Tuesday, November 28.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

CHRISTIE *v.* FIFE COAL COMPANY, LIMITED.

Lease—Mineral Lease—Term of Entry—Contract—Agreement to Enter into Lease without Specifying Date of Entry—Process—Compromise of Action.

The landlord and tenant of a coal field agreed in writing to compromise an action between them as to the terms and validity of the lease by entering into a new lease.

Held that the omission in the agreement to specify the date at which the new lease was to commence did not invalidate the compromise.

Opinion (*per* Lord Justice-Clerk and Lord Moncreiff) that where no term of entry is specified in a written agreement to enter into a mineral lease, the presumption is for immediate entry, and the lease will run from the date of the contract.

Robert Christie, heir of entail in possession of the estate of Durie, let to the Fife Coal Company, Limited, two coalfields on the estate of Durie. The tenancy of the West Field originally stood on a lease beginning in 1879 and ending at Martinmas 1907, but it was modified as regards amount of royalties, &c., by a lease dated in 1888, which extended the term of endurance to Martinmas 1917. The tenancy of the East Field depended entirely on the second lease of 1888.

Robert Christie died on 27th August 1896, and was succeeded in the entailed estate by his son Robert Maitland Christie. On 26th October 1896 the Fife Coal Company intimated that they gave up the lease of the East Field as at Martinmas 1897, and on the following day the renunciation was accepted on behalf of Mr Christie, but on the footing that it included the clauses making alterations on the lease of the West Field. The Fife Coal Company, on the other hand, maintained that their intimation referred solely to the East Field, and that the clauses in the lease of 1888 referring to West Field remained unaltered.

Thereafter, on 24th February 1898, Robert Maitland Christie raised an action against the Fife Coal Company to have it declared that the lease of 1888 had been renounced and relinquished, and had terminated and come to an end wholly and in all the clauses therein contained at the term of Martinmas 1897, or alternatively to have it declared that Robert Christie as heir of entail was not entitled to grant the lease, and that the same was invalid and not binding on the pursuer, and to have the lease reduced. In this action the Fife Coal Company lodged defences.

After the case had been sent to the procedure roll, a meeting took place on 2nd September 1898 between the pursuer and the defenders in order to try and settle the points of difference between them. On that day the pursuer addressed and delivered to the defenders a letter containing an offer in the following terms:—"As arranged at the meeting with your directors to-day, I hereby agree to grant your company a new lease of the West Field under the following conditions:—(1) The termination of the lease to be at Martinmas 1922." The other conditions referred to the amount of royalties and wayleaves, but no mention was made of a term of entry. On the same date the defenders endorsed on the pursuers' letter a docquet agreeing to the conditions proposed by the pursuer, and wrote to the pursuer with a copy of his own letter and the endorsement. In their letter the defenders said—"As arranged between you and the chairman of the company, intimation of the withdrawal of the action by you against this company will be forthwith made, and I beg to confirm the arrangement he made with you that this company is to pay £50 towards your expenses in said action, this company to pay its own costs."

The pursuer acknowledged receipt of that letter in his reply of 5th September, which concluded thus—"On receipt of the £50 the withdrawal of the present action by me against your company will be forthwith made." He at the same time expressed the view that the lease agreed on was to commence to run from the date at which the old original lease of the West Field ended, viz., Martinmas 1907, and that until that date the company were bound to fulfil the obligations of the original lease. To this letter the defenders replied on 9th September dissenting from these views as quite erroneous. On 5th September the defenders sent the pursuer their cheque for the £50, and on the following day the pursuer wrote acknowledging receipt of their cheque, and added—"I have instructed my agents Messrs Mylne & Campbell to withdraw the present action raised by me against the Fife Coal Company." Some correspondence followed, in which each of the parties maintained their respective views of the agreement come to by the offer and acceptance of 2nd September, and ultimately the pursuer returned the cheque for £50.

Thereafter the defenders lodged a minute moving the Lord Ordinary (STORMONTH DARLING), on consignation of £50 being made by them, to dismiss the action on the ground that it had been compromised. The defenders put in answers opposing the motion, on the ground that either the agreement come to between the parties was that the action was to be withdrawn on the pursuer granting a new lease to begin at the expiry of the original lease of the West Field, or alternatively that there was no completed agreement between the parties for the settlement of the action.

On 15th March 1899 the Lord Ordinary pronounced the following interlocutor:—"Having considered the minute for the defenders and answers thereto for the pursuer, refuses the defenders' motion to dis-

miss the action: Finds neither party entitled to expenses in connection with said minute and answers, and of new appoints the cause to be put to the procedure roll."

Note.—"The defenders ask me to hold that this action was settled by offer and acceptance dated 2nd September 1898, and their motion is that on consignation by them of £50 I should dismiss the action.

"The parties met on that day, and there is no doubt that they intended to settle the action, and believed that they had done so, for on 6th September the pursuer accepted from the defenders a cheque for £50 as the stipulated contribution which they were to make towards his expenses, and instructed his agents to withdraw the action. But the parties very soon discovered that they were at variance as to the terms of settlement, and the cheque was returned. The question thus raised is one of construction of the offer and acceptance. If the interpretation of either party is clearly and undoubtedly right, the action has been settled on the terms so contended for. If, on the other hand, the document is ambiguous, the parties were not at one, and the action is not settled.

"It is necessary to consider what they were fighting about. The defenders were tenants of two coalfields on the estate of Durie. The tenancy of the West Field originally stood on a lease beginning in 1879, and ending at Martinmas 1907, but it was modified in certain particulars by a lease dated in 1888, which extended the term of endurance to Martinmas 1917. The tenancy of the East Field depended entirely on this second lease of 1888. In 1896 the defenders intimated that they gave up the lease of the East Field as at Martinmas 1897, and the pursuer accepted this renunciation, but on the footing that it included the clauses making alterations on the lease of the West Field. The defenders, on the other hand, maintained that their intimation referred solely to the East Field. This was the question raised by the action. Both parties agreed that the defenders were to be no longer tenants of the East Field, but they differed as to the instrument under which the defenders were to continue tenants of the West Field.

"That being the nature of the *lis*, the attempted settlement proceeded on the footing that a new lease of the West Field was to be granted on certain conditions, and was to terminate at Martinmas 1922. But it omitted to say when the new lease was to begin. The pursuer says that he understood it was to begin at Martinmas 1907 on the termination of the old lease of 1877. The defenders, on the other hand, say that they understood it was to begin as at Martinmas 1897 (when the tenancy of the East Field was relinquished) or at all events not later than Martinmas 1898, being the first term after the date of the settlement.

"Now, my impression is that the defenders' view is the more probable and reasonable of the two. But that is not enough to entitle me to hold that the parties were at one. For that purpose I should have to be satisfied that the pursuer's view was wholly and absolutely inadmissible. And I am not prepared to go so far as that. Both parties are to blame for leaving so important a point as the commencement of the new lease to inference and conjecture. The mere fact that the defenders are driven to suggest alternative dates is significant of the looseness with which the so-called agreement was drawn. I must therefore refuse the defenders' motion, but inasmuch as I think both parties responsible for the bungle, I shall find neither party entitled to expenses."

The defenders reclaimed, and argued—The question was, Did the parties enter into a compromise? It was quite plain that they did. A contract of compromise must be construed like any other contract. The question of compromise was quite distinct from the question, What were the terms of the settlement? The parties might differ as to the terms of the settlement, but the settlement was there all the same. It might be pointed out, however, that the Lord Ordinary thought their view of the terms of the settlement the more reasonable. The pursuer maintained that the disagreement between parties as to the date of the commencement of the lease vitiated the contract. This was not so. The want of a term of entry did not vitiate a tack. If not expressed the lease would be presumed to run from the date of the lease or the following term of Whitsunday or Martinmas—Stair, ii. 9, 26; Ersk. ii. 6, 24; Bell on Leases, i. 213; Hunter on Landlord and Tenant, ii. 204; Rankin on Leases (2nd ed.), 314; *Oliphant* v. *Peebles*, Dec. 4, 1629, M. 11,535; *Seton* v. *White*, Nov. 13, 1679, M. 15,173. On these authorities, therefore, if the lease were made in terms of the agreement of 2nd September, the lease would be valid. The compromise being in writing must be construed by its terms: it was incompetent to vary it by parole proof—*Hamilton & Baird* v. *Lewis*, Nov. 15, 1893, 21 R. 120. The action being compromised it ought to be dismissed.

Argued for pursuer—The Court must take into consideration the circumstances in which the action was compromised. The parties did not differ as to the meaning of the terms of the compromise; they differed as to the terms themselves. The defenders argued that in no case could the want of a term of entry vitiate a tack. But the authorities on which they relied were all based upon two ancient cases—*Oliphant*, *supra*, and *Seton*, *supra*. Neither of these cases had the least resemblance to the present. Both were cases in which the lease was followed by *rei interventus*. In the present csae there were no *rei interventus*. There had been no *consensus in idem*, and therefore no contract—*Lang* v. *Kerr, Anderson, & Co.*, Feb. 26, 1878, 5 R. (H.L.) 69. Even if there were a presumption that where no term of entry was mentioned in a lease, the lease ran from its date or from the next term thereafter, that presumption might be redargued. The correspondence and what passed at the meetings between the parties showed that the presumption did not apply in this case.

At advising—

LORD JUSTICE-CLERK—The parties in this case met for the purpose of settling the action, and they parted on the footing that they had done so; for the defenders sent a cheque for £50 for expenses of the action, which was part of the conditions of the settlement, and the pursuer received the cheque without objection on that footing. But the conditions on which the settlement were made were afterwards brought into question, and it is now contended for the pursuer that while an agreement was entered into for a new lease between him and the defenders on new stipulations he is entitled to put the date of entry of that lease at the year 1907. He does not maintain that there was any agreement to that effect, but only that there was no concluded agreement because there was no agreement as to entry. There is, as I think, no ambiguity in the documents which passed between the parties at the time as regards the granting of a new lease, or the terms and conditions of the lease, including its ish, which was to be the year 1922. The whole question turns upon the entry. It appears to me that if parties enter into a contract for a lease complete in all its details, but without any statement of the commencement of the lease, the necessary reading of that contract is that it is a lease from the time at which it is made, subject of course in the case of an agricultural lease to those specialties which the sequence of cultivation of an arable subject make necessary, which of course affect both entry and ish. The case of *Seton* v. *White* bears this out, and the view is in accordance with that indicated in the institutional writers, particularly Erskine. In this case, which deals with a mineral subject, I cannot see that there is any ground for holding that there was an unadjusted term of the contract. The agreement for a lease was complete, and there being no entry mentioned the presumption is for immediate entry. One of the parties cannot, by fixing an entry of his own, maintain either that there was no completed agreement or that the other party must accept his date as the binding one. In my opinion there was a completed agreement for a new lease, and that being so, it was an agreement for a new lease from its date, there being no other date in the documents constituting the agreement. If we are entitled to look at the surrounding circumstances, I think they tend in the same direction. For it was practically a changing of rates, the lessees being desirous of different rates from those in force. An agreement for rates to begin ten or a dozen years later can hardly be considered possible, not to say likely.

Although the interlocutor we are considering relates only to the question of compromise of the action, we were told in the course of the debate that parties were agreed that the Court should decide the question of agreement; and if that question is decided as I propose, it settles the other question also.

LORD TRAYNER—The parties to this case entered into negotiations for the settlement of their differences, which resulted in the pursuer writing to the defenders the letter dated 2nd September 1898. In that letter he states, "I hereby agree to grant your company a new lease of the West Field under the following conditions," and then sets forth the conditions. On same date defenders endorsed on the pursuer's letter a docquet agreeing to the conditions proposed by the pursuer, and wrote to the pursuer, with a copy of his own letter and the endorsement. In their letter to the pursuer the defenders said—"As arranged between you and the chairman of the company, intimation of the withdrawal of the action by you against this company" (*i.e.*, the present action) "will be forthwith made. I beg to confirm the arrangement he made with you, that this company is to pay £50 towards your expenses in said action, this company to pay its own costs." The pursuer acknowledged receipt of that letter in his reply of 5th September, which concluded thus—"On receipt of the £50 the withdrawal of the present action by me against your company will be forthwith made." He at same time expressed some views as to his meaning and intention in making the agreement of 2nd September, to which the defenders in course replied, dissenting from these views as "quite erroneous."

On 5th September the defenders sent the pursuer their cheque for the £50, and on the following day the pursuer wrote to the defenders acknowledging receipt of their cheque, and added, "I have instructed my agent to withdraw the present action." Some correspondence followed, in which each of the parties maintained their respective views of the agreement come to by the letter and acceptance of 2nd September, and ultimately the pursuer returned the cheque for £50.

The defenders craved the Lord Ordinary to dismiss the action on the ground that it had been compromised, and this the pursuer opposed, maintaining that the compromise was part of a composite arrangement under which a new lease was to be granted, and that as parties were not agreed, but differed essentially as to the terms or effect of that agreement, the agreement, including the compromise of the action, fell, and parties were relegated to the position in which they stood before the letter of 2nd September was written. The Lord Ordinary refused the defender's motion, and the present reclaiming-note has been presented against his interlocutor doing so.

I do not agree with the Lord Ordinary, but think, on the contrary, that the defenders were entitled to have this action dismissed.

It appears to me that a good deal might be said in support of the view that the arrangement as to the withdrawal of the action was separate from and independent of the agreement to grant a new lease. But I am content to take the case as the pursuer puts it, that the arrangement made by him with the defenders comprehended both the granting of a new lease and the with-

drawal of the action. The case then stands in this position. The parties differ as to what is the meaning and effect of the agreement of 2nd September. That cannot be determined in this case; there are no *termini habiles* on which on that question we could give effect to the contention or view of either party. There is to be a new lease—that is clearly enough agreed upon—but what its precise terms are to be must be settled on a construction of the writings of the parties, and that is not and cannot be within the conclusions of this action, which was in dependence before the new agreement was made. I cannot say that, as at present advised, I should have any difficulty in saying what the new agreement was, but I refrain from expressing any opinion upon it further than this, that I do not regard the omission in the agreement to specify a date as the date of the commencement of the new lease is at all a fatal objection to its validity. But I am clear that there was a concluded agreement between the parties on 2nd September, which included an agreement to compromise this action. It was in fact compromised, and ordered by the defender to be withdrawn. I therefore think the present action should be dismissed, leaving to the parties to take such measures as they please with regard to the carrying out of the arrangement for a new lease.

LORD MONCREIFF—The question which we have to decide is, whether, as averred in the minute for the defenders, this action was settled by the parties. I am of opinion that it was, and that, as arranged, the pursuer is bound to take the action out of Court.

The first thing to observe is that the compromise was committed to writing. The writing consisted of (1) a proposed agreement signed by the pursuer, and adopted by him as holograph at a meeting between the parties on 2nd September 1898, (2) an acceptance by Mr Charles Carlow on behalf of the defenders on the same day by a holograph docquet written upon the pursuer's offer.

It is next to be observed that whatever may be the legal construction of this agreement, both parties considered that they had compromised the action, because at the same meeting it was arranged between the pursuer and the chairman of the defenders' company, as part of the transaction, that the action should forthwith be withdrawn, the company paying £50 towards the pursuer's expenses and paying its own costs.

In pursuance of this arrangement the defenders, on 5th September 1898, sent the pursuer £50, of which he acknowledged receipt on the following day, and added—"I have instructed my agents, Messrs Mylne & Campbell, to withdraw the present action raised by me against the Fife Coal Company."

Now, however, the pursuer declines to withdraw the action, the reason alleged being not that he was misled into entering into the contract or compromise, but that he puts a different construction upon the written contract from that which the defenders maintain.

This does not seem to me to be a relevant answer to the defenders' demand that the action should be withdrawn. The pursuer may be right and the defenders may be wrong as to the construction of the contract, but it remains that they have entered into a contract, and if they differ as to its legal effect, this must be decided by a court of law. In the meantime they have agreed that this action shall be taken out of Court.

This perhaps is sufficient for the decision of the case, and it might be the most favourable view for the pursuer to dispose of it on this footing, which would leave it open to the pursuer, if the defenders seek to enforce the agreement, to show that his construction of it is the correct one. But I am also prepared to hold that the construction which the pursuer seeks to place upon the agreement is inadmissible.

He catches at the chance omission that no term of entry of the new lease to be granted is specified in the agreement. It is his own writ, and should in doubt be construed in the way least favourable to him. But looking to the circumstances in which it was entered into, and the matters in dispute in the action which it was intended to settle, I think it is absolutely certain that the new lease which the pursuer undertook to grant was to be granted at once, and was to take the place of and supersede the existing lease of the west mineral field.

What the pursuer was really trying to effect by the action was to get rid of certain modifications of the royalties payable for coal and dross in the West mineral field under the original tack of 1879.

Without going into particulars, the royalties mentioned in the agreement were a mean between those to which the pursuer wished to revert and those which the defenders maintained they were entitled to continue to pay under the lease of 1888. This shows pretty plainly that the agreement was a compromise of the claims of parties *hinc inde*, and accordingly the defenders' contention is that the settlement was to come into effect immediately.

It is sufficient merely to state the pursuer's view to show how untenable it is. His contention is that the new lease which he agreed to grant to the defenders' company was not to commence for nine years, viz., not till Martinmas 1907. What does this involve? Apparently that the defenders should for nearly ten years give up everything for which they were contending in this action on the chance that in 1907 the pursuer, who is an heir of entail, would be alive and in a position to fulfil his undertaking; and lastly, that the rates which they undertook to pay would at that somewhat remote date be reasonable rates. The choice lies between a lease to commence at once (or at Martinmas 1898, it matters little which), or at Martinmas 1907—there is no intermediate time suggested. I feel no hesitation in saying that if it is necessary to choose between the two views, the view contended for by the pursuer is absolutely untenable, and cannot have been the true intention of the parties.

Much was made of the absence in the agreement of the term of entry. That does not offer any impediment in law. In the case of an agricultural lease, where no term of entry is specified, the law implies that the following term should be taken. This being a mineral lease, I see no reason why the new adjustment of conditions should not commence at once. I understand that the defenders are willing to take Martinmas 1897 if necessary, which if anything would be more favourable to the pursuer, but that is a matter of detail. On the whole matter I am of opinion that the Lord Ordinary's interlocutor should be recalled, and the action dismissed in respect of the settlement.

LORD YOUNG was absent.

The Court recalled the interlocutor reclaimed against, dismissed the action, and decerned.

Counsel for the Pursuer—H. Johnston, Q.C.—Graham Stewart. Agents—Mylne & Campbell, W.S.

Counsel for the Defenders — W. Campbell, Q.C.—John Wilson. Agents—Davidson & Syme, W.S.

Tuesday, November 28.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

LAMBERTON *v.* AIKEN.

Bill of Exchange — Essentials of Promissory-Note — Sum Certain—Interest—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *secs.* 9 (1) *a and* 83 (1).

By section 9 (1) *a* of the Bills of Exchange Act 1882 it is provided that the sum payable by a bill is a sum "certain within the meaning of the Act, although it is requested to be paid with interest." By section 83 (1) it is provided that the sum payable under a promissory-note is "a sum certain in money."

The following letter: — "James M'Cracken, Esq.—Dear Sir—We beg to acknowledge having received from you the sum of £250 sterling, and we jointly and severally bind ourselves, our heirs and successors to make payment of this sum together with any interest that may accrue thereon" [Signed through a penny stamp]—*held* not to be promissory-note, on the ground that neither the rate of interest nor the date of payment was specified on the face of the document, and that accordingly the sum payable thereunder was not "certain" in the sense of the Bills of Exchange Act.

This was an action at the instance of Mr William C. Lamberton, secretary and director of Donaldson Aiken & Scott, Limited, shipbuilders, against James Aiken and others, shareholders and directors in that company, concluding for payment by each of the defenders of the sum of £63, 3s. 6d. The pursuer averred that at the end of June 1898, the company being in financial difficulties, he and the four defenders arranged to procure an advance from the bank of the sum of £250 upon their joint and several personal guarantee, and that the following letter of obligation was granted by them to Mr M'Cracken, the agent of a branch of the Clydesdale Bank :—

PI 21/11 98.

Commissioners of Inland Revenue 22, 11 Adjudged Duly Stamped 98.

22 11 £1 Penalty Paid 98.

Adjudication 1709 14 Nov. 98.

(STAMP.) Six Shillings and Three Pence.

Scotland 22 11 98

JAMES M'CRACKEN, Esq., Clydesdale Bank, Moore Place.

"157 West George Street, Glasgow, 1st July 1898.

"Dear Sir,

"We beg to acknowledge having received from you the sum of £250 stg., and we jointly and severally bind ourselves, our heirs and successors, to make payment of this sum, together with any interest that may accrue thereon.—We are, Yours faithfully,

(*Signed through a Penny Stamp.*) J. W. DONALDSON AIKEN. WILLIAM C. LAMBERTON. JAMES AIKEN. ARCHD. SCOTT."

The pursuer further averred that the sum of £250 had thereafter been handed over to him as the secretary of the company, and had been applied by him to the purpose for which it was borrowed; that on the 15th September 1898 he had repaid to the bank the sum borrowed, and that he had not been relieved of payment thereof by any of his co-obligants, the defenders.

The defender James Aiken lodged answers in which he claimed to set off a sum of £80, which he averred he had contributed to the pursuer in order to avoid the liquidation of the company. He averred with respect to the letter of obligation:—"The said document is a promissory-note, and is not stamped as such, nor is it capable of being stamped as such. The document has been after stamped since the present proceedings were commenced, but it has not been properly stamped."

The defender pleaded, *inter alia*—"(4) The said document, dated 1st July 1898, being a promissory-note and not stamped, or capable of being stamped as such, cannot be founded on, and this defender ought to be assoilized.

The Lord Ordinary (STORMONTH DARLING) on 24th May 1899 pronounced an inter-