SUMMER SESSION, 1886.

COURT OF SESSION.

Thursday, May 13.

SECOND DIVISION.

[Lord Trayner, Ordinary.

HUNTER *v.* FRASER AND ANOTHER (BARRON'S TRUSTEES) AND OTHERS.

Lease—Determination of Tenancy—Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62)—*Term of Whitsunday, Old Style, New Style—Act* 1690, *cap.* 39—*Act* 1693, *cap.* 24.

The outgoing tenant of a farm held under a lease for nineteen years, the date of the termination of which was the term of Whitsunday 1885, gave notice to his landlord of his intention to claim compensation for permanent improvements executed by him on his holding, under the Agricultural Holdings (Scotland) Act 1883, which provides that a tenant shall not be entitled to compensation thereunder "unless four months at least before the determination of the tenancy" he gives notice of claim. The notice of claim was sent on 21st January. *Held* that by the local custom and the actings of the parties proceeding thereon, it appeared that they intended by "the term of Whitsunday," to mean that Whitsunday old style or the 26th of May was to be the term for the expiry of the lease, and therefore that the notice of claim was timeously given.

The Act 1690, cap. 39, provides—"Our Sovereign Lord and Lady and the Estates of Parliament considering the inconveniency arising from the uncertainty of the term of Whitsunday . . . for remeid whereof their Majesties with consent of the said Estates of Parliament do statute and ordain that the summer and winter terms shall in all time coming be the 15th day of May and Martinmas, and that the legal term of removing both in burgh and landward shall be the said 15th day of May, upon warning forty days preceding the same."

The Act 1693, cap. 24, provides—"Our Sovereign Lord, &c., . . . for further clearing the 39th Act of the second session of this current Parliament, statute and declare that the 15th day of May was since the date of the foresaid Act, and shall be in all time coming, in place of the former term of Whitsunday, to all effects whatsoever as well as to removings."

In June 1867 William Chambers Hunter, Esq., of Tillery, and James Barron entered into a lease, of date the 1st and 18th of that month, of the farm of Middle Ardo, in the parish of Belhelvie and county of Aberdeen, by which Mr Hunter let the farm to Barron and his heirs—but excluding assignees, sub-tenants, and heirs portioners—"for the period of nineteen years from and after the term of Whitsunday 1866." The yearly rent was £180, payable at Martinmas and Whitsunday. Mr Hunter died in 1868 and was succeeded by Lieutenant-Colonel Alexander Chambers Hunter as heir of entail under a deed of strict entail dated 3d January 1803, under which the lands were held. Barron also died during the currency of the lease, but the farm was carried on by his testamentary trustees, Mr Fraser and Mr Runciman, along with James Barron, his son and heir-at-law, and George Barron, also his son, who was the managing occupier of the farm.

Notice of removal from the farm was served upon George Barron by the instructions of the landlord, the forty days' warning terminating prior to 15th May. On the other hand a notice of claim was served upon the landlord by the trustees (as outgoing tenants) in virtue of the Agricultural Holdings (Scotland) Act 1883, for the value of unexhausted improvements executed by them upon the said holding. This notice of claim was dated the 13th January 1885, but was not posted until the 21st, and it was received by the proprietor upon the 22d January 1885. The Act by sec. 7 provides—"Notwithstanding anything in this Act a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act." Section 40—In this Act "determination of

tenancy means the termination of a lease by reason of effluxion of time or from any other cause."

Barron's trustees appointed, in terms of section 9, sub-section 3, of the Act, Mr George Mitchell as a referee, but Colonel Hunter did not on his side appoint any person as referee, holding that the notice came too late. On April 21st 1885 therefore Barron's trustees as outgoing tenants presented a petition in the Sheriff Court at Aberdeen against Colonel Hunter, praying the Court to appoint a competent and impartial person to be a referee along with Mr Mitchell. Colonel Hunter lodged defences to the petition, in which he objected to the title of the pursuers in the petition, but admitted that the termination of the tenancy was at Whitsunday 1885. He stated that the notice of claim was not received by him until the 22d January, and maintained that there had not been notice of four months before the end of the lease that the tenant claimed compensation for improvements effected by him, as required by the Agricultural Holdings (Scotland) Act 1883.

The Sheriff-Substitute (BROWN) found, of date 4th May 1885, that the tenants had given notice of their claim and appointed a referee in terms of the Act, but that Colonel Hunter had failed to appoint a referee; that the trustees were entitled to have a referee appointed; and he appointed a Mr Walker to be the referee along with Mr Mitchell.

"*Note.*— . . . . On the merits a difficult question arises, viz., what is the meaning of the expression in the statute 'the determination of the tenancy?' The leases founded on expire at Whitsunday, and the contention of the landlord is that that must be taken to mean the legal and not conventional term of entering and removing, or, in other words, the 15th and not the 26th of May. That is based on the terms of the old Scots Acts of 22d July 1690 and 12th June 1693, and there is no doubt that something like at least to the principle was decided in a case (*Walker* v. *Charles*, 17th May 1876) which went from this county to the Court of Session, where it was held that a tenant, bound by his lease to pay rent at Martinmas and Whitsunday, was not entitled to lead evidence that by the custom of the county and the understanding of parties the terms mentioned meant Martinmas and Whitsunday old style. But the Agricultural Holdings Act does not set forth these terms or regulate the 'effluxion of time' referred to in the interpretation clause by their incidence, and the argument for the tenant is that the expression 'determination of tenancy' is used in section 7 in a popular sense, especially when taken in connection with the language of section 1, and therefore that the *de facto* quitting of the holding, admittedly the 28th of May, is at least within the provision of the statute. Construing a remedial measure such as this, I am not prepared to hold that the tenant has not made out a *prima facie* case, and according to the view I take of the reasonable operation of the Act I make the appointment." . . .

On 16th May 1885 Colonel Hunter brought this note of suspension and interdict of the proceedings to have the trustees and the referees interdicted from proceeding with the reference. He founded on the lease entered into between his predecessor and the late Mr Barron, by which the farm was let "all as presently occupied and possessed by the said James Barron, and that for the period of nineteen years from and after the term of Whitsunday Eighteen hundred and sixty-six, which is hereby declared to be the term of entry under this lease;" and it was "further stipulated and agreed that at the termination of this lease at Whitsunday Eighteen hundred and eighty-five the incoming tenant shall be entitled to receive entry at that term to the houses and whole grass lands," &c., and by which Barron bound himself to flit and remove "at the expiry of this lease" without warning or process of removing. He founded on the Acts 1660, cap. 39, and 1693, cap. 24, as showing that the term of Whitsunday had been fixed for all future time to be the 15th May. He also referred to the Act "for regulating the commencement of the year, and for correcting the calendar now in use"—24 Geo. II., cap. 23, sec. 6.

The respondents averred that according to the custom of Scotland, and at all events of Aberdeenshire, the term of Whitsunday in agricultural leases was held to mean the "old term," the 26th of May in any year, and Martinmas the old term of Martinmas or 22d November, and that the lease in question had been entered into on that understanding; also that Mr Barron had only obtained entry to the farm upon the 26th of May 1866, and that consequently his representatives were entitled under the lease to remain until the 26th of May 1885. The suspender denied this allegation and also the alleged custom founded on.

The complainer pleaded—"(1) The respondents, the representatives of the deceased James Barron, not having given notice to the complainer of their intention to make a claim for compensation under the Agricultural Holdings Act within four months of the determination of the tenancy, they are not entitled to compensation under the Act, and the appointment of the respondents George Mitchell and George J Walker as referees is void and null. (3) *Esto*, that the late James Barron did not get actual entry to the farm until 26th May, the complainer being a singular successor is entitled to have the lease construed and enforced as between him and the respondents according to its legal meaning, and is not committed by such acting of the former proprietor as might have formed a personal bar against him. (4) Parole evidence of custom is not admissible, with the view of controlling the written lease, or of showing that the expressions Whitsunday and Martinmas were used by the parties with reference to the old style."

The respondents pleaded—"(4) The respondents having given due notice of their intention to claim for compensation under the Agricultural Holdings Act, are entitled to have the note refused, with expenses."

Interim interdict was granted, and thereafter the Lord Ordinary on the Bills (TRAYNER) suspended the proceedings and declared the interdict perpetual.

"*Note.*—The respondents were tenants of certain lands under a lease which terminated at Whitsunday 1885. On 21st January last they gave notice to the complainer (their landlord) under sec. 7 of the Agricultural Holdings (Scotland) Act 1883 of a claim for compensation in

respect of unexhausted improvements, and followed up their notice by appointing a referee to act for them in ascertaining the amount of the compensation. The complainer having failed to nominate a referee on his part, the respondents applied to the Sheriff in terms of the statute to appoint a referee, and the judgment of the Sheriff-Substitute, appointing a referee as craved, is set forth at length in the fourth statement for the complainer. Thereupon the complainer brought the present suspension to have the referees interdicted from proceeding with the reference on the ground, mainly, that as the respondents had not given the statutory notice of their claim, their right to compensation had been lost, and that the reference was therefore useless and illegal.

"The competency of the suspension and the merits of the question raised between the parties depend upon whether the respondents gave the necessary notice as required by the statute. The statute provides (sec. 7) that 'a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing of his intention to make a claim for compensation.' The respondents' lease terminated at Whitsunday 1885, and their notice was given on 21st January last, being less than four months prior to 15th May. But they maintain that the words 'determination of tenancy' mean the time at which a tenant is bound to quit the actual possession of his farm, and as they were not bound to do this until the 26th of May, their notice was in time. They allege that although the lease bears that it shall terminate at 'Whitsunday 1885,' yet according to universal custom this means not the 15th but the 26th of May.

"The statute defines (sec. 42) 'determination of tenancy' as follows—'the termination of the lease by reason of effluxion of time, or from any other cause.' The termination of the lease therefore is the point of time four months before which the notice by the tenant must be given. The lease in question terminated, according to its own expression, at 'Whitsunday 1885.' I do not regard that expression as open to construction. Whitsunday has been fixed by statute (1690, cap 39, and 1693, cap. 24) to be the 15th of May, and the general and popular notion as to the term of Whitsunday, I had thought, was quite conform to the statutory declaration. The parties having used in their lease a well-known and well-defined term, must be presumed to have used that term in its ordinary and generally accepted sense, and I am of opinion that proof is not admissible to qualify the language used, or to show that it meant something else. Especially is such proof inadmissible in a question with the complainer, who is a singular successor, and was not a party to the deed sought to be modified or explained. On the whole matter I am of opinion that the determination of the respondents' tenancy, in the meaning of the Act, was the 15th of May, and that the notice given did not comply with the statutory requirement. I am therefore against the respondents both on the preliminary question of competency and on the merits."

The respondents reclaimed.

On 16th December the Second Division, after hearing counsel, allowed parties, before answer, a proof of their averments, the opinion of the Court being delivered by

The Lord Justice-Clerk—"In this case, which raises a rather important and general question under the Agricultural Holdings Act, we have come to the conclusion that without some further evidence we are not in a position to deal satisfactorily with the questions that have been raised. As the matter is one of general importance we have thought it right to give the parties an opportunity of proving their respective averments upon that which truly is the question at issue. The Agricultural Holdings Act limits the time within which the tenant's claim must be lodged. The provision in section 7 is:—'The tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation.' Now, the question in this case is—'What is the true construction of these words as applied to the lease in question?' The averment of the parties on that matter is that in point of fact the notice was not given within four months of Whitsunday—that is, the 15th of May. What the parties aver on this subject is in the 5th statement of the condescendence, and the reply to that statement. Perhaps the most important part of the statement is the reply in which it is said:—'Explained that under said lease the respondents' predecessor only obtained entry to the said subjects on the 26th of May 1866, and that they were entitled to occupy the said lands and subjects under said lease until 26th May 1885. Explained further that by custom which was and is universal in Scotland—at all events in the county of Aberdeen—where no express stipulation was made to the contrary, the terms of Whitsunday and Martinmas are understood to mean the old terms known by the same names, viz., 26th May and 22d November, with reference to the entry and removal of tenants. The said custom was well known to the parties when entering into said lease, and the said lease was entered into in reference thereto. The respondents in point of fact continued to possess the subjects in question until 26th May 1885, and the complainer had not and has not asserted any right to take possession of said subjects prior to that date.' What the defender says with reference to that explanation is this:—'With reference to the explanation in the answer, denied that the said late James Barron only obtained entry to the said subjects at 26th May 1866, and explained that he was tenant and occupant of the farm in question continuously from Whitsunday 1839 down to the date of his death on or about 18th October 1881. The alleged universal custom is denied.' How far proof of custom is or is not competent to affect the conditions of this contract of lease is a matter which I do not think we need at present determine. The question here is not what the terms of Whitsunday and Martinmas mean. The controversy is with reference to this question—What was the determination of this contract of location or lease with reference to the Agricultural Holdings Act? Now, with regard to that matter I think it is exceedingly important to know how the parties acted up to that time, and consequently I should propose that before further answer we allow both parties a proof of their respective averments on

that statement and answer—statement 5 and the answer thereto. That is the opinion of the Court."

Thereafter the parties by joint-minute made the following admissions as to the facts, on which proof was allowed, and craved the Court to hold the same as proof in the cause:—"DARLING for the suspender, and SALVESEN for the respondents, concurred in stating that they admitted, and hereby admit, that it is and has always been the custom throughout Scotland, with the exception of the counties after mentioned, that where the terms of Whitsunday and Martinmas are the stipulated terms of entry and removal of agricultural tenants, and there is no stipulation to the contrary, the actual entry and removal take place at 26th May and 22d November respectively; but that in Fifeshire, Kinross-shire, and Clackmannanshire the actual entry and removal take place at 15th May and 11th November respectively, and that in Stirlingshire and in that part of the county of Perth which adjoins said fore-mentioned counties, and in part of Lanarkshire, the custom varies, the actual entry and removal of tenants, however, taking place in the majority of cases on 15th May and 11th November, where the terms of Whitsunday and Martinmas are the stipulated terms of entry and removal, and there is no stipulation to the contrary.

"DARLING for the suspender further admitted, and hereby admits, that the late James Barron obtained entry to the subjects in question on 26th May 1866; that the respondents continued to possess the subjects in question until 26th May 1885, and that the suspender did not, before this action was raised, assert any right to take possession of said subjects prior to that date, further than by giving notice to remove at the term of 'Whitsunday 1885,' said notice having been given on 13th March 1884.

"SALVESEN for the respondents admitted, and hereby admits (but under reservation of all competent objections to the relevany), that it is and has been the general rule in Aberdeenshire, as well as throughout Scotland, in matters of legal process, such as warnings to remove from subjects of an agricultural nature, to make the forty days' warning prescribed by the Act of Sederunt of 14th December 1756 terminate at or prior to 15th May in case of a Whitsunday removal, and at or prior to 11th November in case of a Martinmas removal, although the actual removal did not take place until the 26th of May and 22d of November respectively."

The reclaimers argued—In this case the lease terminated at the term of Whitsunday, but that term was not the 15th of May but the 26th of May. It was the custom of the part of the county where the farm was situated that the leases of all agricultural subjects began and came to an end on the 26th of May, if the term of Whitsunday was the term spoken of in the lease. Here it was quite evident that the parties had acted in accordance with that custom, as Barron did not get entry to the subjects until the 26th of May 1866. The lease was for a period of nineteen years, and therefore he was entitled to retain the subjects until the 26th of May 1885. Under the Agricultural Holdings Act the determination of the tenancy meant the time when the lease and occupation came to an end—*Cameron* v. *Scott*, Dec. 7, 1870, 7 Macph. 233. If it was made plain that the parties by the term Whitsunday meant the 26th of May, and the lease was open to construction, there was no stopping short of the conclusion that any competent evidence can be used for the purpose of that construction. The term Whitsunday was open to construction—*Cuthbertson* v. *Lowes*, July 20, 1870, 8 Macph. 1073. The Acts of 1690 and 1693 did not really alter the term of Whitsunday. They merely made it a fixed term instead of a moveable one, as it had been before 1690, and therefore parties were entitled to make any bargain they liked, and if by the custom of the country and the conduct of the parties it was shown that the parties to the lease meant the 26th and not the 25th of May, they were not barred by these Acts from doing so. That was the case here, and therefore the notice of a claim having been made on the 21st January had been timeously given.

The respondent argued—Even in a question with the original granter of the lease there could not be shown by proof outside the lease to make it appear that the 26th of May was meant. Here the question was with an heir of entail, who was not the original granter, and there could be no proof as to what was the intention of the parties, because an heir of entail did not come fully into the position of his predecessor in the entail. All question upon the meaning of the term Whitsunday was barred by the Act of 1690, which laid down that the term of Whitsunday was after that date to be 15th of May in any year. The Act of Geo. II. did not alter this. The expiry of the lease was to be at the term of Whitsunday 1885—that is, on the 15th of May 1885. The notice of claim was not sent until the 21st January, and therefore was not timeously made. There might be a distinction between the definition of a word in ordinary language and the definition given in a statute—*The Master, &c., of the Hospital of St Cross* v. *Lord de Walden, &c.*, June 12, 1795, 6 Dunn and East. 338; *Smith, &c.* v. *Wilson*, June 4, 1832, 3 Barn. and Adolp. 728. Although the tenant did stay on till the 25th May 1885, that was merely possession which was allowed for his convenience, and he was not really the tenant—*Stivart* v. *Earl of Cassillis*, December 21, 1811, F.C.; *Miller* v. *Robertson*, November 8, 1878, 6 R. 15; *Waterston* v. *Stewart*, November 22, 1881, 9 R. 155; *Hockin* v. *Cooke*, 4 Dunn and East. 314; *O'Donnell* v. *O'Donnell*, November 7, 1884, 13 Irish L.R., C.D., 82.

At advising—

LORD JUSTICE-CLERK—The question that we have to decide in this case is one of considerable interest, but I shall state my opinion shortly upon it, as I do not think that it requires much elaboration.

The question raised in the case relates to a claim made under the Agricultural Holdings (Scotland) Act of 1883 for compensation for permanent improvements made by the tenant during the period of his tenancy. By that statute it is necessary for any tenant who is claiming compensation to give notice to his landlord of his intention to do so at least four months before the termination of his lease, and the question here is, whether that necessary notice was given four months before the termination of the lease, and that raises the question

when did the tenancy of the farm come to an end?

The tenancy commenced in 1866, and was to be for nineteen years. The entry was to be at Whitsunday 1866, and therefore the lease terminated at Whitsunday 1885. Now, the term of Whitsunday is the 15th of May, but it is said that in this case the tenancy only commenced upon the 26th of May 1866, and not upon the 15th—that is to say, that by the custom of that part of the country in which this farm is situated, the 26th of May was by custom held to be the Whitsunday term for entry and for termination of the agricultural lease. It is admitted that the notice from the tenant of his intention to claim compensation was made four mouths before the 26th of May, but not four months before the 15th; the question therefore is, did the tenancy terminate before the 26th of May, because if it did, then the notice was not properly given?

On the authorities the result is, that the 15th day of May is the term of Whitsunday, and where Whitsunday is mentioned as a term of entry or of the termination of a lease of an agricultural subject, that expression means the 15th of May and nothing else. If the tenancy is to be regulated solely by the words of the lease, its termination must be upon the 15th of May, and the 26th is altogether beyond the operation of the lease. It is said, however, that even if that is true, and that the expression Whitsunday 1885 had the signification that the lease ended on the 15th of May if there was nothing else, yet by the custom of the country the 26th and not the 15th of May is taken as the term of Whitsunday. If that allegation had stood alone we could not have given effect to it. But that is not the only thing that affects the question here. It is admitted by both parties that possession was given on the 26th of May 1866. It is not said that under the lease the tenant could have demanded entry to his farm sooner, and I do not think that that would have been possible, because I think that the fact that the tenant did not enter upon the occupation of the farm till the 26th May showed that both parties had agreed that the 26th was to be the time of entry. Therefore I think it is quite plain that the lease did not terminate until the 26th of May 1885, because the tenant was entitled to a lease for nineteen years and that did not expire till the 26th of May 1885. To plead custom is one thing, but to plead that the actings of parties showed that they were proceeding upon a recognised local custom is quite another thing. The question is, at what time did Barron's right as tenant cease. It did not and could not cease until the 26th of May 1885, because then and only then did the nineteen years for which the lease was granted expire. I think that it is shown that the parties had agreed that the custom that the 26th of May should be regarded as the Whitsunday term should apply to this contract as it applied to other contracts about agricultural subjects in the same part of the country. That is shortly the view at which I have arrived, and therefore I am of opinion that the notice by the tenant was given in time. I do not agree with the opinion expressed by the Lord Ordinary. I do not think that the authorities at all conflict with the view I have expressed. The Act of 1690 only made the moveable term of Whitsunday into a permanent one, but that left it within the powers of contracting parties to show what the expressions used in the contract really meant.

Lord Young—I am of the same opinion. The question we have to decide is one of fact, although in connection with it we have to face a legal question. The question of fact is, when according to the contract of lease between the parties did the respondent's tenancy determine, *i.e.*, come to an end? We have the lease before us which was entered into between the respondent and his landlord, that is, the suspender's predecessor in title. I would wish to observe here that in my opinion the question before us is not in anyway affected by the fact that one of the parties to the contract was an heir of entail succeeding to an entailed estate. I think the question is exactly the same as if it was between the original parties to the lease. Now we have the lease here, and the only words of importance in it are these—after defining the limits of the farm to be let—"And that for the period of nineteen years from and after the term of Whitsunday Eighteen hundred and sixty six, which is hereby declared to be the term of entry under this lease." The parties are agreed that the effect of that language is to make the tenancy determine at Whitsunday 1885, and that term falls either on the 15th or the 26th day of May 1885. The question is, on which of these days did the tenancy determine.

Now, we know that the day which is now the 26th of May was formerly the 15th before the Act of Geo. II., and so we are accustomed to speak of these two days as Whitsunday old style and Whitsunday new style. Now, did the parties mean that the term of Whitsunday was to be Whitsunday old style or Whitsunday new style, viz., the 15th of May. The Act of 1690 does not affect the question. It is also a matter, not of legal knowledge, but within the knowledge of all who have to deal with such matters through Scotland, that the 15th of May is generally regarded as the term of Whitsunday. The Act of 1690 may have had a good deal to do in making that the general opinion through the country, but that is a mere incidental circumstance. In Aberdeenshire, where the farm which was the subject of this lease is situated, it is admitted by both parties that when they talk of Whitsunday in regard to agricultural subjects they mean Whitsunday old style, viz., the 26th of May, and not Whitsunday new style, the 15th of May, and there is nothing in the common law of Scotland or in any statute to prevent them meaning that when they talk of the term of Whitsunday. Well, did the parties to this case mean that? Not to encumber the question before us, I may say that I think they did mean that, and that it would have been enough for the determination of this question to say merely that they meant the 26th of May to be the date whenever they used the term Whitsunday in the lease either as a term of entry or of the determination of the lease. I think I would go rather further than I understand your Lordships are prepared to go as to the rule of law that parties engaged in a particular trade, and using language which is familiar to that trade, and which has a particular sense in the trade operations, when they use that particular language in the course of trade, presumably use it in the sense in which it is used

in the trade. But further, it is proved to demonstration in this case that the parties to this lease did mean by their language in this lease what it is conceded parties in similar circumstances do usually mean, because the tenant entered and took possession on the 26th of May 1866, and held the land as tenant for nineteen years from that date. Therefore upon the contract between the parties I think it quite plain that the farm was let for nineteen years from the 26th May 1866. This would have applied to a verbal lease for a year—the length of time does not matter. If the parties in their communings in regard to the lease for a year had used the expression Whitsunday, it would have been competent to refer the matter to the oath of the parties, and have oral evidence as to what they meant by the use of that term Whitsunday.

But we are not dealing with any mysterious matter. I am persuaded, as a judge is usually persuaded, that the meaning of the contract entered into between the parties to it was, that the lease was to run for nineteen years from the 26th May 1866, and that consequently it ended on the 26th May 1885. Well, the lease commenced on the 26th May and ended on the 26th May, and on that simple ground I am of opinion that we should decide the case in favour of the respondent.

I do not think the Act of 1690 has anything to do with it. The change made by that Act was just the change from the fluctuating ecclesiastical period to a fixed term. We have here a conventional term, and I think that is the term that the parties to this contract meant when they used the expression term of Whitsunday.

I am therefore of opinion that the case should be decided in favour of the respondent on two grounds—1st, That we have evidence by the admission of both parties that parties in the district in similar circumstances to those here mean by the term Whitsunday the 26th of May; and secondly, that it is proved that the parties to this contract meant that date by the expression "term of Whitsunday."

Lord Craighill—I have come to the same conclusion. I think that the true interpretation of the words in this lease, "term of Whitsunday," is the date of the 26th of May. If there had been within the lease such words as "by the term of Whitsunday 1866 we mean the 26th day of May 1866 to be the time of entry upon the farm," there is no doubt that the condition would have been quite a good one. There being no such words in the lease, then if no inference could be drawn from the conduct of the parties, the expression "Whitsunday" must be taken to mean the 15th of May. But although that is the meaning generally attributed to these words, still the words admit of such qualification as I have mentioned. That which the parties have said must be taken as imported into the lease. The parties have not indeed actually said it in the lease itself, but if we want an interpretation of the words in the lease the conduct of parties is the best interpretation that can be afforded.

The parties said in the lease "the term of Whitsunday 1866, which is hereby declared to be the term of entry under this lease." Now what was the day on which entry was to be obtained. Both parties have admitted that that day was the 26th of May 1866, and accordingly that was the day in which entry was obtained under the missives of lease, although the principal deed itself was not signed until June 1867. But that was very shortly after the tenant had entered upon the occupation of the farm, and both the landlord and the tenant must have been fully aware of their respective rights and duties under the lease. Just in the same way we must read the expression "term of Whitsunday" used in the lease in reference to the determination of the tenancy. If the tenancy did not begin until the 26th of May 1866, then it did not end until the 26th of May 1885. There was indeed no difficulty made when that period did actually arrive. The tenant remained on as a matter of course, and as nothing to the contrary was said, we must take it that he remained with the landlord's sanction until the 26th of May. It appears, then, when we have those facts before us, that the 26th must be taken to be the true meaning of the words used in the lease "term of Whitsunday."

Lord Rutherfurd Clark—I am of the same opinion.

The Court recalled the Lord Ordinary's interlocutor, repelled the reasons of suspension, and refused the interdict craved.

Counsel for Suspender—Comrie Thomson—Darling. Agents—H. B. & F. J. Dewar, W.S.

Counsel for Respondents—D.-F. Mackintosh, Q.C. — Salvesen. Agent — Thomas M'Naught, S.S.C.

HOUSE OF LORDS.

Friday, May 14.

(Before Lord Chancellor Herschell, Lords Watson, Ashbourne, and Fitzgerald.)

MAGISTRATES OF GLASGOW *v.* COMMISSIONERS OF POLICE OF HILLHEAD.

(*Ante* vol. xxii. p. 580, and 12 R. 864.)

Road—Bridge—Bridge partly in one Burgh and partly in another, and Accommodating Traffic of Other Places—Liability for Maintenance—Roads and Bridges Act 1878 (*secs.* 37 *and* 38).

Section 37 of the Roads and Bridges Act 1878 provides that "where a bridge is not situated wholly within one county or burgh, the expense of maintaining, and if need be of rebuilding the same shall, failing agreement, be a charge equally against the trustees of the county or counties and local authority or authorities of the burgh or burghs within which it is partly situated."

By section 88 it is provided that "Whereas there are or may be bridges in Scotland which accommodate the traffic not only of the county or counties or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county or of other counties and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of