as a witness, the case must be determined on the proof which had been taken, and under it effect was given so far to the defender's oath in regard to his having sold to the deceased Mr Kyle for the price of £84, and decerniture was pronounced only for the balance of the £150. The case was thus quite special, and the decision cannot be regarded as having in any respect touched the important question at issue under this record, and for that reason I presume it has not been reported.

The following interlocutor was pronounced:—

"*Edinburgh, 7th March* 1872.—Recal the interlocutor of Lord Ormidale of 5th December 1871 reclaimed against: Find that the loan libelled can be proved only by the writ or oath of the defender: Find that the said loan is not proved *scripto* of the defender by the bank cheque with the defender's signature thereon, No. 7 of process: But allow the pursuer to produce any writ of the defender which he possesses or may recover: Find the defender entitled to expenses since the date of the Lord Ordinary's interlocutor reclaimed against, and remit to the auditor to tax the amount thereof and report."

Agents for Reclaimer—Webster & Will, S.S.C.
Agent for Respondent—Alex. Howe, W.S.

Tuesday, March 5.

SIR ANDREW ORR *v.* H. A. RANNIE.

Landlord and Tenant—Lease—Consensus in idem placitum—*Summary Ejection.*

Where parties had entered into a lease of agricultural subjects, complete in other respects, but omitting to specify the duration of the lease, and the tenant entered into possession and began to cultivate the subjects,—*held* that the landlord was not entitled to remove the tenant summarily in the middle of the crop and year, either in respect that no duration had been agreed on, or that the tenant had renounced the lease on the ground that the landlord had failed to implement certain conditions as to buildings, &c.

Question whether the omission of a clause specifying the period of endurance would render a lease utterly null and void.

This was an appeal from the Sheriff-court of Clackmannanshire against an interlocutor of the Sheriff, in a petition craving warrant for summarily removing and ejecting the respondent from the farms of Aberdona, &c., and for interdict against his entering into the possession of the mansion-house.

On 10th May 1871 the Sheriff-Substitute (BENNET CLARK) granted interim interdict, and thereafter a record was made up on the question of the landlord's right summarily to eject the tenant. In the meantime the tenant was warned to remove, and he left at Martinmas 1871.

On 18th November 1871 the Sheriff-Substitute pronounced the following interlocutor, in which the facts of the case are fully set forth:—"Finds that the petitioner, who is heritable proprietor of the farms of Aberdona, Weston, and Upper Sheardale, part of the estate of Harviestoun and Aberdona, advertised the said farms on 18th July 1870 to be let for the period of nineteen years, or such number of years as might be agreed upon, with entry at Martinmas 1870. That the respondent made offer on 15th September 1870 for said farms, in reference to said advertisement and relative conditions of let, of a certain rent, which was not accepted by the petitioner; and an amended offer was made by the respondent on 20th September, of an increased rent of £475, with certain conditions as to new buildings, the game, and the fences; which conditions were objected to, but ultimately the amended offer was accepted on 1st October 1870, with the exception of the proposed conditions as to the game, and keeping up the fences round the plantations; finds that nothing was said in the respondent's offer, nor was anything fixed in the correspondence and communings which followed between him and the petitioner's factor as to the endurance of the lease; finds that the respondent thereafter entered into possession of the said farms at the term of Martinmas 1870 but he did not obtain possession of the mansion-house of Aberdona, which was included in the lease of the said farms, it being then occupied by a tenant whose lease did not expire till Whitsunday 1871; finds that the respondent, after entering into possession of the farms, purchased from the petitioner, by valuation, the turnips on said farms, the straw of the previous corn crop, and a portion of the implements of husbandry on the farms, and paid for the grass seeds sown with the previous crop. That he proceeded to labour the lands, to prepare them for crops, and cultivated and sowed a portion of them for the ensuing season and crop, and for that purpose bought and used manure, and seeds; finds that, it being stipulated that the steading and fences were to be put in proper repair, and certain fences to be put up, and new buildings erected, the respondent urged on the petitioner the fulfilment of these stipulations, and in November and December 1870, complained to the petitioner's factor of the undue delay in reference thereto; and in January, February, and March 1871, the respondent remonstrated verbally and by letters, pointing out the inconvenience and loss he was suffering by the failure of the petitioner to attend to these stipulations; and on 7th March he wrote to the petitioner representing strongly the damage he was suffering, but the petitioner declined to make any compensation; finds that the respondent, on 22d March, submitted to the petitioner's factor a memorandum of conditions for a ten years' lease of the farms, and certain stipulations as to the buildings and fences, to which it was replied that the lease was understood to be for nineteen years, and declining the respondent's proposals. Whereupon the respondent intimated that he had no alternative but to give up the farms; and on 4th April he wrote to the petitioner's factor, holding the petitioner liable for having broken his engagements, and adding—'You understand that I do not occupy the farms in terms of the conditions of let to which you refer, for any lease, or for any fixed period, and that I am entitled to renounce possession at pleasure;' to which the petitioner's factor replied that the terms of agreement were the conditions of let, and that the petitioner had no wish that he (the respondent) should give up his bargain; finds that the agents of the parties then entered into a correspondence in regard to the position of the parties in the matter, the petitioner's agents holding that there was no concluded bargain between them for any period, to which the respondent's agents assented; and on the same day the petitioner's

agents replied that the petitioner has adopted the respondent's contention that there is no concluded bargain, and required him to remove. Whereupon the respondent's agents intimated that he will resist any attempt to remove him 'forthwith;' finds that on 10th May the present petition for the summary removing and ejection of the respondent from the said farms was presented; finds, in law, that the petitioner, having accepted the offer made by the respondent for the said farms, and the respondent having thereupon entered into possession of the same, and been dealt with by the petitioner as his tenant in lawful possession of the subjects, having purchased from the petitioner straw and turnips, implements and stock, and proceeded to cultivate and sow the land for the current crop and season, that he is tenant of the said farms for crop and year 1871, and is not liable to be summarily ejected therefrom, either in respect of his refusal to enter into a contract of lease of the same for nineteen years, or in respect of the intimation contained in his letter of 4th April to the petitioner's factor; therefore refuses the prayer of the petition for summary removing and ejection, and dismisses the same, reserving to the parties all claims of damages competent to either of them, and to each his defences thereto; finds the respondent entitled to expenses; allows an account thereof to be given in, and remits the same to the auditor to tax and report.

"*Note.*—The circumstances of this case are unusual, and it does not appear that there is any decision in the books bearing directly on the question raised in the record.

"The basis of the negotiations for the letting of the farms in question was undoubtedly the advertisement and the conditions of let. The former announced a purpose on the part of the petitioner to grant a lease of the farms for nineteen years, or such number of years as may be agreed on. The latter referred to the duration, in the less specific words, 'for such term of years as may be agreed on.' The petitioner's contention is, that there was either a lease for nineteen years or no contract at all; the respondent's, that there was a contract of lease concluded; and that the endurance not having been specified, and the lessor objecting to let for ten years as proposed by the lessee, it was in the circumstances binding for one year.

"It cannot be disputed that all the negotiations were in contemplation of a lease of considerable endurance, but the petitioner has failed to show that it was necessarily for nineteen years. Had it been contended that, having been entered into possession without a specified duration, it must be held that the respondent is bound for the shortest period implied in the rotation of crops stipulated in the conditions of let, it is thought that the argument might have been supported with more show of authority; but the petitioner maintains that, unless the respondent agrees to a lease for nineteen years he has no right whatever, and is liable to instant ejection from the premises. The petitioner, while resting his case on the plea that there is no contract, puts it also alternatively, on the respondent's letter of 4th April, as constituting a renunciation of his rights as tenant.

"As to the latter of these pleas, it does not appear to the Sheriff-Substitute that the respondent's expressions, when fairly read, admit of such a construction. All he evidently meant to contend for was, that seeing the petitioner was not prepared to carry out what he (the respondent) held to be his obligations under the bargain, he held himself also free from the obligations undertaken by him, and not bound for any specific period.

"It is unnecessary here to inquire who may be to blame for the unfortunate difference between the parties which has led to this case. But it having turned out that the lease for a period of years, which was in contemplation of both parties, cannot be carried out in consequence of the omission to fix its duration, the question arises, What are now the rights of the parties?

"Recourse must be had to analogous cases and the general principle regulating the contract of lease. It is trite law that an agricultural lease requires writing to be effectual for more than a year, on the principle that rights affecting land must be in writing; but a verbal lease for a year is good, and such a lease may, by *rei interventus*, or by possession, be validated for a longer period. If, then, the less solemn form of a verbal lease is sufficient to constitute a right to endure for a year at least, much more should a written lease, constituted by offer and acceptance, and followed by *rei interventus* and possession, validate a contract of lease defective only as regards its duration, and make it effectual for that period. In such circumstances the principle on which the law proceeds appears to be to hold the contract effectual for the shortest period consistent with the mutual interests of lessor and lessee. The Sheriff-Substitute is not prepared to say that, had the petitioner contended that the respondent having entered into possession under conditions of let prescribing a five shift rotation, and having proceeded to cultivate and crop the farms with that view before the difference arose, that he was bound for five years, he might not have given effect to that view. But when the question is between no right whatever, or a right for a specific period, every consideration points to a year from the term of entry as the period which provides most fairly for the respective interests of the parties.

"It is unnecessary to refer in detail to the authorities quoted at the debate, and others referred to in Mr Hunter's work, in support of these views. He remarks the contract, in whatever way proved, 'creates an obligation on the parties for a certain period, the duration of which the law has defined.'

"A lease of land for agricultural use bears in its very nature a relation to a period of time. Such a subject can reasonably be let in no other way than for one or more crops or years, that being essential to enable the lessee to derive the benefit contemplated in the contract—the reaping of crops, which require for their production a revolution of the seasons. If, therefore, parties having entered into such a contract have omitted to provide for its duration, or differ as to what it should be, the law, giving effect to these considerations, holds that the lessee who has proceeded in good faith to expend manure, seed, and labour, at the proper season, in preparation for the year's crop, is entitled to be protected in his rights for that year at least. As the counterpart of these, the lessor's corresponding privileges are recognised.

"In applying these principles to this case, it must be observed that the respondent's position as tenant was fully recognised by the petitioner for five or six months after he had entered into possession; and that, besides enjoying full possession of the subjects, he was performing all the acts of a tenant under a lease. It is impossible, in these

circumstances, to maintain, as the petitioner does, that the respondent has ceased to have any right, because, when the parties were proceeding to adjust the terms of a formal lease, it was found that they had omitted in the negotiations to fix the duration, and the respondent declined to agree to nineteen years as the period. The parties are therefore brought to the inquiry, for what period does the law hold them bound? Upon the general principles now referred to, the Sheriff-Substitute has come to the conclusion that the respondent is entitled to possession as tenant of the farms for one year from the term of his entry."

On appeal, the Sheriff (MONRO) adhered to the interlocutor of the Sheriff-Substitute, and added the following Note:—"The Sheriff concurs with the views of the merits embodied in the interlocutor and note of the Sheriff-Substitute. The parties appear to have agreed that no lease for a term of years should be executed between them, thus superseding any question as to the number of years for which such lease should have endured under the previous communications between them; but the Sheriff sees no evidence of any agreement between the parties that the contract of location between them should be held as *funditus* null and void *ab initio*, or that it should be terminated at some intermediate period from Martinmas 1870 to Martinmas 1871. The respondent entered into lawful possession at Martinmas 1870, and the relation of landlord and tenant was established between him and the petitioner. He sowed the grain crop, or part of it, *in bona fide*, and would be entitled to the benefit of the maxim, *messis sententem sequitur*. In such circumstances a summary petition against the respondent, presented in May last, praying for immediate ejectment, appears manifestly inadmissible.

"It occurs to the Sheriff that there may be a doubt as to the relevancy and competency of the petition, and as to his jurisdiction in the circumstances to grant its prayer; but these points have not been raised, and he shall not enter upon them."

The petitioner appealed to the First Division of the Court of Session.

MACKINTOSH, for the appellant, argued, that there having been no concluded agreement of lease, the tenant was only a precarious possessor, who could be removed on reasonable notice.

Authority cited—*Fraser* v. *Brebner*, Feb. 10, 1857, 19 D. 401.

SHAND and KEIR, for the respondent, were not called on.

At advising—

LORD PRESIDENT—I do not think I ever saw a clearer case than this. The parties adjusted a contract of lease, complete in all respects except in regard to the period of its endurance, and under that lease the tenant, Mr Rannie, entered into possession, with the full knowledge and approbation of the landlord. He was removed at the end of the first year, after due warning and process of removal, to which he offered no objection; and the relation of landlord and tenant thus came to an end. A simpler case could hardly be imagined. Neither party was in a position to contend that a lease had been constituted for a term of years, for the landlord has removed the tenant at the end of one year, and the tenant has consented, and gone out. There is thus an end of the contract between them. But the landlord was most unfortunately induced, during the currency of the year, to present a petition to the Sheriff, praying for the summary removal and instant ejection of the tenant. Now, if the tenant had not entered into possession under this incompleted contract, and the landlord was seeking to prevent him from doing so, the case would be very different, for the landlord was not bound to allow possession to the tenant until a clause had been added specifying the duration of the lease, which was originally intended to be for a term of years. But instead of insisting on that he allows the tenant to possess the subjects from Martinmas 1870 till 10th May 1871, and to carry on all the ordinary agricultural operations. But on 10th May he proposes summarily to eject the tenant whom he had allowed to sow the crops of the year. Anything so monstrous I never heard before, and do not expect to hear again.

The only other point requiring to be noticed is in regard to the occupation of the mansion-house. The landlord was, of course, entitled to interdict the tenant from entering into possession of it; but as this point was not disputed by the respondent, it cannot have occasioned any expense. There can, therefore, be no doubt that this appeal should be refused, with expenses.

The other Judges concurred, Lord Deas and Lord Kinloch observing that, but for the conduct of the parties, the important question might have been raised, Whether the omission of a clause specifying the duration of a lease would render it entirely null and void?

The Court accordingly refused the appeal, with expenses.

Agents for Appellant—Cotton & Finlay, W.S.
Agent for Respondent — Alexander Morison, S.S.C.

Tuesday, March 5.

GORDON *v.* WALKER.

Process—Amendment—Proof—Expenses—Rei Interventus.

In an action before the Sheriff for damages for failure to implement a contract of sale, alleged to have been constituted by informal missives, the pursuer averred *rei interventus* in general terms, but neither stated nor proved any specific acts:—*Held* not entitled to amend the record in the Court of Session, or to lead additional proof, with a view of averring and proving such specific acts of *rei interventus*.

Observed, that an interlocutor by the Sheriff, affirming the judgment of the Sheriff-Substitute, without mentioning expenses, carries the expenses of the appeal.

This was an appeal from the Sheriff-court of Aberdeenshire, in an action at the instance of William Gordon, joiner, Aberdeen, against George Walker, farmer, North Mains of Barra, for "the sum of £1000 sterling, being damages sustained by the pursuer in consequence of the defender having fraudulently failed and refused to implement a written contract or bargain entered into and completed by him with the pursuer on or about the 21st day of November 1864, by which bargain the defender bought, and the pursuer sold, for £440 sterling, the property marked No. 7 in the Square of Old Meldrum, belonging to the pursuer, with expenses."

The pursuer founded on an offer to purchase, holograph of the defender, and his acceptance