On the pursuer, along with the officer and agent, arriving in Motherwell, the pursuer informed the defender that he had presented said petition, and instructed the officer to intimate the same to him. This the officer did, and thereafter carried the furniture which had been placed upon the lorries into the hotel. The said petition was withdrawn by the pursuer on 1st June 1885, in consequence of an alleged defect in the petition or warrant thereon, and with a view of avoiding litigation thereanent. (Ans. 8 and 9) Admitted, under reference to defender's statement of facts. (Cond. 10) The defender was wilfully and maliciously attempting to carry off the furniture from the hotel with the view of defeating the pursuer's right of hypothec. The value of the furniture and effects sequestrated under the present action is insufficient to meet the current year's rent of the subjects. The defender's statements, so far as inconsistent herewith, are denied. (Ans. 10) Denied."

In his statement of facts the defender stated, *inter alia*, that being deprived of the beneficial occupation of the portion of the subjects which had been used as a hotel, he resolved to dispose of some of his furniture for which he had no further use, and on or about 27th May 1885, having paid his rent for the past half-year, he instructed Messrs Duncan, Keith, Buchanan, & M'Cloy, auctioneers, Glasgow, to send out and remove the same to Glasgow for sale. "(3) In pursuance of defender's instructions, Messrs Duncan, Keith, Buchanan, & M'Cloy despatched two lorries from Glasgow on the afternoon of 27th May 1885, and on their arriving at said subjects they were loaded on the street alongside said subjects with some of the furniture which defender intended to remove, and about four o'clock on the morning of 28th May 1885, when the said lorries were loaded and ready to start for Glasgow, the pursuer, his son, their law-agent (Mr J. B. Soutter, writer, Hamilton), and a sheriff-officer named James Young appeared, and unwarrantably, illegally, and forcibly interdicted and prevented the removal by defender of said furniture, and having cut the ropes wherewith the same was tied to the lorries, seized and carried it back from the public street to the said subjects, and after seriously assaulting defender proceeded to inventory and sequestrate, or pretend to sequestrate, the whole furniture and effects belonging to defender on said subjects, including those carried back as aforesaid.

The pursuer pleaded—"(1) The defender being in arrears in payment of his rent, the pursuer is entitled to sequestrate his effects in security thereof. (2) The pursuer's right of hypothec being in danger of being defeated, he is entitled to sequestration, decree, and warrant as craved."

The defender pleaded—"(2) There being no arrears of rent due by defender, and the other averments of pursuer being irrelevant and insufficient to support the conclusions of the action, sequestration should be recalled, and the action dismissed with expenses. (3) The pursuer is not entitled to benefit by his illegal actings before mentioned to the prejudice of defender. (4) The pursuer having prior to the commencement of the current year forcibly prevented the removal of furniture belonging to defender, and having illegally seized, carried back, and detained the same on the subjects, has no right of hypothec over the same for the rent of the current year."

The Sheriff-Substitute (BIENNIE) on 24th August 1885 pronounced an interlocutor finding that a number of the articles which the pursuer admitted had been on the lorries on the morning of 28th May were being removed from the premises by the defender prior to the date on which sequestration was competent, and that they were wrongfully carried back or caused to be carried back by the pursuer; recalling the sequestration *quoad* these; and appointing the case to be put to the motion roll.

"*Note.*—The respondent paid his rent, at all events with the exception of £3, 15s., about which there is a dispute, on 15th May last, and on the night of 27th May or the morning of the

28th was removing his furniture or a portion of it. Whether this was a right thing to do or not I am not entitled to say, but in my view the petitioner had no legal power to stop this removal, and acted illegally in carrying back the furniture to the premises. He had no right to sequestrate for the current rent until 12 o'clock of the 28th May (*Thomson* v. *Barclay*, 1883, 10 R. 694), and it would be extreme to hold that he was entitled to do what he did for the £3, 15s., even assuming it to be due.

"That being so, the question arises if the petitioner under his new sequestration can attach those articles which he wrongfully carried back, and it seems to me that he cannot do so. The case of *Thomson* v. *Barclay* supports that view, and it is consistent with the common law that no one shall take advantage of his own wrong. In *Jeffrey* v. *Carrick*, 1836, 15 S. 43, also, it was decided that a landlord cannot sequestrate furniture wrongously retained by his tenant, and if so, *a fortiori* it follows that he cannot sequestrate furniture wrongously retained by himself.

"Had the furniture after being carried back been allowed to remain in the premises for some time the case might have been different, but the first sequestration under which it was carried back was only withdrawn the same day, or the day before the present sequestration was presented.

"The respondent avers that he had removed many more articles than those admitted by the petitioner, and the case has been put to the motion roll of the first Court day after the vacation."

On 5th December the defender was allowed to add the following averments and pleas to the record—"2. The premises in question are by said missive of set let as a hotel, and the defender has by a resolution of the Justices of the county of Lanark, over whom he has no control, and without any allegation of fault being made against him, been deprived of a hotel licence and the beneficial occupation of said subjects as a hotel. The loss of the hotel licence, without fault on the part of the defender, and the substitution of a public-house licence therefor by the arbitrary act of the said Justices, involves so serious a change in the character of the subjects let, that the insertion in the intended lease of a clause entitling the defender to a corresponding abatement of rent would have been 'usual and reasonable in the circumstances,' and the question of the defender's liability for rent in the present action falls to be decided on the footing of a formal lease having been entered into embodying a clause or stipulation to that effect. 3. A fair and reasonable rent for the premises occupied by the defender as a public-house for the current year would be £100 sterling, and this sum defender is willing and hereby offers to pay.

"Plea-in-law—In the circumstances above set forth the defender is entitled to have the rent of premises in question abated as claimed."

The pursuer was allowed to add the following answers and plea—"2 and 3. The missive of set is referred to. Admitted that the defender was by a resolution of the Justices deprived of a hotel licence as stated; *quoad ultra* denied, and explained that the rent under the missive is £160 for the current and subsequent years, and that this sum would be got for the subjects in question were they let, a part as a public-house and the remainder as a shop and dwelling-house. £100 would be a fair rent for the public-house portion.

"Plea-in-law—The defender is bound to pay the rent stipulated in the missive."

A proof was allowed, which was directed (in accordance with the interlocutor allowing it) entirely to the question of what articles the defender intended to remove on the occasion of the first sequestration. It did not appear that he intended to remove anything from the bar, cellars, and rooms connected with the bar, and it further appeared that the articles, including stock therein, were of considerable value. The defender did not dispute that there had been as matter of fact an over-deduction of landlord's taxes to the extent of £3, 15s. from the rent due at Whitsunday 1885.

On 12th January 1886 the Sheriff-Substitute pronounced an interlocutor recalling the sequestration, except in so far as it had been already recalled, and also except as regarded the articles in the bar of the hotel and rooms connected therewith; *quoad ultra* repelling the pleas for the defender, granting warrant to the Clerk of Court to pay to the pursuer the sum of £80 which had been consigned by the defenders at Martinmas preceding, with interest, reserving the question of expenses, and to pronounce further on the merits.

"*Note.*—. . . Sequestration was recalled as to the articles in No. 13 of process by the interlocutor of 20th August, and on the same principle it seems to me it must be recalled as to all the articles which the defender was prevented from removing by the pursuer's admittedly illegal sequestration. . . . The defender has consigned the half-year's rent, but pleads that, having lost his hotel licence from no fault of his own, the hotel portion of the premises has been useless, and that he is only bound to pay for the public-house portion, which both parties hold to have been of the value of £50 for the half-year.

"This raises a question which, as far as I know, has not been expressly decided. The authorities bearing on it seem to be these:—In agricultural leases, where the subject is totally or partially destroyed by causes not within the contemplation and beyond the control of the parties, the rent ceases, or a deduction is made. Hunter on Landlord and Tenant (Guthrie), vol. ii. 451.

"In mineral leases, which are more speculative in their character, the rule, apart from express agreement, is different, the tenant taking the risk of the quantity and value of the minerals, and being only entitled to abandon or claim a deduction if the minerals are entirely absent or exhausted (*Murdoch* v. *Fullarton*, 1829, 7 S. 404; *Bargeddie Coal Co.* v. *Wark*, 1860, 23 D. 44; *Gowans* v. *Christie*, 1873, 11 Macph., H.L. 1; M'Swenney on Mines, 215). The matter is generally regulated by agreement (*Dickson* v. *Campbell*, 1824, 2 Shaw's App. 175; *Thomson* v. *Gordon*, 1869, 7 Macph. 687; *Shotts Iron Co.* v. *Deas*, 1881, 8 R. 530).

"Where the loss has arisen from supervenient law the cases have varied. In *Crawford* v. *Kennedy*, 1694, Mor. 10, 125 (tax duties), and *M'Kenzie* v. *Kennedy*, 1697, Mor. 7867 (tax duties), an abatement was held allowable; but in the later cases of *Goldie* v. *Williamson*, 1796, Hume, 793 (toll duties); *Holiday* v. *Scott*, 1830,

8 S. 831 (fisheries); *Dunsmore* v. *Oswald*, 1821, 1 S. 170 (fisheries), it was held otherwise.

"In *Boyle* v. *Pollock*, 1700, 4 Br. Sup. 481, a tacksman of excise duties was refused an abatement where certain manufacturers, who had been considered liable, were held free by a judgment of Exchequer; and in *Heriot's Hospital* v. *Angus*, 1709, Mor. 10, 126, an abatement was also refused where by a declarator of immunity multures were diminished.

"It is unnecessary to decide whether the defender's loss of licence falls under the one set of cases or the other, as he has not to my mind proved that he was not in fault, or what damage he has suffered. On the first point all that is proved is that the defender entered in August, and was deprived of his hotel licence in April, and that no fault was found with him in the interval; but it is not attempted to be proved why the licence was taken away, and hotels are not deprived of their licences without some supposed fault on the part of the occupiers. But were this otherwise, there is no proof as to the extent of the loss. That there was loss may be taken for granted, but that is not sufficient. The loss must be what the old writers call *plusquam tolerabile*, and the defender's statement that the hotel portion was rendered absolutely useless is improbable and unsupported.

"The defender urged that the sequestration ought to be dismissed, as the pursuer had no valid ground for bringing it, but I cannot hold this, and the case has been continued until Whitsunday. It is preferable, also, in the circumstances to reserve the question of expenses.

"The defender admits that he must repay £3, 15s. inhabited house-duty, erroneously deducted at last May term. This can be adjusted at the final settlement."

The pursuer appealed to the Court of Session, and argued—(1) The sequestration was incompetent. At the date of the sequestration no rent was past due. No doubt the defender was liable to the pursuer in a payment of £3, 15s. of over deduction in respect of the landlord's share of taxes, but for the rent due at Whitsunday 1885 the defender held a receipt bearing to be in full of that rent, and that receipt was a complete answer to a sequestration at the landlord's instance. Then as regarded the sequestration in security of future rents that too was incompetent, there being no evidence that the defender was *vergens ad inopiam* or other similar ground. But (2) Even if the sequestration was competent, the full rent of £160 was not due. The hotel licence was part of the subject let, as appeared from the missive—particularly its sixth article—and by the loss of that, through no fault of the defender, the defender was entitled to an abatement of rent.

The pursuer's argument sufficiently appears from Lord Craighill's opinion.

Authorities as in the Sheriff-Substitute's notes.

At advising—

Lord Craighill—The appellant Mr Leitch is tenant under a lease for five years of the Dalziel Arms Hotel, Motherwell, and the pursuer Mr Donald is his landlord. The appellant entered on the occupation in August 1884, the licence held by the previous tenant having been transferred to him, and the business was carried on by the appellant till Whitsunday 1885. Previous to that, however, his application for a renewal of the licence had been refused by the Licensing Court, and the consequence was that the hotel business, as previously conducted, could not be carried on after this term of Whitsunday. The refusal of the licence was not the result of any fault or misconduct on the part of the appellant in carrying on his business, but was the outcome of a resolution on the part of the Justices adopted on what were thought considerations of public expediency, to substitute a public-house licence for a hotel licence in every case in Motherwell. The rent payable by the appellant was £160, payable one half at Martinmas and the other at the following Whitsunday in each year. On the 2d June 1885 the pursuer presented a petition to the Sheriff praying for warrant to inventory and secure the whole stock, fittings, furniture, goods, and other effects, so far as subject to the landlord's hypothec, which were or had been in the said premises since Whitsunday 1884, in security and for payment of £3, 15s., being an unpaid balance of the half-year's rent, payable at the preceding Whitsunday, with interest and expenses; and the whole stock, &c., which were or had been in the premises since Whitsunday 1885, in security and for payment first of the sum of £80, the half-year's rent to become payable at the ensuing term of Martinmas; and second, the like sum of £80 as the half year's rent to become payable at Whitsunday 1886, with interest, the terms of Martinmas and Whitsunday being first come and byegone in these last two cases respectively before warrant to sell should be granted. Sundry pleas were stated in defence. Part were urged against the pursuer's right to sequestrate articles of plenishing which had been removed before twelve of the clock on the term day, and had, as the defender alleged, been illegally carried back, and with these pleas, as regards most of the articles in controversy, the Sheriff dealt in an interlocutor of 24th August, in which both parties have acquiesced. The other pleas were of a more general nature, and were objections to the competency of the sequestration. Upon these, so far as they required to be decided, judgment was given on the 12th January 1886, by the interlocutor which is now the subject of the present appeal.

Three grounds or reasons of appeal were urged at the debate on the consideration of the Court. These were, first, that the sum of £3, 15s., alleged to be an unpaid balance of rent, is not rent at all, and this is the nature of the controversy upon that subject. When the defender paid at Whitsunday 1885 what was believed at the time to be this half-year's rent, there was kept off a sum of £3, 15s. as landlord's taxes beyond the sum for which the landlord was liable. As to this, parties, as was admitted at the debate, are now agreed. But it was assumed at the time that the reduction claimed was not in excess of the landlord's liability, and consequently a receipt for the full rent was delivered to the appellant. The mistake that had been committed was, however, soon afterwards discovered, and it is for the sum of £3, 15s. improperly withheld that the warrant to inventory and sell is prayed for in the first part of the petition for sequestration. The appellant says the payment of the full rent is vouched by the receipt, but this receipt is

immaterial when the fact is that the full rent has not been paid. The £3, 15s. is a balance which remains due, for as more was deducted in name of landlord's taxes than the amount for which the landlord was liable, the obvious result must be, and is, that what was thus kept back is an unpaid portion of the half-year's rent. This defence, therefore, plainly must be overruled.

The second objection is, that in the case presented on the record, sequestration for the rent of the two half-years from Whitsunday 1885 to Whitsunday 1886 was incompetent, neither being payable at the date of the application. But the competency of sequestration for current rent is not doubtful. All the authorities speak plainly on the subject. Of these the most familiar, probably, is the statement by Prof. Bell in par. 1245 of his Principles, and that on pages 24 to 27 of the 2d volume of his Commentaries. And as regards the contention that reasonable necessity for the application must be alleged, otherwise it may not be granted, all that on this occasion need be said is, that good cause has been shewn on the record, if that be required as a condition of competency. The 8th article of the condescendence, and the appellant's answer, as well as article 3 of the defender's statement of facts, show that on the night between 27th and 28th of May, the latter being the flitting term-day, the hotel was in course of being displenished, and that the purpose of the appellant was to take the furniture which was being removed to an auctioneer's rooms in Glasgow, in order that it might be sold. Had this intention not been frustrated, there would have been little or nothing, or at anyrate what there would have been would not have been sufficient for the security of the rent which had begun to run. In these circumstances it appears to me that there was reasonable cause, alleged and proved, for the pursuer's application.

The third objection is, that the full rent of £160 was, in the circumstances of the case, rent for which sequestration could not be employed. The circumstances referred to are these—The licence for the hotel was refused in April, and consequently for the year from Whitsunday 1885 the premises could not be used for the business as previously conducted. Spiritous liquors could not be served or sold, and this, it is said, would materially affect the value and the nature of the business that could be profitably carried on. On this view of the matter the defender pleads that there must be an abatement from the rent, and that till the rights of parties have been arranged or determined neither the whole nor indeed any part of the stipulated rent can be held to be due or to be a ground for sequestration. The defender does not propose to reduce or to abandon the lease, by which £160 is made the contract rent. On the contrary, he intends to remain in occupation as tenant, and to turn the subjects to such use as he may think most likely to conduce to his profit. He carries on business as a publican in the premises, for a publican's licence was granted in room of the hotel licence which had been refused, and what he proposes to do, and what he says is his right to do, is to continue in occupation at a rent of £100 in place of £160. Whether the refusal of the licence would be a ground on which the lease could be reduced need not now be considered, for the defender, as already mentioned, stands by the lease, and it will be time enough to come to a determination on this subject once the obligation of the defender in that matter is submitted to the determination of the Court. What we have at present to decide is, whether, there being no qualifying condition in the appellant's obligation to pay the stipulated rent, and the premises taken being corporeally such as they were when he took them, the loss during his occupation arising from the Justices' refusal of a licence must not be assumed to be one of the incidents by which the appellant is affected? My view of the matter is that the appellant is not entitled to remain in occupation—to stand by his lease—and so doing, to refuse at the same time payment of the stipulated rent for which he undertook obligation. This defence, as well as the others, appears to me to be untenable, and on the whole matter I come to the conclusion that the interlocutor of the Sheriff ought to be sustained and this appeal dismissed.

Lord Rutherfurd-Clark and the Lord Justice-Clerk concurred.

Lord Young was absent.

The Court pronounced this interlocutor—

"Find that the defender, who is the appellant, is tenant of the Dalziel Arms Hotel in virtue of a lease of which the stipulated rent, being £160, is payable half-yearly at Martinmas and Whitsunday: Find that the defender entered on occupation in 1884, the licence held by the preceding tenant having been transferred to him, and that the business of the hotel was carried on in the usual way till Whitsunday 1885: Find that the defender in April 1885 applied to the Licensing Court for a renewal of the licence for the year subsequent to the next ensuing term of Whitsunday, and that the license was refused, though not upon the ground of fault or negligence on the part of the defender: Find that on Whitsunday 1885 a portion of the rent for the half-year from Martinmas 1884, amounting to £3, 15s., was unpaid when the petition for sequestration was presented, and that for this balance of rent sequestration as prayed for by the pursuer was competent: Find that the stipulated rent of £160 for the year from Whitsunday 1885 to Whitsunday 1886 was current when the petition for sequestration was presented, and that the sequestration in security of that rent was competent in the circumstances condescended on and proved: Therefore dismiss the appeal, affirm the judgment of the Sheriff-Substitute appealed against: Find the pursuer entitled to expenses; remit to the Auditor to tax the same and to report: Remit the cause to the Sheriff with instructions to proceed therein as accords, and with authority to decern for the expenses now found due, when taxed, and decern."

Counsel for Pursuer—J. P. B. Robertson, Q.C.—Low. Agent—Alexander Morison, S.S.C.

Counsel for Defender—Sol. Gen. Asher, Q.C.—J. A. Reid. Agents—Boyd, Jameson, & Kelly, W.S.