

After advising a reclaiming petition, which was followed with answers,  
THE LORDS adhered to the judgment above recited.

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Reporter, *Lord Henderland.* Act. King's Counsel, *Abercromby.* Alt. Dean of Faculty,  
*Wight, Cathcart.* Clerk, *Mitchelson.*

G. *Fob. Dic. v. 3. p. 368. Fac. Col. No 187. p. 385.*

\* \* \* This case was appealed.

THE HOUSE OF LORDS, 15th June 1792, "ORDERED, That the interlocutors complained of, so far as they declared generally, That the landlord's hypothec over the crop and stocking cannot be defeated by the prerogative process of the Crown, in virtue of the statute 33d Henry VIII. as extended to Scotland by the articles of union, and the act of Parliament 6th of Queen Anne, be reversed. But in respect that the King's title does not sufficiently appear in the process, it is further ordered, That the cause be remitted to the Court of Session, to inquire more particularly into the process and conduct thereof, in virtue whereof the effects in question are supposed to have been subjected to the King's title."

1793. December 3.

The FACTOR on the Sequestrated Estate of JOHN LESLIE,  
against JAMES TWEEDIE.

THE factor on the sequestrated estate of John Leslie, let to Robert Bee, from Martinmas 1790 to Martinmas 1791, a brewery, which was a part of the bankrupt estate.

Robert Bee having fallen in arrear of duties to the Crown, James Tweedie, supervisor of Excise, before Martinmas 1791, obtained a warrant from the Justices of Peace, in virtue of which Bee's whole brewing and malting utensils were laid under distress for payment of the debt.

The factor on Leslie's estate having, two days prior to this event, obtained a sequestration of the same subjects, for payment of the current year's rent, presented a bill of suspension and interdict against the officers of the Crown, praying that they might be prohibited from disposing of the effects, till the landlord's hypothec should be satisfied.

The bill having been passed, Tweedie

*Pleaded*; By the English statute, 15th Cha. II. c. 11. Parliament 13: which extends to Scotland, in consequence of the 18th article of the union, the utensils used in a brewery are liable to all claims arising from the excise laws, in consequence of the manufacture therein conducted, even although they are not the property of the brewer; and by 28th Geo. III. c. 37. a general enactment was introduced, giving the public revenue the same right, not only over utensils

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The officers of the revenue suing for debts due to the Crown, are preferable to the landlord claiming on his hypothec over the *invecta et illata.*

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but over all materials and commodities in the possession of every manufacturer or dealer whose trade is liable to the excise laws ; *a fortiori*, therefore, must the Crown be preferable, where, as in the present case, the competition relates to the property of the manufacturer. Besides, the Crown's preference was established by the judgment of the House of Peers, (15th June 1792), reversing the decision of this Court, 29th June 1791, Ogilvie against Wingate, No 27. p. 7884.

*Answered* ; The statutes of Cha. II. and Geo. III. were merely intended to constitute the Crown a creditor over subjects which at common law it could not have attached. The landlord's preference for his hypothec, being a real right, is reserved by 6th Anne, c. 26. and these statutes do not take it away, either directly or by implication. A single judgment of the House of Peers is not necessarily a precedent which this Court is bound to follow. Besides, the case of Ogilvie related to the landlord's hypothec over the fruits of the ground, and not to that over the *invecta et illata*.

THE LORD ORDINARY found, " That the different statutes founded on by the officers of the Excise, go no farther than to give the Crown a preference for the revenue duties, in a competition with the personal creditors of the bankrupt, and do not infringe on the landlord's right of hypothec, as established by the laws of Scotland before the Union."

On advising a reclaiming petition and answers, several of the Judges considered the question as determined by the judgment of the House of Peers, in the case of Ogilvie ; but at the same time expressed regret at that decision, as they still thought that the landlord's hypothec, as a *real* right, was saved from the prerogative process of the Crown.

On the other hand, it was observed, that by the express words of the 6th Queen Anne, real *estates* only were saved from the Crown's preference, and declared attachable in no other form than according to the rules of the Scots law. That a mistake had arisen by confounding a real *right* in the landlord, with a real *estate* in the debtor, the latter of which alone came within the reservation of the statute ; and that consequently, although the landlord's hypothec might be a real right in him, yet the subject over which it extended was personal, and as such liable to the preference of the Crown.

Some of the Judges were of opinion, that the Crown's preference was also established by the statutes Cha. II. and Geo. III. ; for as these statutes (it was observed), had made it preferable even to a right of property, it must also be preferable to every subordinate right of hypothec.

THE COURT, by a great majority, " sustained the petitioner's preferences in behalf of the Crown."

Lord Ordinary, *Ankeruille*.  
Alt. *Honyman*.

For the Crown, *Lord Advocate Dundas*.  
Clerk, *Mitchelson*.

R. D.

Fol. Dic. v. 3. p. 368. Fac. Col. No 31. p. 177.