the requirements of the statute, and therefore no ground for the interposition of the Court to quash the proceedings.

If the complainer's present argument on the nature of the proceedings is sound, his previous objection of want of notice had little force. I thought his previous objection strong, because the complainer was effectually deprived of his land, and his tenant was decerned to remove from possession. But if all that the Presbytery did was to express their opinion, or record a finding that the complainer's ground was suitable, then the objection of want of notice is deprived of nearly all its force. Had that been all the Presbytery did I scarcely think I would have ventured to differ from your Lordships on the question of notice. But now, viewing the proceedings as taken after sufficient notice, and as equally binding on the complainer as if he had been himself present, I think there are no grounds for interference by this Court with the judgment of the Presbytery since, on the merits we cannot review it.

I do not, however, think that the tenant is altogether precluded from making a claim for compensation. To some extent the landlord's claim, to which the valuation relates, may be held as covering the claim of the tenant, or a claim on behalf of the tenant, but there may be special claims of compensation still open to the tenant, and I do not think that he can be precluded from urging them. Indeed, I understood the counsel for the respondents to say that any such claims on the part of the tenant would be fairly considered.

Lord Mure—The questions here raised present themselves to my mind very much in the same way as the larger question which we formerly disposed of. This Court has no jurisdiction to deal with cases of this description unless it be shown that there is some gross violation of the statutory or common law rules. Otherwise this Court has no right to review in any respect the proceedings of the Presbytery. The two points here raised are gross irregularity and going beyond their power in the order on the tenant to remove. Now, what the Presbytery did here was to ordain the tenant to remove. They could not take an operative course to turn him out as the civil courts could do; but the order to remove is just the usual order pronounced according to the styles of the church courts given in Dr Cook's book in all questions of designating manses or glebes. Now, if there was any impropriety or unfairness in that it was a matter to be disposed of by the Sheriff on appeal. What we are asked to do is to review the judgment of the Presbytery in ordaining the tenant to remove; but that is a matter for appeal to the Sheriff.

As regards the compensation question, that is still more questionable. It is just whether or not the Presbytery, in valuing the landlord's interest in the ground, valued properly the interest of the tenant. But my view of that matter is that it is a question on the merits, and that we cannot form, or at all events act upon, any opinion as to whether the Presbytery did right or wrong on that question, because we have no jurisdiction.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the cause, and heard counsel, in terms of the appointment in the interlocutor of 18th February last, Repel the reasons of suspension: Refuse the interdict, and decern: Find the complainers liable in expenses, and remit to the Auditor to tax the account thereof and report."

Counsel for Complainers—Guthrie Smith—Balfour. Agents—Drummond & Reid, W.S.

Counsel for Respondents—Dean of Faculty (Watson)—Gloag. Agents—Mackenzie & Kermack, W.S.

Thursday, March 2.

SECOND DIVISION.

[Lord Rutherfurd Clark.

WILSON *v.* MANN.

Landlord and Tenant—Lease—Singular Succession.

A, who was a yearly tenant of a farm, and also factor upon the estate of B, had no written lease, and applied to B for permission to carry out a regular cropping rotation—which was granted by letter. Shortly afterwards B died, and his estate was held by trustees, who, in a letter addressed to A, fixed the date at which his lease should be held to terminate. The amount of rent paid by A had been regularly entered by him in a rental book which he kept as factor upon the estate, and these entries were docqueted by B as correct up to the date of his death. The trustees having afterwards advertised the estate for sale, stated in their advertisement the duration of A's lease and the rent paid by him. In an action of declarator at the instance of A against a purchaser who sought to have him removed—*held* that the letters, entries in rental book, and advertisement, taken together, constituted a lease in A's favour which was good against a singular successor.

This was an action at the instance of Robert Wilson, tenant of the farm of Forehouse, in the parish of Kilbarchan and county of Renfrew, against Thomas Mann, proprietor of the estate of Glentyan, in the same parish and county, in which he sought to have it found and declared that in virtue of letters signed by the late Captain James Stirling, then proprietor of the estate of Glentyan, in or about the months of October and November 1871, and of a letter by Messrs Dundas & Wilson, Clerks to the Signet, factors and agents for the trustees of Captain James Stirling, then deceased, dated 23d December 1873, a valid and effectual lease of the lands and farm of Forehouse, part of the estate of Glentyan, was granted in favour of the pursuer for the term of eight years from and after the term of Whitsunday 1872, and that the rent payable therefor was £223 sterling per annum, and that in virtue thereof he was entitled to the undis-

turbed possession, use, and enjoyment of the said farm and lands during the endurance of the said lease; and further, that the defender, when he purchased the said estate of Glentyan in or about the year 1874, was in the full knowledge that the said lands and farm of Forehouse were let to the pursuer to the said term of Whitsunday 1880 at the said rent of £223, and that he thereafter homologated the said lease by taking payment of the rent payable for the said lands and farm; and the defender and all others ought to be prohibited and discharged from troubling or molesting the pursuer in the premises.

The pursuer set forth that in 1861 he succeeded his father as tenant of Forehouse. Although there was no formal lease, Captain Stirling, their landlord, had verbally assured both the pursuer and his father that neither would be disturbed in the possession of the farm as long as he lived. The pursuer acted as factor for Captain Stirling. In 1871 the pursuer applied to Captain Stirling for leave to break up and cultivate certain portions of the lands in rotation, with the view to again laying it down in grass. After making verbal application to that effect, he wrote Captain Stirling in the following terms:—

"*Forehouse, October* 28, 1871.

"Captn. James Stirling, R.N.—Dear Sir — In consideration of the fact that Bankhead field, and the other grass fields leased by me from you, are not grazing as they did when more newly laid down, and believing that they require breaking up and renewal, I hereby submit to you for approval a plan for breaking up head end of Bankhead, or from trees above where old house stood, about 10 acres at first, and the rest of it, &c., afterwards, if you permit, as follows,—the larger part to be in oats, the rest green crop, first season; what is in oats to go through the regular cropping rotation, being laid down with a sufficient quantity of manure; what is in green crop first year to be oats next year, then green crop again, and laid down with sufficient manure, and when sown to have proper grass and clover seeds, and of sufficient quantity, sown. Should this meet your approval, and you grant this request, it will much oblige your obedt. servt.,

"Robt. Wilson."

To this letter Captain Stirling appended the following holograph addition:—

"*Glentyan*, 31*st October* 1871.

"To be laid down without furrows; cut once in hay; not allowed to seed; to have three tons of warm lime per acre, and a quarter of ton of salt pr. acre on the hay stubble.

"James Stirling, R.N."

The pursuer appended in his own handwriting as follows:—

"I agree to the foregoing. Robert Wilson."

A day or two after the above was written Captain Stirling gave the pursuer the following corroborative letter, written by him to the dictation of Captain Stirling, who signed it —

"Mr Robert Wilson.

"Sir—I agree to your proposal for breaking up Bankhead field, &c., as specified in your note to me, with the addition which I have added at foot of same, viz., that it is to be laid down without furrows, to be cut only once in hay, and to have the quantity of lime and salt which I have mentioned applied to it.

"James Stirling, R.N."

The pursuer averred that this application was made on the understanding that he was to remain tenant until the whole operation should be completed. Captain Stirling died in 1872. After his death the pursuer waited upon Messrs Dundas & Wilson, the agents for Captain Stirling's trustees—Mr Somervell and Mr Ralph Dundas—and suggested to them that a period should be fixed when his possession of the farm should terminate, and on 23d December 1873 Messrs Dundas & Wilson wrote to him as follows:—

Glentyan.

"Dear Sir,—We have now heard from Mr Somervell regarding the termination of your occupation of Forehouse. He wishes it to be understood that the termination of your lease shall be at Whitsunday 1880 as to the whole subjects, that the lands shall be left in grass, and that the portion which you are allowed to break up shall be left in pasture of not less than a year old.—We are, dear sir, yours truly,

"Dundas & Wilson."

In terms of the powers given to him, the pursuer had broken up the grass land.

In 1874 Captain Stirling's trustees advertised the estate of Glentyan for sale, when it was purchased privately by the defender. In the advertisement of the estate the following statement appeared:—

"The lands are let from year to year, with the exception of Forehouse, the lease of which expires at Whitsunday 1880. Also,

"*Rental Particulars.*

"Forehouse—Let to Mr Robert Wilson for eight years from Whitsunday 1872, £223."

The particulars as to the rental of the estate were, however, qualified as follows:—"The foregoing particulars, and the statements and the calculation of rents and burdens, are believed to be correct, but are not guaranteed."

As evidence of the rent payable by him, the pursuer produced a cash-book which he had kept as factor for Captain Stirling, and afterwards for his trustees. It appeared that the above rent had been paid by the pursuer since 1871. The entries in this book were docqueted as correct by Captain Stirling up to the date of his death. The trustees had not themselves so authenticated the entries subsequent to that date, but it was admitted that the pursuer's accounts had been examined and found correct by accountants acting on their behalf.

The defender, on the other hand, denied that any lease which could be valid against him as a singular successor had ever been constituted; and, treating the pursuer as a yearly tenant, he had brought an action of removing against him in the Sheriff Court of Renfrewshire. The defender admitted that he had accepted rent from the pursuer since acquiring the estate, but that he had received it without prejudice and under protest.

After hearing parties, the Lord Ordinary, on 24th January 1876, pronounced the following interlocutor:—

"The Lord Ordinary, having considered the cause, Finds, declares, and decerns, in terms of

the conclusions of the libel: Finds the pursuer entitled to expenses; and remits the account thereof when lodged to the Auditor to tax and report.

"*Note.*—This case is attended with some difficulty.

"The argument of the defender is, that there are no sufficient writings to constitute a lease, or to prove the existence of such a contract, at least in a question with him as a singular successor, and in particular, he urges that the rent is not ascertained by any writing.

"The writings which passed between the pursuer and Captain Stirling in 1871 relate to Bankhead, which is a part of the farm of Forehouse. They show that it was contemplated that the pursuer should possess the farm for a period of years. But the period is not fixed, nor is any reference made to the rent.

"On 23d December 1873 the agents of Captain Stirling's trustees wrote a letter, in which they say that the 'termination of your lease shall be at Whitsunday 1880.' This document recognises the existence of a lease, and specifies its duration, but it says nothing as to the rent. It seems, however, to the Lord Ordinary that it must be construed as meaning that the subjects were to be held at the rent which was then payable by the pursuer. What that rent was is fixed by the books kept by the pursuer as factor for Captain Stirling, and docqueted by Captain Stirling in August or September 1872. The pursuer continued to possess the farm after that time, and no change in the tenure is alleged. The Lord Ordinary thinks, therefore, that the rent payable is ascertained by the writ of the landlord.

"Although the pursuer was already in possession of the farm when the writing of December 1873 was granted, the Lord Ordinary thinks that his subsequent possession must be ascribed to that writing. This was the view by both parties. In their advertisements with a view to a sale of the estate of Glentyan, Captain Stirling's trustees stated that the farm of Forehouse was let under a lease expiring at Whitsunday 1880; and the pursuer proceeded with the cultivation of the farm on the footing that he held it till that time. If the writing of December had not been granted, he might have given notice that he intended to remove at Whitsunday 1874.

"But it was maintained by the defender that though a contract of lease might be sufficiently proved against Captain Stirling or his representatives, that contract was not binding on him as a singular successor. In the opinion of the Lord Ordinary this argument should not prevail. He thinks that all the requisites of a lease have been sufficiently proved by the writings under which the pursuer was possessing at the date of the defender's entry, and that the contract is therefore available against the defender. The nearest case is that of *Skene* v. *Spankie*, 1 Bell on Leases, 313, and noticed in Baron Hume's Reports in *Arbuthnot* v. *Campbell*, p. 785. It is true that there the writing specially stated that the lease was to be at the present rent. But the Lord Ordinary does not think that a distinction can be drawn between the expression and the implication of such a stipulation if the implication arises from the sound construction of the writing itself.

"It is clear enough, and indeed it was not disputed, that the defender purchased the estate on the representation that the farm of Forehouse was held under a lease expiring at Whitsunday 1880."

The defender reclaimed.

Argued for him—The pursuer never had a valid lease, or at least one which was good against a singular successor. The letter of September 1873 was not equivalent to a written lease. It merely pointed to some verbal lease, and specified neither the rent nor the period of entry. The rental-book kept by the pursuer himself could not be held as a writ of the landlord specifying the rent. Nor could the advertisement avail the pursuer. There was no *rei interventus* following upon the alleged lease. The pursuer had failed to comply with the terms stipulated from 1871.

Authorities—Bell on Leases, i. 313; Bell's Pr. 1190; 1 Hunter, Land. and Ten. 434; Erskine, ii. 624; *Arbuthnot* v. *Campbell*, Feb. 27, 1793, Hume 785; *Walker* v. *Flint*, Feb. 20, 1863, 1 Macph. 417; *Emslie* v. *Duff*, June 2, 1865, 3 Macph. 854; *Bathie* v. *Wharncliffe*, March 6, 1873, 11 Macph. 490; *Sellar* v. *Aiton*, Jan. 26, 1875, 2 Ret. 381.

Counsel for the respondent were not called upon.

At advising—

Lord Justice-Clerk—The first question is, whether there was at the date of the purchase a valid lease subsisting between the proprietor and the tenant. I am of opinion that this is too clear to be disputed, and that it is proved by the writ of the lessor that there was a binding and effectual lease for eight years from Whitsunday 1872, at a rent of £223. The proof of this contract rests on several written, although informal documents—(1) The letter of 28th October 1871 necessarily implies a tenancy of at least five years, with a definite specified object, and thus it is clear that the acceptance of that offer implied an obligation to grant a lease for a term; (2) What that term was is proved by the letter of Dundas & Wilson, the landlord's agents, which truly constitutes the lease, for apparently the ish had not been previously adjusted. It is not so much proof of a previous verbal lease as the completion of the previous inchoate contract. This is conclusive against the landlords; and even if the rent had not been established *scripto*, the presumption would have been that the old rent was to be continued; and it is proved under the landlord's own hand in the rental-book that this rent was £223, 3s. But the amount of the rent is clearly proved by the landlord's advertisement, in which the existence of the lease, the duration, and the rent are clearly announced to intending purchasers; and on this representation the defender made the purchase. I am therefore clear that there was a valid lease as between the former proprietor. Is it, then, binding on the singular successor? I see no reason why it should not be so, for these informal writings together constitute a lease *scripto*. I should have come to the same conclusion although the documents had amounted to no more than the acknowledgment of an antecedent verbal contract. If the writing is sufficient to bind the landlord to grant a formal lease, that is suffi-

cient; and it is immaterial to inquire how the antecedent obligation was constituted. But the agreement is not verbal. It is constituted *scripto* by the original letter and that of the landlord's agents, which, together with the other writs, contain all the requisites of a verbal lease. I agree without hesitation with the Lord Ordinary.

Lord Neaves—I am of the same opinion. I confess I should feel sorry if the views advanced by Mr Campbell were to be binding upon our courts of law. In early times it was doubted in this country whether a lease-holder or a purchaser was to be preferred. That was a disputed point. But our rulers, no doubt, seeing how much the future prosperity of Scotland would depend upon the promotion of agricultural interests, did not leave the matter to the uncertainty of common law, but passed the Act of 1449, c. 17, which gives protection to certain leases against singular successors. At first, as regarded the documents thought necessary to make out the tenant's rights, this statute was construed with some strictness—too strictly. But there follows a relaxation in course of time, and that upon good grounds. It would have been strange indeed if an Act intended for the benefit of "puir people that labouris the ground" could only have been made available in cases where there existed formal written documents.

The contract which is good against singular successors may consist either of one lease or of a variety of documents, provided that, when taken together, they sufficiently establish the consent of parties. Now in this case what have we? There is first an agreement by which a change is to be made in the condition of the land—it is to be broken up in a particular way, and it is to be presumed that the tenant is not to continue a yearly tenant as before, but that he is to remain upon the farm, and carry out the prescribed course of cropping. It is not necessary to decide whether, on the strength of that document, the tenant could have demanded the execution of a formal lease. This is certain, the document being there, it was competent for the landlord to supplement it by fixing the period for which the contract of lease was to run. Now, that period is fixed by the letter of Messrs Dundas & Wilson. The termination of the lease is to be in 1880. That was only the fair and reasonable following up of what had been already done, and rendered the original contract explicit, giving to it a definite ish. No doubt the rent is not set forth, but that is proved by other writings. The book which Wilson, who was both tenant and factor, kept, is admitted to have been kept by him as factor. In it there are entries of the rent from year to year. This book must be considered as the writ of the landlord. It was kept by his factor, and must have been examined by him. We have, therefore, the original object of this lease—the period of years for which it was to run—and the rent payable—all specified. Then the lands come to be advertised for sale, and we have that advertisement, which states the rent payable—all these documents following out and rendering explicit what had previously taken place, and putting the purchaser in full knowledge of what he was buying. Doubtless it was a disadvantage to him that these lands should be under a lease, and I daresay he calculated his price accordingly, and after making his purchase he now says that he is not bound by this contract of lease, and seeks to get rid of it. Surely that is not doing justice to the "puir people that labouris the ground."

It is said that there is no document which shows what the rent was to be. The factor's book shows that. Nor can I doubt that the letter of Dundas & Wilson assumed by plain implication that the rent was to be that which the tenant was paying at the time. I think, therefore, that an existing contract has been clearly proved.

Nor will it do for the defender to go back to the original missive letter and say that the pursuer has failed to follow out the course of cropping agreed upon, and that therefore he cannot found upon that missive. With that the singular successor has nothing to do at all. If the tenant did wrong, his fault has been condoned by his landlord. The grounds upon which the Lord Ordinary proceeds are, in my opinion, fully supported by both law and equity.

Lord Ormidale—I agree with both your Lordships. We have here, I think, all that is necessary to constitute a lease, not only between the tenant and the first landlord, but also between him and the present defender. It was conceded in the argument—indeed not disputed—that in order that a lease should hold good against a singular successor it is not necessary that it should be formal. We have it established by authority—and especially that of Mr Bell—that a lease binding in a question with a landlord is equally binding with a singular successor, subject to certain qualifications. The lease must disclose the subject let, the rent to be paid, and the duration. It is also established that an informal lease does not require to be constituted by one writing. Now, have we not all the essentials of a lease here? The subject is clearly defined—the rent and the duration. Without going back to the letter of 1871, I take that of Dundas & Wilson in 1873, in which we have the subject and the duration of the lease expressed, and I think also the rent implied. It is not necessary, however, to decide that, as we have other written evidence of what the rent was. We find it clearly brought out in the factor's book, the entries in which, prior to 1872, were docqueted by Captain Stirling himself. We have entries of the rent for the various terms after the date of the lease. They are subject to the observation that they have not been authenticated or docqueted by Captain Stirling's trustees, but it would require a charge of dishonesty to entitle the defender to repudiate them now upon that account. But we have an admission that the pursuer's accounts have been examined and found correct by those acting on behalf of the trustees. Have we not here all that we want? I will not occupy time by saying anything as to the effect of the advertisement. It places the defender in a very unfavourable position indeed.

I will, however, make this further observation regarding the defender. When he takes possession of the land he receives the rent, and grants receipts without making any protest. It is said that he did protest, and in proof of that we were referred to a lengthy correspondence. But what I want to know is, whether, when the defender

granted the receipts he ever said that he did so under protest?

The Lord Ordinary has, I think, come to a right conclusion, and therefore we should adhere to his interlocutor.

Lord Gifford—I concur. We have here a good and valid lease with Stirling's trustees. After the letter written to the pursuer by their agents it is impossible to doubt that if an action of declarator had been raised against them they would have been bound to grant a formal lease. No doubt there is no mention of the rent, but it is sufficient if its amount can be ascertained by other means. I think, too, that I am entitled to read into the documents the words "at the present rent."

Now, that carries a long way. If the trustees are bound, the singular successor is bound, and that apart from the effect of the advertisement or other specialties. I go further. The purchaser has bound himself. In the disposition to him, which he has taken, the trustees except from their warandice "the current tacks." The effect of this exception is, that unless the defender can show that this lease was not binding on the trustees, it is binding on him. That is shown in the case of *Wight* v. *Earl of Hopetoun*, Nov. 17, 1673, M. 13,199. Upon these grounds, therefore, I am for adhering to the interlocutor of the Lord Ordinary.

The Court adhered.

Counsel for Pursuer—Dean of Faculty (Watson) —Mair. Agent—William Officer, S.S.C.

Counsel for Defender—Balfour—R. V. Campbell. Agent—A. Kirk Mackie, S.S.C.

Friday, March 3.

SECOND DIVISION.

[Lord Craighill.

STEPHEN *v.* THURSO POLICE COMMISSIONERS.

Reparation—Liability — Master and Servant—Contractor—Police and Improvement (Scotland) Act 1850.

The Police Commissioners of a burgh entered into a contract for cleansing the streets and the removal of filth and rubbish. It was stipulated that the contractor should be under the immediate order of the inspector or of the clerk of the Commissioners, and it appeared that he was in the habit of receiving orders and directions from them. A quantity of rubbish, which had been taken from an ash-pit, was left through the negligence of the contractor all night on one of the streets, and a person walking in the dark fell over it and was injured.— *Held*, in an action at the instance of the party injured against the Commissioners, that as they had not parted with the control of the contractor, they were responsible for the accident, and accordingly liable in damages.

Observed by Lord Gifford that the real question in such cases is, who has the control and direction of the person who did the wrong?

Question whether such Commissioners can competently enter into any contract which will have the effect of relieving them of their statutory duties?

This was an action of damages brought at the instance of David Stephen, watchmaker and jeweller in Thurso, against James Brims and Charles Macdonald, as representing the Commissioners of Police of the burgh. The summons concluded for payment to the pursuer of the sum of £500.

The pursuer set forth that upon the evening of the 27th November 1874, while proceeding from his house to his shop, he was thrown violently down by a heap of rubbish and filth which was lying on the street, a few feet from the pavement; that the night was very dark, and there was no light near the spot. In consequence of this fall the pursuer averred that he was severely injured, and by being unable to attend to his business suffered pecuniary loss. This action was accordingly brought for the purpose of recovering damages.

The defenders, as representing the Police Commissioners, denied liability. They stated that they had contracted with Mr Andrew Swanson, carter, Thurso, for the removal by him of all dung, refuse, or other matter from the streets, lanes, pavements and footpaths in Thurso, and also, when required, from any premises there which the defender or their inspector might point out, and that this contract was binding upon Swanson for three years prior to Whitsunday last 1875. They maintained that in consequence of this contract, if there was any injury caused to the pursuer, it arose through the fault of Swanson, who had put the rubbish upon the street, and had failed to remove it.

A proof was taken before the Lord Ordinary.

It appeared that by the contract entered into between the Police Commissioners and Mr Swanson it was provided that the contractor or one of his servants "shall, when required by the inspector, be bound to clean and remove any nuisance, fulzie, or other matter on the streets, lanes, pavements, or footpaths, and shall also be bound to enter upon any premises when or where the Commissioners or their inspector may point out any nuisance, and remove it upon receiving written orders to that effect from the clerk or inspector; and it is hereby specially conditioned and agreed that the whole of the works and services specified shall be performed in the most sufficient and complete manner to the entire satisfaction of the said Commissioners of Police or any person they may appoint as surveyor or inspector; and that the contractor, except where otherwise provided for, shall be under the immediate order of the inspector, or in his absence of the clerk of the Commissioners." Mr Swanson in the course of his evidence stated — "The inspector of nuisances in office when the contract was entered into was James Gunn. He gave me notice of anything requiring to be done. Gunn was succeeded by one William Mackay, who was in office for only about three weeks. Bruce succeeded him. (Q.) Was there any difference