

outside. That was the system which the consignees adopted and which the lorrymen fell in with. They were remunerated by the consignee for the performance of that duty. But that was not the duty for which the lorrymen were engaged by their employers.

The fourth finding in the case sets out quite clearly that the duties of the lorrymen were confined to carrying the goods to the premises and slinging the goods by tackle which was supplied by the consignee, who received the goods and stowed them by his own servants and not by servants employed by the carting contractor. Accordingly it appears to me that at the time when the accident happened the respondent was in reality engaged in performing the work of the consignee, and was not engaged in work for which he was employed and paid by his own masters.

The cases cited appear to me to have no bearing upon the present. The one which comes nearest to it is that of *Goslan v. James Gillies & Company*, 1907 S.C. 68. The reason for the decision there is quite plain when one sees that although the injured man was not when he met with his accident engaged in the work for which he was specially employed, he was engaged in performing his master's work and was merely rendering a helpful hand to his fellow employees in furthering his master's interests. The only peculiarity in this case is that the kind of work in which the respondent was engaged at the time when the accident befel him was the same as that for which he was employed; that the lorry on which he was injured was a lorry which belonged to his employer, and was driven by an employee of the employer. These facts seem to me to be wholly immaterial, for the ground of my judgment is that the respondent was not engaged in his master's business but in the business of the consignee at the time when the accident befel him.

Accordingly I propose that we should answer the question in the negative.

LORD JOHNSTON—I entirely concur with your Lordship. This case seems to me not to be covered by the case of *Goslan*, which is the only one cited on either side which really bears upon the question, but is in contrast, and I think that that contrast justifies an entirely different judgment. It is quite true that the servant here was doing in a sense the work that he was employed to do, but he was doing it as part of an arrangement which entirely altered his employment, for he was not doing merely his own work but the same work for one or more of his fellow employees in order to liberate them to do the work of another employer. He was, therefore, just as much as they were, because in concert with them, performing work not for his own master but for the consignee of the goods being delivered, which the consignee was bound to supply men to do for himself. Although therefore he was doing technically the sort of thing which he was employed to do, it seems to me that he was just as much as any of the other three doing work outside the scope of

his employment, and therefore I do not think that he is entitled to recover compensation from his proper employers.

LORD SKERRINGTON—I agree with your Lordship.

The Court answered the question in the negative and sustained the appeal.

Counsel for Appellants—Duffes. Agents—Warden & Grant, S.S.C.

Counsel for the Respondent—A. O. M. Mackenzie, K.C.—Young. Agents—Weir & Macgregor, S.S.C.

Friday, July 3.

FIRST DIVISION.

[Lord Hunter, Ordinary.]

LORD NINIAN CRICHTON STUART v. OGILVIE.

Lease—Statute—Construction—Power to Resume—Notice to Tenant—Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), sec. 18 (1) and (5).

The Agricultural Holdings (Scotland)

Act 1908, sec. 18, sub-sec. (1), enacts—

“Notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention to bring the tenancy to an end . . . (b) in the case of leases from year to year . . . not less than six months before the termination of the lease.” Sub-section (5)—“The provisions of this section relative to notice shall not apply to any stipulation in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes. . . .”

A landlord let a park for one year, and in the lease reserved “Power to resume, in whole or in part, the lands hereby let for any purpose whatever, except that of letting to another agricultural tenant, on giving one month's notice of his intention so to do to the tenant.” The landlord gave the tenant one month's notice of his intention to resume possession of the park, the purpose being to graze pedigree sheep belonging to himself.

Held that the enumerated purposes in sub-section 5 did not form a genus; that the resumption contemplated was covered by the words “other purposes,” and consequently that the notice was sufficient.

The Honourable Lord Ninian Crichton Stuart of Falkland, in the county of Fife, complainer, brought a note of suspension and interdict against John Barrie Ogilvie, farmer, Westfield Farm, Falkland, respondent, in which he prayed the Court to interdict the respondent from trespassing upon and grazing sheep or cattle in a certain park, called the Mansion-House Park, belonging to the complainer.

The complainer pleaded, *inter alia*—“(1) The respondent's occupation of said Mansion-House Park having been terminated, in terms of the minute of lease between the complainer and the respondent, the complainer is entitled to be protected against interference by the respondent with his right of possession thereof.”

The respondent pleaded, *inter alia*—“(4) In respect that the clause in said minute of lease founded on by the complainer, which purports to give the complainer power to resume possession on giving one month's notice of his intention so to do, is inept and of no force or effect, the note should be refused.”

The facts are given in the opinion (*infra*) of the Lord Ordinary (HUNTER), who on 27th June 1913 repelled the pleas-in-law of the respondent and granted interdict as craved.

Opinion.—“The complainer, who is the proprietor of the estate of Falkland, in the county of Fife, seeks to interdict the respondent, who is tenant of the farm of Westfield on that estate, from unlawfully entering or trespassing upon the park at Falkland House in said county known as the Mansion-House Park, belonging to the complainer, and from grazing sheep or cattle or other live stock in said park, or in any other way interfering with the complainer's possession thereof.

“By minute of lease between the parties, dated 21st and 24th January 1907, the park known as the Mansion-House Park, extending to 41 acres or thereby, was along with two other parks, possession of which was subsequently resumed by the complainer, let to the respondent for one year from Martinmas 1906 and from year to year thereafter. By the third article of this lease the complainer reserved to himself ‘Power to resume in whole or in part the lands hereby let for any purpose whatever, except that of letting to another agricultural tenant, on giving one month's notice of his intention so to do to the tenant,’ it being provided that the respondent should be entitled to compensation for any loss or damage sustained by such resumption.

“By letter dated 10th February 1913 and addressed to the respondent the complainer's factor gave notice that the complainer would resume possession of said park as at 31st March 1913. It was explained to respondent by letter, dated 21st February 1913, that the park was required for the grazing of pedigree sheep belonging to the proprietor.

“The respondent disputed the complainer's right to resume possession of the land, and proceedings were in consequence taken in terms of the Sheriff Courts (Scotland) Act 1907 to have him ejected. He was ejected and his live stock removed at his sight to one of his own parks. Notwithstanding this ejection the respondent replaced his cattle in the field in question, and on 10th April, and again on 11th April, the complainer caused the respondent and his stock to be removed. Hence the present proceedings.

“I think it clear that, so far as the terms

of the lease are concerned, the complainer was entitled to give the notice he did, and to resume possession of the park at 31st March 1913. The respondent, however, maintains that the clause in the lease which purports to give the complainer power to resume possession on giving one month's notice of his intention to do so is inept and of no force or effect. This argument is based upon the provisions of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64). It is provided by section 18 (1) of that Act that ‘... [quotes, *v. sup. in rubric*] ... ;’ and by (2) of the same section that ‘failing such notice by either party the lease shall be held to be renewed by tacit relocation for another year, and thereafter from year to year.’ According to the respondent's contention, this clause by implication prohibits contracting out, and incorporates into all year-to-year leases a condition that the tenancy shall not be terminated unless notice to terminate has been given six months before the termination of the lease by one of the parties to the other. I think that a good deal may be said against this view, particularly in a case like the present where the written lease is prior to the statute, and nothing is said therein as to express arrangements, lawfully entered into between landlord and tenant before the passing of the Act, becoming void or being modified by its provisions. In the view I take of the case it is not necessary for me to express a final opinion upon this matter. The complainer's counsel rested their argument mainly upon the terms of (5) of section 18 of the 1908 Act, which provides—“The provisions of this section relative to notice shall not apply to any stipulation in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes, or to subjects let for any period less than a year.”

“The question is whether other purposes referred to in that provision include grazing of pedigree sheep. The Solicitor-General, founding upon the rule of construction that general words following particular and specific words are restricted to the same genus as those words, maintained that the provision in sub-section 5 did not confer upon the landlord right to resume land on short notice where he proposed himself to use the land for agricultural or grazing purposes, but limited the right to purposes *ejusdem generis* with building, planting, and feuing. As regards this rule of construction, it is to be observed that, as Lord Kinneir said in the case of *The Admiralty v. Burns*, 1910 S.C. p. 531, at p. 536—‘It is a rule of construction only, that is to say, it is a canon which must be used to guide the Court in construing a written instrument in order to find out what is the true intent and meaning of the language used, and I think we must be cautious in applying it as if it were an abstract rule of law which could be used to force a meaning upon the words of the contract irrespective of other indications of what is the true intention of the parties.’

“As I read section 18 of the Act of 1908 I think that the intention of the Legislature was to allow unrestricted freedom of con-

tract between landlord and tenant where it is in the contemplation of both parties to a lease that the landlord, for his own purposes, may desire to resume possession of the land let. In the present case the purpose for which the complainer desired the park was one which, in my opinion, both parties might in entering into the contract contemplate as reasonably probable, and therefore covered by the terms of the provision. It would have been different if the landlord had availed himself of the clause as to notice with the intention of reletting the land to another tenant.

"A considerable amount of argument was submitted as to the regularity of the proceedings taken under the Sheriff Court Act 1907 for the removal of the respondent. If the view which I have expressed under the Agricultural Holdings Act 1908 be sound, I do not think that this matter is of any importance. In my opinion the respondent after 31st March 1913 had no right to possession of the subjects let to him, and was therefore not entitled to replace his cattle in the field in question whether he had been ejected in a regular or irregular fashion. I therefore repel the pleas for the respondent and grant the interdict craved."

The respondent reclaimed, and argued—The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), sec. 18 (1) (b), entitled the respondent to six months' notice. The complainer could not found on the exception contained in (5), as that provision dealt only with stipulations entitling the landlord to resume for building, planting, feuing, and purposes *ejusdem generis*. Grazing of pedigree sheep did not fall within the genus, which was confined to purposes non-pastoral and non-agricultural. *The Admiralty v. Burns*, 1910 S.C. 531, 47 S.L.R. 481, was distinguishable, as the enumerated purposes in that case did not form a genus at all.

Counsel for the complainer were not called on.

LORD PRESIDENT—The lease between the complainer and the respondent provides that the complainer should have power to resume the lands let for any purpose whatever except that of letting to another agricultural tenant. The complainer proposed to take advantage of that clause, and to resume possession of the lands in question for the purpose of grazing it himself in order to rear pedigree sheep, and it is not disputed that under his contract he is entitled to resume for that purpose. But it is said that by the Agricultural Holdings Act 1908, passed after this contract had been entered into, the purposes for which the complainer is entitled to resume the land are limited—in other words, that the statute has expressly altered the terms of the bargain between landlord and tenant here.

I cannot think that that effect was produced by the 5th sub-section of the 18th section to which we were referred. It provides that the landlord may resume in a case such as this for the purpose of "building, planting, feuing, or other purposes." Now it is quite true that the landlord does not pro-

pose to resume for building, planting, or feuing, but he does propose to resume for another purpose, and the question that was argued to us was this, whether or no the words "other purposes" are limited by the words which precede them to purposes *ejusdem generis*, according to the familiar rule of construction. I think that they are not, because, in the first place, I do not think that this clause in the Agricultural Holdings Act is one to which the rule of *ejusdem generis* applies at all, and that for the reason which was given by Lord Kinnear in the case of *The Admiralty v. Burns* (1910 S.C. 531), where he says—"The second observation is perhaps of more importance, and it is this, that if you are to limit general words by holding that they must cover only things that are *ejusdem generis* with preceding specific words, you must find that these specific words themselves are *ejusdem generis* with one another."

Now I cannot think that building, planting, and feuing are *ejusdem generis* with one another, and accordingly this clause of the Act of Parliament is not one to which the rule of construction applies. But I for my part go further and say that "other purposes" in the statute in question must clearly include "any purpose" which is a matter of express contract between the landlord and the tenant, even although it might not be *ejusdem generis* of words which we see in the Act of Parliament, and it would be out of the question to hold that an Act of Parliament could so seriously modify the contract—or rather delete or alter entirely the contract between landlord and tenant—as would be the case here if we were to hold that "other purposes" did not include a purpose which was made matter of express contract between the parties.

I therefore propose to your Lordships that we should adhere to the interlocutor of the Lord Ordinary.

LORD JOHNSTON—I agree in the conclusion to which your Lordship has come, for this very simple reason. You cannot, I think, reduce the purposes enumerated in sub-section 5 of section 18 of the Agricultural Holdings Act 1908, to any category other than this—if it can be called a category—that they must be purposes inconsistent with the continued occupation of the subjects by the tenant, and at the same time must be consistent with the good faith of the lease.

Now in this lease we have a power to the landlord to resume the lands or any part of them "for any purpose whatever," with the very express exception of that of letting to another agricultural tenant. Resumption for any purpose is inconsistent with the tenant's continued occupation. But if it is for the landlord's personal use, and not to enable him to re-let to another tenant, it is not inconsistent with the good faith of the lease. And therefore, in my opinion, the complainer is not in any way precluded by the terms of the enactment in question from exercising that right.

LORD SKERRINGTON—Section 18 (5) of the Agricultural Holdings Act 1908 (8 Edw. VII,

cap. 64) speaks of the resumption of land for "building, planting, feuing, or other purposes." These words seem to me to refer to a distinction which has always been familiar to lawyers between terminating a lease as regards either the whole or a part of the subjects let, on the one hand, and resuming either the whole or a portion of the subjects for some particular purpose. Accordingly it is essential to the idea of resumption that the landlord should have some definite purpose in view—I mean a purpose different from simply terminating a tenancy in order that he may be free to re-let the property to anyone else. The effect of section 18 (5) is that we must read this lease and see whether it contains a *bona fide* clause of resumption, or whether under the guise of resumption it authorises the landlord to terminate the lease on giving some short notice such as the law allowed prior to the Act of 1908, and such as it has been suggested that the Act of 1908 will not tolerate.

Now the clause in the lease is plainly a *bona fide* clause of resumption, because, although the purposes are extremely wide—"any purpose whatever"—the right of the landlord is so limited that he must not resume for the purpose of letting to another agricultural tenant. In other words, he must not resume for the purpose of terminating the lease.

Accordingly I agree with your Lordship in thinking that the Lord Ordinary was right, and that we should affirm his interlocutor.

The Court adhered.

Counsel for the Complainer (Respondent)
—Solicitor-General (Morison, K.C.)—Lippe.
Agent—John S. Morton, W.S.

Counsel for the Respondent (Reclaimer)
—Pitman—Wilton. Agents—J. & F.
Anderson, W.S.

Friday, July 3.

FIRST DIVISION.

FIFE COUNTY COUNCIL AND ANOTHER *v.* FIFE COAL COMPANY, LIMITED, AND OTHERS.

Local Government—County—Water—Public and Domestic Water-Rates Levied Prior to Supply of Water—Kirkcaldy District Water Order Confirmation Act 1913 (2 and 3 Geo. V, cap. clxix)—Kirkcaldy District Water Order 1913, secs. 58, 59, 60, and 66.

Sections of a local Act of Parliament under which held that the local authority was entitled to levy a public and a domestic water-rate before it was in a position to supply water.

The Kirkcaldy District Water Order 1913 (confirmed by the Kirkcaldy District Water Order Confirmation Act 1913, 2 and 3 Geo. V, cap. clxix), sec. 58, enacts—"The District Committee shall, and they are hereby authorised and required, once in every

year, on or before the fifteenth day of August, to lodge with the Clerk to the County Council an estimate of the expenses incurred or to be incurred for the purposes of the undertaking and water supply under the Order of 1910 and this Order, and of the water revenues other than assessments for and during the year next ensuing the fifteenth day of May then last past, including the sums necessary for payment of interest on and repayment of principal of any money borrowed for providing such supply." Section 59—

"The estimate to be made up in manner before provided shall be submitted to the Finance Committee of the County Council, who shall revise the same and submit the estimate so revised to the County Council at their meeting in the month of October in each year, and the County Council may, and they are hereby authorised and required annually to impose and levy an assessment, to be called the domestic water-rate, upon all lands and heritages within the limits of supply, at such rate in the pound as shall be sufficient when supplemented by the public water-rate (if any) after mentioned, and the other water revenues received under the powers of this Order, to defray the expenses referred to in the immediately preceding section: Provided that as regards all persons who shall be the owners or occupiers of any dwelling-houses, railway stations, or other buildings (other than tenements situated in a private close or place), they shall not be liable to be assessed in respect thereof for the domestic water-rate unless such dwelling-houses, railway stations, or other buildings shall have been actually supplied with water under this Order, or unless some pipe of the District Committee, or through which the District Committee is entitled to give a supply to such premises, shall be laid down within one hundred yards of the same, measuring from the outer wall of such dwelling-houses, railway stations, or other buildings, or of any domestic offices in contact with and occupied as appurtenances of such dwelling-houses, railway stations, or other buildings; and that as regards the owners or occupiers of tenements situated in a private close or place, they shall not be liable to be assessed in respect of such tenements for the said domestic water-rate unless such tenements shall have been actually supplied with water under this Order, or unless some pipe of the District Committee or through which the District Committee is entitled to give a supply to such premises shall be laid down within one hundred yards of the entrance to such close or place, or the nearest part thereof. . . ." Provision is also made that in the case of agricultural subjects only the dwelling-houses and their appurtenances shall be subject to domestic water-rate, and that canals, railways, tramways, water-works, gas-works, electric power or electric supply works, and underground water, gas, or electric pipes, and all mines, minerals, and quarries, shall for the purposes of the domestic rate be rated on one-fourth of the annual value. Section 60—"The County Council may, if they shall think