second, the failure of the defenders to claim and establish their right to damages, and third, as to the alteration which must be made on the form of the Sheriff-Substitute's interlocutor, I adopt the views expressed by Lord Salvesen.

LORD DUNDAS was absent, being engaged in the Extra Division.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff dated 25th July 1913: Find in fact and in law in terms of the findings in the interlocutor of the Sheriff-Substitute dated 5th April 1913: Recal said interlocutor of 5th April 1913 in so far as it assoilzies the defenders from the conclusions of the action, in lieu of which dismiss the action: *Quoad ultra* affirm said interlocutor, and decern."

Counsel for the Appellants (Defenders)—Constable, K.C.—Duffes. Agents—J. S. & J. W. Fraser-Tytler, W.S.

Counsel for the Respondents (Pursuers)—The Solicitor-General (Morison, K.C.)—Fenton. Agents — Simpson & Marwick, W.S.

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*Thursday, December* 17.

## SECOND DIVISION.

[Lord Cullen, Ordinary.

## ININMONTH *v.* BRITISH ALUMINIUM COMPANY, LIMITED.

*Landlord and Tenant—Lease—Resumption of Lands—Notice to Tenant of Intention to Resume.*

A farm lease reserved to the landlord "the right to sell or resume possession of any part or parts of the lands hereby let at any time, . . . the tenant to receive a proportionate deduction from his rent and surface damage to crops as, failing agreement, the same may be fixed by arbiters mutually chosen." It contained no provision with regard to notice to the tenant by the landlord of his intention to resume. On the landlord's selling a portion of the lands so let, the tenant brought a note of suspension and interdict against the purchasers to interdict them from entering on any portion of the lands let to him, on the ground that, as he averred, the landlord had not given him notice of his intention to resume them. The Court *refused* the note, *holding* that even if notice had not been given, the provisions in the lease for a deduction from the rent and compensation for damage caused by resumption impliedly excluded any right in the tenant to notice.

George Ogilvie Kininmonth, Gedsmiln, in the parish of Burntisland and county of Fife, *complainer*, brought a note of suspension and interdict against The British Aluminium Company, Limited, London, *respondents* (*reclaimers*), for interdict against the respondents entering on any portion of certain farm lands tenanted by him.

The complainer averred that the landlord had sold a portion of the lands to the respondents without having given to the complainer definite and sufficient notice that he intended to resume them; and pleaded, *inter alia*—"(3) Interdict should be granted in respect (*a*) that no valid notice of resumption has been given to the complainer; (*b*) that the said subjects cannot be resumed until after the expiry of a reasonable period of notice."

The respondents pleaded, *inter alia*—"(1) The complainer's averments being irrelevant, interdict should be refused.

The lease reserved to the landlord "the right to sell or resume possession of any part or parts of the lands hereby let at any time, . . . the tenant to receive a proportionate deduction from his rent and surface damage to crops as, failing agreement, the same may be fixed by arbiters mutually chosen." It contained no provision with regard to notice to the tenant by the landlord of his intention to resume.

On 31st January 1914 the Lord Ordinary on the Bills (ANDERSON) passed the note, and on 13th May 1914 the Lord Ordinary (CULLEN), before whom the case had come to depend, allowed a proof before answer.

The respondents reclaimed, and argued—The landlord had given reasonable notice, and it had been accepted by the complainer. In any event the complainer was not entitled to notice, for apart from the lease there was no agreement between him and the reclaimers as to notice, and the lease itself did not provide for it. *Sharp* v. *Clark*, January 24, 1807, Hume 577, was referred to.

Argued for the complainer—The landlord had not given the complainer definite and sufficient notice. The complainer was entitled to reasonable notice in order that he might have time to look out for and get other land to take the place of the land which was to be resumed. The necessity of notice was implied in the resumption clause, which was susceptible of construction, and it should be construed equitably. *Trotter* v. *Torrance*, May 27, 1891, 18 R. 848, 28 S.L.R. 651, was referred to.

At advising—

LORD SALVESEN—The first question in the case is whether the landlord's right to resume possession required as a condition-precedent that he should give notice to the tenant of his intention to do so. There is no provision in the lease itself with regard to notice, and I cannot see any ground for the view that the absolute right for which the landlord stipulated should be subject to an implied limitation. In the ordinary case it would no doubt be in the landlord's interest not to resume possession until the crop had been reaped, for he has to pay surface damage to crops as the condition of his right to resume; and I think that this provision in favour of the tenant impliedly excludes any right to notice. Whatever the state of the land may be at the time

resumption takes place the tenant must be compensated, and the compensation will be large or small according to whether the land is in crop or has been denuded of its crop in ordinary course. The complainer's contention was that he was entitled to notice (he was unable to indicate whether three, six, or twelve months' notice) in order that he might have time to look around and to get other land to work along with what he continued to hold under his lease. In my opinion this cannot have been in the contemplation of the parties, nor is it to be readily implied. The assumption of the lease is that the tenant will be fully compensated if he receives compensation for surface damage to crops and a deduction from his rent proportionate to the area of the land resumed. Reasonable notice, which is what the complainer contends for, would be of little value for the purpose in question, as his ability to lease land in the district to take the place of any land resumed must necessarily depend on numerous causes over which neither party has any control.

It is, however, in my opinion, unnecessary to decide the case on the footing that the landlord was entitled to resume without notice, for a correspondence between the parties and their agents has been produced which is admitted to be accurate and complete. Now it appears from that correspondence that the complainer got notice on 23rd September 1913 that the land afterwards sold to the respondents and the sale of which they were at that time negotiating with the landlord would be resumed at the term of Martinmas 1913. [*His Lordship then referred to the correspondence, and found that the complainer had in fact received reasonable notice.*]

The LORD JUSTICE-CLERK and LORD GUTHRIE concurred.

LORD DUNDAS was not present at the hearing, being engaged in the Extra Division.

The Court recalled the interlocutor of the Lord Ordinary, sustained the first plea-in-law for the respondents, and refused the note.

Counsel for the Reclaimers (Respondents)—Blackburn, K.C.—C. H. Brown. Agents—Macandrew, Wright, & Murray, W.S.

Counsel for the Respondent (Complainer)—Macphail, K.C.—R. C. Henderson. Agent—James Scott, S.S.C.

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# HIGH COURT OF JUSTICIARY.

*Friday, December* 18.

(Before the Lord Justice-General, Lord Dundas, and Lord Anderson.)

## SHOTTS IRON COMPANY, LIMITED *v.* THOMSON.

*Justiciary Cases—Mine—Coal Mines Act* 1911 (1 *and* 2 *Geo. V, cap.* 50), *sec.* 86—*Coal Mines General Regulations, dated July* 10, 1913, 129 (*c*) *and* 137 (*b*)—*Electric Cables—Removal of Unprotected Cable in Use prior to June* 1, 1911, *in Ventilating Road to Mechanical Haulage Road.*

The Coal Mines General Regulations 1913 provide that in mechanical haulage roads electric cables, other than flexible cables, shall be protected by metallic covering, but (Regulation 137 (*b*)) that this shall not apply until 1st January 1920 to "any apparatus which was in use before 1st June 1911," and which complied with the regulations in force at that date.

An electric cable unprotected by metallic covering which had been in use in the mine before 1st June 1911, and complied with the regulations then in force, was removed from a ventilating road in the mine and installed in a mechanical haulage road.

*Held* that owing to its change of position in the mine the cable was no longer apparatus in use before 1st June 1911 within the meaning of the Act.

*Question* whether the exemption provided by Regulation 137 (*b*) in favour of a cable in use prior to 1st June 1911 could ever apply to such a cable when removed to another position in the mine.

The Coal Mines Act 1911 (1 and 2 Geo. V, cap. 50), section 86 (1), enacts—"The Secretary of State may by order make such general regulations for the conduct and guidance of the persons acting in the management of mines or employed in or about mines as may appear best calculated to prevent dangerous accidents and to provide for the safety, health, convenience, and proper discipline of the persons employed in or about mines." By section 90 the owner, agent, and manager of a mine where a contravention of the regulations occurs is made guilty of an offence against the Act.

The General Regulations made under the Coal Mines Act 1911, and dated 10th July 1913, enact—Regulation 129 (*b*)—"All cables, other than flexible cables for portable apparatus and signalling wires, shall comply with the following requirements . . . (*c*) Concentric cables, or two-core or multicore cables, protected by a metallic covering, or single core cables protected by a metallic covering, which shall contain all the conductors of the circuit, shall be used (i) where the pressure exceeds low pressure; (ii) where the roadway conveying the cables is also used for mechanical