*Thursday, May* 28.

## SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

### M'CAFFER *v.* ALLAN.

*Sheriff—Process—Interlocutor—Findings in Fact—"For the Reasons in Note Assoilzies"—Finding in Fact in Note but not in Interlocutor.*

*Observed* by Lord Young that an interlocutor in the Sheriff Court deciding an ordinary action after proof should contain in itself all the findings in fact on which the Sheriff's judgment is based. It is irregular for him to make findings in fact in his note which are not included in his interlocutor; and such findings are not properly imported into the interlocutor by the use of the expression "For the reasons in note."

This was an action brought in the Sheriff Court of Lanarkshire, at Glasgow, for repetition of the price of a horse, which was alleged to have been disconform to warranty in respect of unsoundness. The Sheriff-Substitute (SPENS) after a proof assoilzied the defender. The interlocutor after sundry findings in fact proceeded as follows:—"For the reasons in note, sustains the defences, and assoilzies the defender, and decerns." There was no finding in fact as to whether the horse was unsound or not when sold, but in his note the Sheriff-Substitute said:—"I am of opinion upon the veterinary evidence that unsoundness is not established," and "The pursuer has failed to satisfy me that the horse was unsound at the date of sale." The pursuer appealed to the Second Division of the Court of Session. The Court dismissed the appeal. On the merits the question was one purely of fact.

In giving judgment, LORD YOUNG, after delivering an opinion to the effect that the Sheriff-Substitute's judgment should be affirmed, said:—

"The interlocutor of the Sheriff-Substitute is not altogether satisfactory, and is another illustration of a practice which has been growing up, especially in the west. The interlocutor is—"Finds it not proved that any warranty was granted," and then it goes on, "for the reasons in note sustains the defences and assoilzies the defender." That is quite irregular. A note can never be made part of an interlocutor. In his note the Sheriff-Substitute states—"I am of opinion upon the veterinary evidence that unsoundness is not established." That ought to have been a finding in the interlocutor, and we shall have to find, both that it was not proved that any warranty was granted, and also that it was not proved that the animal was unsound."

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Find in fact in terms of the findings in fact in the interlocutor appealed against: Further find that it is not proved that the brown mare in question was unsound when sold: Therefore of new sustain the defences and assoilzie the defender from the conclusions of the action, and decern."

Counsel for the Pursuer and Appellant—Macaulay Smith. Agents—Robertson & Wallace, S.S.C.

Counsel for the Defender and Respondent—Lees—A. S. D. Thomson. Agent—J. Stewart Gellatly, S.S.C.

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*Tuesday, June* 16.

## FIRST DIVISION.

[Lord Low, Ordinary.

### WALDIE *v.* MUNGALL.

*Lease—Agricultural Holdings (Scotland) Act* 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 7—*Compensation for Improvements—Notice—Determination of Tenancy.*

Section 7 of the Agricultural Holdings (Scotland) Act 1883 provides that "a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing to the landlord to make a claim for compensation under this Act."

*Held* that in the case of a lease where there was only one term of entry for all the subjects let, viz., Martinmas, the common law right of the outgoing tenant to consume the turnips on the ground after that date was not a right to possession of the holding as tenant, to the effect of rendering a notice of claim for compensation for improvements timeous if not given four months prior to Martinmas.

*Black* v. *Clay*, June 22, 1894, 21 R. (H. of L.) p. 73, *distinguished.*

*Observations* (*per* Lord M'Laren) on *in re Paul*, 1889, L.R., 24 Q.B.D. 247.

Mr John Waldie was tenant of the farm of Gattonside Mains, Roxburgh, belonging to Mr Henry Mungall of Gattonside, in terms of an offer by the tenant and acceptance thereof dated respectively 24th October and 2nd November 1885.

The offer was for a lease of nineteen years and was stated to be "subject to all the conditions and provisions contained in the foregoing articles."

The conditions of lease thus referred to contained, *inter alia*, the following provisions:—"*First*—The lease of the farm to be for such number of years as may be agreed upon, with entry at Martinmas 1885 . . . *Sixth.*—The rent which may be agreed on shall be paid in money to the proprietor and his heirs, half-yearly by equal portions at Whitsunday and Martinmas in each year. . . . *Tenth*—Further, no hay, straw, fodder, or turnips growing on the farm shall be sold, but the whole thereof shall be

consumed and made down into dung and regularly applied to the lands. . . . And the tenant shall be bound to leave to the landlord or incoming tenant the whole straw of his way-going crop as steelbow, and without payment therefor, the tenant having right to the barn and threshing-mill and barn-yard till the term of Whitsunday after the termination of the lease for the purpose of stacking and threshing his crop. . . . *Eleventh*—The tenant on getting possession of the threshing-mill, which shall not be until after the landlord shall have done with using the same in threshing out last year's crop, shall be bound to accept of the same as in good and sufficient going order and repair, and shall be bound constantly to keep, and at the expiration of the lease to leave, the same in the like good order and condition. . . . *Thirteenth*—The tenant and his foresaids shall be bound to flit and remove themselves, their servants, goods, and gear from the houses and lands at the termination of the lease, without any warning or process of removing to that effect."

The parties agreed that there should be "a break on the part of landlord and tenant in the lease . . . at the term of Martinmas 1895," on written notice being given by either party before Whitsunday 1895.

In 1887 the landlord's agents wrote to the tenant stating that their client agreed "that the lease may be put an end to by either party on giving a year's notice on either side." They further gave the tenant written permission to do certain things, *inter alia*—"(1) The tenant shall be at liberty, notwithstanding the conditions of the lease, to sell the turnips growing on the farm at the termination thereof, which turnips shall in the option of the tenant be consumed elsewhere than on the farm."

On 14th May 1895 Mr Waldie, the tenant, intimated that he intended to take advantage of the break in the lease at Martinmas 1895.

On 26th July 1895 the tenant intimated that he intended to claim a sum as compensation for improvements under the Agricultural Holdings Act.

The landlord repudiated the notice on the ground that it had not been intimated four months before the determination of the tenancy.

Mr Waldie then raised an action concluding, *inter alia*, for declarator—"(2) . . . That the determination of the pursuer's tenancy within the sense and meaning of the Agricultural Holdings Act does not take place sooner than the separation from the ground of the said turnip and other green crop in course of good husbandry, or otherwise sooner than the term of Candlemas 1896." (3) That the pursuer's notice of claim was "duly given four months at least before the determination of the pursuer's tenancy . . . and constitutes a valid and effectual notice."

The defender pleaded that the notice had not been timeously given, the tenancy having determined at Martinmas 1895.

The Lord Ordinary (Low), by an interlocutor dated 20th February 1896, found that notice had not been timeously given, and dismissed the action.

*Opinion.*—"The question in this case is, whether, where there is only one ish in the lease of a farm for all the subjects let, the right of the outgoing tenant, at common law, to reap the crop on the ground after the termination of the lease is to be regarded as a right to possession of the holding as tenant, to the effect of rendering a claim for compensation for improvements under the Agricultural Holdings Act timeous, although it is not given four months prior to the ish.

"In the pursuer's lease there was only one term of entry—namely Martinmas—and therefore only one ish. It was argued that there was a separate ish as regarded the barn, barnyard, and threshing-mill, but that is not the case. The right or privilege which the tenant was given to use the barn, barnyard, and threshing-mill is expressed to be 'after the termination of the lease.'

"This case, therefore, is clearly distinguished from *Clay* v. *Black*, 21 R. 41, H.L. 72, where three separate periods of entry were specified, and the lease was for nineteen years 'from these periods respectively.' The lease here is also different from that which was construed in *Wight* v. *Earl of Hopetoun*, 1 Macph. 1097, 2 Macph. (H.L.) 35, which was for nineteen years from the entry, which was 'declared to have been begun as to the grass and houses at Whitsunday 1747, and to the arable land at the separation of the current crop 1747 from the ground.

"In the latter case a certain notice which had to be given 'at least twelve months before the expiry of the above term of nineteen years,' was held to be too late when given in the month of August preceding the Whitsunday at which the tenant fell to remove from the grass and houses. The true ground of judgment in that case must now be taken (in view of the observations upon it in *Clay* v. *Black*) to have been that the terms of the lease, when read in the light of the purpose for which the notice was to be given, shewed that the parties must have had the earlier term of removal in view in stipulating that twelve months' previous notice must be given. But the majority of the Judges in the Court of Session (led by Lord Justice-Clerk Inglis), and, at all events, Lord Chancellor Westbury in the House of Lords, held it to be a sufficient ground of judgment that the stipulation that the entry to the arable lands (and consequently the ish) should be at the separation of the crop, was no more than a statement of the common law right of an outgoing tenant to reap the crop which he had sown, and that therefore the entry and ish as to all the lands was at Whitsunday, the outgoing tenant having only a limited right of entry and occupation of the land under crop for the purpose of reaping it.

"The soundness of that view was more than doubted by the House of Lords in the case of *Clay* v. *Black*. The view taken by the noble and learned Lords in the latter

case appears to me to have been this. If a lease bears to be for a period of years from Whitsunday as to grass and houses, and from separation of the crop as to the arable lands, the tenant continues, after the expiry of lease as regards grass and house, to possess the arable lands as tenant under the lease, and not merely as the sower of the crop, who has a limited right or privilege of entry upon the lands after they have been leased to another for the purpose of reaping the crop.

"The judgment in *Clay* v. *Black* was that in a lease with entries at Whitsunday and separation, the tenant does not require to give notice of a claim under the Agricultural Holdings Act four months before Whitsunday, but is in time if he gives the notice four months before Martinmas, which was held to be the term contemplated by the phrase 'separation of the crop.'

"But what of the case of there being only a Whitsunday entry? In that case also the outgoing tenant would be entitled to reap the crop which he had sown. But would he be entitled to reap the crop as tenant? He would not be so if the view taken by the Judges of the Court of Session and by Lord Westbury in *Wight's* case as to the nature of the right of an outgoing tenant at common law to a waygoing crop is sound. And I do not understand that the soundness of that view was challenged in *Clay* v. *Black*. What was challenged was the view that there was no difference between the case of a lease with entry to houses and grass only at Whitsunday, and to the arable lands at separation, and a lease which gives entry to the whole lands at Whitsunday and leaves the outgoing tenant's right to a waygoing crop to be regulated by the common law. The difference between these two cases I take to be that in the first the tenant, after removing from the grass and houses, continues in possession of the arable lands and reaps the crop under and by virtue of the lease and as tenant; while in the second case the lease terminates at Whitsunday, and after that term the outgoing tenant has no possession under the lease or as tenant, but has only a right to reap the crop which he has sown, in accordance with the maxim *messis sementem sequitur*.

"The case of *Clay* v. *Black* did not determine that in the case of a lease in which there is only one term of entry to all the subjects, a notice by the tenant may be good although it is not given four months prior to that term, and that is a question which must be decided upon a construction of the provisions of the Agricultural Holdings Act when read in the light of the right of an outgoing tenant at common law to reap the waygoing crop.

"The 7th section of the Agricultural Holdings Act enacts that a tenant shall not be entitled to compensation unless four months 'before the determination of the tenancy' he gives notice to the landlord. The phrase 'determination of the tenancy' is defined to mean 'the termination of the lease by reason of effluxion of time, or from any other cause.'

"Now, if the view taken in the case of *Wight* as to the nature of the right of a tenant to reap a crop after the ish of the lease is sound, I think that it is plain that where there is only a Whitsunday ish the lease terminates at that term, which is also the date of the determination of the tenancy. I say that that is the result if the views in *Wight's* case are sound, because it was argued on the authority of the English case *in re Paul*, 24 Q.B.D. 247, that the common law right of a tenant to reap a waygoing crop must be read into and held as part of the lease. That, however, would not avail if, as was held in *Wight's* case, the outgoing tenant's right to reap the crop is only (to use Lord Westbury's words) 'a limited right of entry and occupation for that purpose . . . which is perfectly consistent with the lease commencing as to all the lands at Whitsunday.'

"Further, in the case of a tenant who has only the common law right to enter upon the lands for the purpose of reaping his crop, it seems to me that if the Whitsunday term is disregarded it is impossible to fix any *punctum temporis* with reference to which the four months are to be calculated. Where by express stipulation the tenant is entitled to possess the arable land until the separation of the crop, that is held to be equivalent to a continuation of the lease until Martinmas; but there is no reason in my opinion for holding that the common law right of an outgoing tenant to reap his crop is practically an extension of his tenancy until Martinmas. Apart from stipulation in the lease, an outgoing tenant has in my opinion only such right of entry and possession as is necessary to enable him to ingather his crop. After the crop is ingathered in ordinary course he has no right whatever in or upon the lands.

"There are two sentences in Lord Watson's judgment in *Clay* v. *Black* upon which the pursuer founded as being in his favour. His Lordship said—'I have come to the conclusion that the "determination of a tenancy," as the expression occurs in sections 2 and 7 of the statute, refers to the time when the tenant finally gives up possession of the subjects which in the statute are described as his "holding." Section 2 is framed upon the assumption that his quittance of his holding and the determination of his tenancy are to be in point of time coincident.'

"The pursuer argued that a tenant who has a crop on the ground at the end of the lease does not give up possession until he has reaped the crop, and that until he has done so, there is, according to Lord Watson's view, no determination of the tenancy.

"Now, what Lord Watson says is that there is no determination of the tenancy until the tenant gives up possession of his 'holding.' But the word 'holding,' which Lord Watson quotes from the statute, is defined as 'any piece of land held by a tenant.' There is, therefore, no 'holding' in the sense of the statute unless the person claiming compensation holds a piece of land

as tenant. According to the opinions in *Wight's* case, however, the right of an outgoing tenant to reap a waygoing crop after the ish is not a right to hold a piece of land as tenant, but a right to enter, for the sole purpose of reaping a crop, upon land which is held by another person as tenant.

"I am therefore of opinion that where a lease comes to an end as regards the whole subjects at Whitsunday, the outgoing tenant must give notice of a claim under the Act at least four months before that term, even although he will have right to enter upon the farm after that term for the purpose of reaping the crop.

"I have been dealing with the case of a Whitsunday ish and the right of an outgoing tenant to reap the corn crop thereafter. I have done so because a Whitsunday ish was the one considered in the leading cases to which I have referred, and also because when the Court have dealt with a tenant's right to reap a crop after the ish it has always been in regard to a corn crop.

"In this case the ish was at Martinmas, and the crop was the turnip crop. I do not, however, think that that makes any difference in the principle applicable. The lease contains the quite common clause prohibiting the sale of turnips off the farm. That clause was altered by the letter of the landlord's agents of 12th May 1887, quoted in the condescendence, by which the pursuer was given the option of selling the turnips off the farm at the termination of the lease. The pursuer, however, was not bound to sell the turnips, but was entitled to exercise his rights in regard to that crop.

"The pursuer avers that the practice in such cases is for the outgoing tenant to consume the turnips upon the land after Martinmas, the understanding being that he has at least until Candlemas to do so. I assume for the purposes of this case that the practice is correctly stated by the pursuer. But it amounts to no more than this, that by custom a tenant under a lease with a Martinmas ish is recognised to have the same right to reap his turnip crop after the ish which a tenant leaving a farm at Whitsunday has to reap his corn crop after that term. The only difference is that as it is usual to prohibit the sale of turnips off the farm, the only way of reaping the crop (if it is not sold to the incoming tenant) is to eat it with sheep upon the ground. That however is a matter of detail, and does not in my opinion alter the character of the outgoing tenant's right. He reaps the turnip crop just as a tenant with a Whitsunday ish reaps the corn crop, because he has sown the crop, and not because he continues to be tenant under the expired lease.

"Further, in this case, as in the case of a corn crop, the difficulty is to find a *punctum temporis* prior to which the notice must be given. The pursuer says that Candlemas should be taken. But, upon his own showing, I do not think that any warrant for fixing upon that term can be found in the statute. The custom which he avers is that 'the consumption of the turnips upon the farm extends at least until Candlemas (2nd February) subsequent to the Martinmas term, and frequently continues as late as the month of April.' The custom upon which the pursuer relies, therefore, is for the outgoing tenant to continue possession for a period varying according to circumstances. He is entitled to possess 'at least' until Candlemas, but he may continue until April.

"The English case (*in re Paul*) to which I have referred was strongly founded on by the pursuer. There a lease expired on the 11th October, but by a custom of the country the tenant was entitled to hold over the possession of the meadow land until the 11th day of the following February. The Court held that the determination of the tenancy did not occur until the latter date. The ground of judgment as stated by Lord Coleridge, C.-J., was that the custom must be held to have been incorporated into the lease, and he referred to the custom as one 'by virtue of which the termination of the tenancy might be postponed for a period after the expiration of the notices to quit.'

"Now, if the result of reading the custom into the lease was that the tenant continued to possess a substantial part of his holding as tenant under the lease until a definite and fixed date, the ground of judgment is very clear. But if I am right in the view which I have taken as to the nature of a Scottish tenant's right to reap his crop after the ish, he has, after that date, no possession as tenant; and, according to the pursuer's own averment, there is no fixed period within which the reaping or consumption of the crop must be completed. The ground of judgment therefore in *Paul's* case is not applicable.

"The pursuer also founded upon the Removal Terms (Scotland) Act 1886. Under that Act, when the term of a tenant's removal is Martinmas, he does not remove from the dwelling-house on the farm until the 28th of November. The date of the term as regards the lands, however, is not altered, and I am of opinion that the fact that under the Act the pursuer was entitled to hold the farm house until 28th November did not prevent his tenancy of his holding, within the meaning of the Agricultural Holdings Act, coming to an end at the ordinary date."

The pursuer reclaimed, and argued—(1) While there was only one term of entry in the lease, the pursuer, as a matter of fact, did not get entry to the land under turnip cultivation at that date, and it was not till the succeeding March that he did so. Accordingly this case was analogous to that of *Black* v. *Clay*, November 7, 1893, 21 R. 91; June 22, 1894, 21 R. (H. of L.) 77, where also it was the fact that there were different terms of entry. By necessary implication there was a separate ish for the turnip crop, and the pursuer had a right of possession for the purpose of either consuming or selling it off. Moreover, there was a separate ish as regarded the barn, barnyard, and

threshing-mill. Accordingly, the right of the pursuer here came up to the criterion applied by Lord Watson in *Black* v. *Clay*, at page 77, to the interpretation of the words "determination of a tenancy," since he had not "finally given up possession of the subjects," and it must be held in accordance with that decision that the tenancy did not determine till the crop had been removed, *i.e.*, in this case till Candlemas at least. The case of *in re Paul*, November 19, 1889, 24 Q.B.D. 247, strongly supported this view. The pursuer certainly had as strong a right as that of the tenant in *Wight* v. *Hopetoun*, *ut infra*, which would have been sufficient for determining the question of sufficiency of notice under the Act.

Argued for the respondent—The case was clearly distinguishable from that of *Black* v. *Clay*, where three separate periods of entry were specified, and the lease was for nineteen years "from these periods respectively." Here there was only one term of entry, viz., Martinmas, and accordingly there was only one ish. Moreover, here the right founded upon was merely a limited one of entry for removing the crop, while there the right, such as it was, was an exclusive one. Accordingly the pursuer in order to succeed must prove that the decision in *Black* v. *Clay* would have been the same had it not contained these essential points of distinction, and this he was unable to do. It was an attempt to extend this common law privilege of removing the crop, founded as it was merely on the principle that "he who sows must reap," to a right of possession such as had never previously been recognised. Moreover, the right to consume turnips was of a much more unsubstantial nature than that to grow a corn crop after the nominal term of a lease had expired, the present right being merely one to consume an already matured crop. Accordingly it did not come as high as the right in the case of *Wight* v. *Earl of Hopetoun*, July 10, 1863, 1 Macph. 1074, 2 Macph. (H. of L.) 35, which was stated by Lord Westbury to be merely a limited right of entry and occupation. This opinion had not been really contradicted by the case of *Black* v. *Clay*. As regards the case of *in re Raul*, the ground of judgment was that, according to the law of England, the custom must be held to be incorporated in the lease, and by virtue of it the tenant was to keep a substantial part of his holding as tenant under the lease for a definite period after its nominal termination. Here, however, the tenant only had a limited common law right for a definite purpose. Moreover, he could not point to any *punctum temporis*, any fixed period within which the consumption of the crop must be completed. Accordingly the two cases were not analogous.

At advising—

LORD M'LAREN—This case raises a question as to the sufficiency of a notice of a claim for improvements under the Agricultural Holdings Act, but under conditions which distinguish the case from *Clay* v. *Black*.

The pursuer is tenant of the farm of Gattonside Mains under an informal lease for the period of nineteen years, afterwards reduced to ten years. The missives bear reference to a statement of conditions issued by the proprietor, and the first of these conditions is that the lease shall be for such number of years as may be agreed on, with entry at Martinmas 1885. Unless it can be shown that this condition is altered or extended by the effect of other conditions agreed on, it would follow that as there is only one term of entry to the farm, there is also one ish, or period of "determination of the tenancy," and that notice of claim ought to be given four months before Martinmas of the last year of possession.

Under the sixth condition the rent is made payable as usual in such holdings in equal moieties at Whitsunday and Martinmas. The tenth condition contains a provision in which the pursuer founds, viz., that no hay, straw, fodder, or turnips growing on the farm shall be sold, but the whole thereof shall be consumed and made into dung, and regularly applied to the lands. It is not disputed that this provision makes necessary the continued occupation of so much of the farm as was under turnip-crop during the last year of the lease, in order that the turnips should be consumed on the farm during the winter months following Martinmas 1895. It is proper to notice that during the currency of the lease the proprietor gave written permission to the tenant to do certain things, and, *inter alia*, to sell the turnips which should be growing on the farm at the termination of the lease, which turnips should, in the option of the tenant, be consumed elsewhere than on the farm. But this was only a permission, and a mere permission to dispose of the turnips would, of course, not affect the tenant's right to consume the turnips on the land if he pleased.

An argument was also founded on the excluding part of the 10th condition taken in connection with the 11th condition, where it is provided, first, that the outgoing tenant shall have right to the barn and threshing-mill and barn-yard till the term of Whitsunday after the termination of the lease for the purpose of stacking and threshing his crop, and also (art. 11) that the tenant, *i.e.*, the pursuer, shall only get possession of the threshing-mill "after the landlord shall have done with using the same in threshing out last year's crop."

The 13th condition is to the effect that the tenant shall be bound to remove "from the houses and lands" at the termination of the lease without warning or process of removing.

Now, the pursuer has claimed the right of feeding stock on the turnip-fields during the winter months following Martinmas, and it is conceded that if his tenancy was not determined until the turnips were eaten, his notice was sufficient in point of time. And of course if the tenancy is to be taken as prolonged to Whitsunday 1896 when the tenant's right to the use of the barn, threshing-mill and barn-yard came to an end the notice would be sufficient.

But again, if we are to take it that the tenant obtained entry to the entire and undivided subject at Martinmas 1885, it would follow that his tenancy came to an end at Martinmas 1895, because the lease was only for ten complete years. On this point it is not unimportant to notice that in the letter reducing the duration of the lease to ten years the expression used is "I agree to there being a break on the part of landlord and tenant in the lease of Gattonside Mains at the term of Martinmas 1895."

We know that where a farm is in part pastoral and in part arable the lease usually specifies two terms of entry applicable to the respective subjects. In *Clay* v. *Black*, where the lease gave entry to the houses and grass-lands at Whitsunday, and to the arable lands at the separation of the crop from the ground, your Lordships decided that notice under the Act of Parliament was to be reckoned with reference to the later term of entry and ish, and this decision was affirmed on appeal. In some cases, especially where the farm is chiefly pastoral, the term of entry is Whitsunday, and in such cases it is recognised that as the outgoing tenant is entitled to reap his crop, he has a qualified right of entry on the lands for the purpose. But I am not aware that in such a case it ever has been held that the right of removing the crop has the effect of extending the period of the tenancy until Martinmas. On the contrary, I apprehend that the real right of the incoming tenant with a Whitsunday entry is perfected and completed as to the entire farm when he takes such possession at Whitsunday as the nature of the subjects admits of. The outgoing tenant has access to the fields which he has sown for all necessary agricultural operations, but if he enter for any other purpose he would be a trespasser. This, I think, is the import of the judgment of the Court in the case of *Gatherer* v. *Cumming's Executors*, and is clearly expressed in the opinion of the Lord President, 8 Macph. 381. I grant there may not be much practical difference between the use which the outgoing tenant has in such a case as proprietor of the growing crop, and the use which a tenant of similar lands may have under his real right where there is a double entry entitling the tenant to retain possession of the fields until Martinmas. But in such cases I think form is substance, and where landlord and tenant have agreed on a certain term of entry with a correlative ish, I know of no legal principle that should persuade a court of law to prescribe a period of determination of the tenancy different from the period which the parties have prescribed for themselves, or to hold that the limited right of occupation to which I have referred is equivalent to a prolongation of the real right.

Passing from the case which I have used for illustration to the actual case, I see still greater difficulty in accepting the pursuer's proposition that his tenancy was in existence after the term of Martinmas. A lease must come to an end at a definite time, and I do not see how a use of feeding stock on the turnip fields can be taken as a measure of time. The turnips might be consumed within a few weeks after Martinmas, and then the right of occupation would cease, or the feeding might extend to the end of the year, or as suggested in argument until Candlemas. The use of the barn, barnyard for stacking, and threshing-mill is equally indefinite in point of time, with this difference that Whitsunday is given as the extreme limit of the right of occupation. Then one is impressed with the argument that these are rights of very secondary importance in comparison with the general right of a tenant of arable lands to have his crop retained on the lands until it is ripe for removal, and I do not think that the existence of such limited uses can displace the plain condition of the lease, which provides that the entry shall be at Martinmas.

I have thus been led to adopt the conclusions and the reasoning of the Lord Ordinary, and were it not that our decision may regulate the matter of giving notice under other leases where the term of entry is the same, I should not have thought it necessary to consider the question so minutely. There is one other topic referred to by his Lordship which I must notice — I mean the bearing on this case of the English case of *Paul*. I agree in the Lord Ordinary's interpretation of that decision that it proceeded on the ground that by custom a tenant might continue to hold a substantial part of his holding for a definite and fixed period after the expiration of the notice to quit. But it is never very safe in a question of real property law to rely on precedents established with reference to a different system of law. I doubt whether we should be able to give such an effect to custom under our law of landlord and tenant even if the custom were proved, because in Scotland the real right of the tenant is measured by the terms of his lease. But if we apply to these conditions the principle that was applied to the local custom in the case of *Paul*, then I think the pursuer's case fails, because there is no postponement of possession to a definite time. I am for adhering to the Lord Ordinary's interlocutor.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer—W. Campbell — M'Lennan. Agent — Charles Waldie, Solicitor.

Counsel for the Defender—H. Johnston —Constable. Agents—Carmichael & Miller, W.S.