

1825

CASES

TRIED IN

THE JURY COURT.

PRESENT,

LORDS CHIEF COMMISSIONER, CRINGLETIE, AND MACKENZIE.

ROBERTS v. EARL OF ROSEBERRY,

1825.
Dec. 7.

AN action of damages by a tenant of a lime quarry against his landlord for having stopped his working by an interdict.

Damages to a tenant interdicted from working a lime quarry.

DEFENCE.—The interdict was not obtained by misrepresentation, and the operations of the pursuer were not conducted in terms of his bargain.

ISSUES.

“ It being admitted, that, by a missive of
“ lease dated the 20th day of August 1819,

ROBERTS
v.
EARL OF ROSE-
BERRY.

“ John Laing, factor for the defender, acting
“ in name of the defender, and by his authority,
“ let in lease to the pursuer, for the period of
“ ten years from and after Martinmas 1819, a
“ lime-rock or quarry, the property of the de-
“ fender :

“ Whether, on or about the 12th day of Sep-
“ tember 1820, the defender did, in violation
“ of the said missive of lease, apply for and ob-
“ tain from the Sheriff of the county of Lin-
“ lithgow an interdict prohibiting the pursuer
“ from working the said lime-rock or quarry?—
“ and Whether, by the said interdict, the pur-
“ suer was prevented from working the said
“ rock or quarry, from about the said 12th day
“ of September 1820, until on or about the
“ 11th day of November 1821, or any part of
“ the said period? all to the loss and damage
“ of the said pursuer.”

Moncreiff, in opening the case, and in re-
ply for the pursuer, stated the facts, and that
the interdict was recalled; that the defender
had no right to stop the working; and that this
action was relevant. The defender can, there-
fore, only make statements in diminution of da-
mages, as the interdict was taken at his risk.

A tenant depriv-
ed for a certain

The pursuer and John Harvey had taken a

coal-pit, part of the produce of which was employed in burning the pursuer's lime. When Harvey was called as a witness,

Jeffrey, for the defender, objects, This is *consequential* damage. The witness is interested.

Moncreiff.—The damage is direct. The pursuer became a party to the coal lease with a view to the demand which his lime-work would create. But I withdraw the witness.

LORD CHIEF COMMISSIONER.—The only question is, Whether the damage is consequential or not, as the law is clear?

Jeffrey.—This is not an action for oppression, but for being illegally and injuriously stopped in working the quarry. The first question is, Whether he was so interdicted as legally to subject the defender in damages? I submit to the COURT, that, though the interdict was refused, still it is no bar to my now showing that what the pursuer did was illegal.

LORD CHIEF COMMISSIONER.—It is proper to bring this under the consideration of the Court at this stage of the cause, and if you have any separate argument you may now state it.

ROBERTS
v.
EARL OF ROSE-
BERRY.

time of the sub-
ject let can only
recover direct,
not consequen-
tial damage.

Circumstances in which it was held that the Court of Session had put a construction on the terms of a missive of lease, and that it was incompetent to prove that the tenant acted in violation of his lease.

ROBERTS
v.
EARL OF ROSE-
BERRY.

There is an important consideration in this cause from the insertion of the word violation in the issue ; but it appears to my brother and myself that it would be going too far to rest our decision on that word separate from the *res circumstantes*. This case originates in an application by the defender to stop his tenant from working in the way he was working. The question depends on the construction of the words of the missive ; they are such as to create doubt in the Sheriff whether the tenant had not transgressed the lease ; but on farther consideration he recalls the interdict, and the effect of this is, to put a construction on the clause in the missive in favour of the tenant. That question came in two or rather three shapes before the Court of Session, both by advocation and damages, and the judgment by the Sheriff, that the clause did not bar the working, was there confirmed.

In these circumstances we must hold that the meaning of the clause has been found, and that it did not warrant the interdict. This clause was under consideration in all the proceedings, and the interlocutors are put in evidence. It is therefore a fact as much established as if damages had been found due, that this interdict was in “ violation of the said missive.” This

being established by the interlocutors, the question here comes to be, Whether the pursuer was stopped, and what is the amount of damages? Upon these it appears to me that a *prima facie* case has been made out.

ROBERTS
v.
EARL OF ROSE-
BERRY.

Any evidence of the meaning of the clause, or this being in violation of it, appears to me incompetent, as there is a final decree. The evidence should be confined to the second point, as the first is decided by the record, which is not questioned as false.

Jeffrey.—To entitle the pursuer to a verdict he must prove that he was totally stopped. But the best part of the quarry remained open. The profit which their witnesses stated was absurd from its extravagance.

A witness was then called and rejected, for the purpose of bringing out the point as to the competency of proving that the workings were in violation of the missive.

LORD CHIEF COMMISSIONER.—This case results entirely in a question of damage, which is peculiarly for the Jury.

In estimating the damage you have nothing to do with the question as to Whether this was in violation of the missive? as that is a point of law

HAMILTON
v.
HAMILTON.

which the Court has decided. The questions for you are, Whether the defender made the application? Whether it stopped the pursuer's workings? and What length of time he was stopped? It is said the result of the interdict was not final till decree was extracted. We are of a different opinion, and that he might have returned to the quarry as soon as the interlocutor was pronounced. It is said the interdict only applied to a part of the quarry. Even if this had been proved, it could only have gone in dimunition of damages; but the evidence on this failed.

Verdict — “ For the pursuer, damages
“ L. 350.”

Moncreiff and More, for the Pursuer.

Jeffrey and J. A. Murray, for the Defender.

(Agents, *A. Smith*, w. s., and *J. & W. Ferrer*, w. s.)

PRESENT,

LORDS CHIEF COMMISSIONER AND PITMILLY.

1825.
Dec. 26.

HAMILTON v. HAMILTON.

Finding that a
tenant was not
due a sum claim-
ed as rent for a

AN action by a minor, an heir of entail, and his curator to recover the rent of a farm for half a