

force, the distinction was really only a question of words and not of substance. But I turn to the Sale of Goods Act and I find that the material sections are those referred to by the learned Judges of the Second Division, namely, sections 16, 17, and 18. I will read only section 16, which seems to me the material one—"Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained;" and then in rule 5, section 18, it says—"Where there is a contract for the sale of unascertained or future goods by description," and so forth, the property in the goods passes to the buyer on ascertainment by the buyer and the seller. It appears to me that those sections have no application whatever to the case before your Lordships, for the simple reason, which was mentioned by my noble and learned friend on the woolsack, that here there was no contract for a purchase of these materials. The learned counsel and also the learned Judges in the Court below seem to me to have proceeded on the supposition or hypothesis that this contract contained not only a contract for the purchase of the ship but a separate contract for the purchase of the materials also; and that seems to me to be a complete fallacy. There is only one contract—a contract for the purchase of the ship. There is no contract for the sale or purchase of these materials, and unless you can find a contract for the sale of these chattels within the meaning of the Sale of Goods Act, it appears to me that the sections of that Act have no application whatever to the case.

I think therefore that the case is exactly covered by the decision given by your Lordships' House in the case of *Seath v. Moore*, and I will only express my entire concurrence in the judgments in that case of those very learned Lords, Lord Blackburn and Lord Watson.

LORD ROBERTSON—I have only to add in a single word that I cannot find, any more than your Lordships do, in this contract any contract to buy materials, or to buy anything except a completed ship.

Article 4 seems to me exactly to fall within sub-section 4 of section 61, that is to say it "is intended to operate by way of mortgage, pledge, charge, or other security." The circumstance that it is inserted in what is a sale of a completed ship will not avail to make it a sale in the sense of the Sale of Goods Act—in fact the 4th article does not even purport to express a sale—it merely asserts to be the property of the purchaser of the ship what has no more relation to it than that it is intended by the builder for the ship. This as it stands is impossibly wide, and I agree with your Lordships that the respondent's attempt to make those materials "specific" in the sense of the Sale of Goods Act, by saying that they had been passed by Lloyds' surveyors, is not warranted by the terms of the contract. The reference to Lloyds in the first article cannot be strained

to this effect. The truth is that the 4th article is simply a bold attempt to sweep into the net the whole of the materials required for the ship. The judgments of this House in *Seath v. Moore* negative the possibility of that being legally done.

LORD LINDLEY—I am of the same opinion, and I cannot usefully add anything.

Interlocutor appealed against reversed.

Counsel for the Appellant—Ure, K.C.—Lochins. Agents—Drummond & Reid, W.S., and McKenna & Company, London.

Counsel for the Respondents—The Lord Advocate (Dickson, K.C.)—Muir Mackenzie. Agents—J. & J. Ross, W.S., and Thomas Cooper & Company, London.

Thursday, March 3.

(Before the Lord Chancellor (Halsbury), and Lords Macnaghten, Davey, Robertson, and Lindley.)

STEWART v. MARQUIS OF
BREADALBANE.

(*Ante*, January 14, 1903, 40 S.L.R. 259, and 5 F. 359.)

Lease—Termination—Conventional Irritancy—Awaygoing—Obligation to Take over Sheep Stock.

In an offer to take a ten years' lease of a sheep farm the tenant stipulated that the landlord should take over the sheep stock "at my awaygoing." The offer also referred to and incorporated the articles of lease in use on the estate, by which it was provided that the landlord might irritate the lease in the event of the rent being unpaid.

During the currency of the lease the tenant fell into arrears with his rent, and the landlord exercised his right to irritate the lease.

Held (*rev.* judgment of the Second Division) that the landlord was not bound to take over the sheep stock, in respect that the phrase "at my awaygoing" meant at the expiry of the lease through the effluxion of time.

Pendreigh's Trustees v. Dewar, July 19, 1871, 9 Macph. 1037, 8 S.L.R. 671, *commented on*.

The case is reported *ante ut supra*.

The Marquis of Breadalbane appealed.

At delivering judgment—

LORD CHANCELLOR—This case raises undoubtedly a very short point, and I think it may be dealt with very shortly. I am of opinion that the judgment ought to be reversed.

It seems to me that the contemplation of the tenant when he described his "awaygoing" was contemplating that awaygoing in pursuance of the arrangements in respect of the period during which he was to occupy as tenant, and certainly was not

contemplating in the use of those words a breach of his bargain with his landlord which would occur in the event of his non-payment of rent and his landlord consequently putting an end to the tenancy. I think what he meant was what he says—"I am going at the end of ten years, subject to a right to put an end to my tenancy at certain breaks, and when I go away," such and such things. That is how I construe the words, and I believe that that is what the parties meant.

With regard to the authority cited by the learned Judges of the Second Division of the Court of Session, the case of *Pendreigh's Trustees v. Dewar*, 9 Macph. 1037, so far as it is relevant at all, tells the other way. The learned Judges in that case, whether they were right or wrong—I think they were right—construed the instrument as containing two totally separate and independent stipulations, the one was that there was to be the relation of debtor and creditor between the parties, and the other was the relation of tenancy. They construed the former stipulation as one which was in any event to be implemented—that is to say, one was to be the borrower of the money and the other to be the lender of the money, and whatever was the termination of the other relation between them, although in that particular case the term was fixed, the borrower was to pay what he had borrowed to the person who had lent it. Under the circumstances it certainly would have been an extremely monstrous decision if it was to be held, the relation between the parties being that which the Judges hold to be the relation between them, that the obligation of the borrower to pay the money should be put an end to by the termination of the tenancy. What bearing that has on this case I a little fail to see, but the real tendency of that decision appears to me to be in the other direction from that for which it is quoted.

This case seems to me to depend entirely upon the use of one word in the stipulation, and looking at the context and at the person who uses the phrase, namely, the person who proposes to become a tenant, I do not think he contemplated the tenancy being put an end to by his own fault, and I think "awaygoing" in his mouth meant the awaygoing at the end of the period during which he was to occupy the landlord's land. For these reasons I move your Lordships that the judgment of the Court below be reversed.

LORD MACNAGHTEN—I am of the same opinion. I construe the words exactly in the same way in which my noble and learned friend on the woolsack construes them, and I have nothing to add.

LORD DAVEY—I also agree. The question turns entirely upon the meaning of the words used in this clause "at my awaygoing." I suppose if it were made clear that the right construction of those words was that they meant whether that tenancy expired by effluxion of time or whether it expired by the exercise by the landlord of

his rights to re-enter, the Courts would give effect to it notwithstanding that the tenant was in default. But I am not prepared to differ from the construction which I understand all your Lordships put upon those words. Looking at the place in which you find them, where the only termination of the lease spoken of expressly in the missive letter itself is on the expiration of ten years or the determination of it by the break in 1902, I think it is probably the soundest construction to treat "my awaygoing" as referring only to the expiration of the tenancy by natural effluxion of time, and that being so there is no contract to purchase the sheep in the events which have happened.

LORD ROBERTSON—I entirely agree in what has been said by my noble and learned friend on the woolsack and also in the judgment of Lord Moncreiff. The clause for taking over the stock is expressed as part of a scheme for occupation of the farm on payment of rent during a period of years. The forfeiture clause on the other hand brings that scheme to an end owing to the inability of the tenant to carry it out, as is shown very plainly by the words which are put in to save alive the claim for rent up to the date of forfeiture. I entirely agree in what has been said by my noble and learned friend on the woolsack as to the case of *Pendreigh's Trustees v. Dewar*, which so far as it bears upon the matter at all rather supports the conclusion of Lord Moncreiff than that of the Second Division.

LORD LINDLEY—I am of the same opinion.

Interlocutor appealed from reversed.

Counsel for the Pursuer (Respondent)—Haldane, K.C.—Macmillan. Agents—Gill & Pringle, S.S.C., and Flux, Thompson, & Quarrell, London.

Counsel for the Defender (Appellant)—The Lord Advocate (Dickson, K.C.)—R. Scott Brown. Agents—Davidson & Syme, W.S., and Faithfull & Owen, Westminster.

Thursday, March 10.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten, Davey, James of Hereford, Robertson, and Lindley.)

HART v. COUNTY COUNCIL OF LANARK.

(In the Court of Session December 2, 1902, 40 S.L.R. 117.)

Local Government—County Council—Fees of Procurator-Fiscal—County General Assessment (Scotland) Act 1868 (31 and 32 Vict. c. 68), sec. 3 (2).

The County General Assessment (Scotland) Act 1868 abolished the power of levying the assessment known as rogue money, and provided that certain salaries, fees, outlays, and expenses