the clause would be applicable if the landlord proposed to take away the farmhouse and farm-steading, although that result might be under the letter of the agreement. I should be disposed to answer such a claim in the negative. I would construe the clause in what appears to me to be a sensible manner rather than read into it an implied obligation in the landlord to build a new farm-steading elsewhere.

But the present case does not raise any such considerations. The power of resumption is limited to taking ground in this outlying field, and I cannot limit the power of the landlord to resume the land there by the consideration that these outhouses have been built upon a part of it. Indeed, Mr Asher admitted that his argument must come to this, that if the ground was occupied by a dovecote or pigsty the clause could not apply. I think the landlord is within his power in making the resumption he proposes to make.

I also indicated an opinion—and indeed it is involved in what I have said—that I would not be indisposed to construe this clause having regard to the conduct of the parties during the time the lease was running. It was pressed upon us, indeed, that twenty years ago, in 1871, the tenant put up a byre, and the condition with the landlord was that at the end of the lease he should either be allowed to remove it or be paid for it, and it was said that he had done this with a view to the resumption of the ground by the landlord. But any anxiety about hardship which might exist in such a case as this is out of the question here, for the tenant has had the use of the byre for twenty years, and he is not to be deprived of it without getting compensation. I think we must hold that the lease under which he occupies his farm contains this clause of resumption as well as the clause prohibiting subfeuing. I think that the Lord Ordinary is right, and that we must affirm his judgment.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I am of the same opinion. I think that the Lord Ordinary is right, and that the right of the pursuer is based upon the only fair and permissible reading of the clause upon which the pursuer relies.

The LORD JUSTICE-CLERK concurred.

The Court refused the reclaiming-note and adhered to the Lord Ordinary's interlocutor.

Counsel for Reclaimer—Asher, Q.C.—Dundas. Agent—George F. Scott, S.S.C.

Counsel for Respondent—D.-F. Balfour, Q.C.—C. K. Mackenzie. Agents—Romanes & Simson, W.S.

Friday, May 29.

SECOND DIVISION.

MACLEAN AND OTHERS.

Will—Revocation—Bond of Annuity not Revoked by Subsequent Will Revoking "all Previous Wills and Testaments."

In 1881 the heir of entail in possession of an entailed estate granted a bond of annuity in favour of his wife if she should survive him, whereby he granted out of the entailed lands an annuity equal to the free yearly rental of the lands, and declared the provision to be "in full satisfaction to her of all terce of lands, or half or third of moveables, or every other claim competent to her on my death." Power to alter the deed was reserved. In 1882 the granter executed a trust-settlement, whereby he revoked "all former settlements and all writings of a testamentary character with the exception of" the bond of annuity. In 1889 he executed a holograph will, by which he made certain provisions for his widow, and declared, "I revoke all previous wills and testaments." *Held* that he had not revoked the bond of annuity.

Upon 16th July 1881 Alexander Thomas Maclean, one of the Judges of the High Court of Calcutta, and heir of entail in possession of the lands and barony of Ardgour and others, on the narrative that he was desirous of securing a suitable provision out of these lands and barony to his wife during her lifetime if she survived him, granted, under the provisions of the Aberdeen Act (5 Geo. IV. cap. 87), to her all the days of her life, if she should survive him, an annuity equal to one-third part of the free yearly rental of the lands and barony. The deed also declared that this annuity was restricted according to the provisions of the statute, and that it was to be accepted by his wife "in full satisfaction to her of all terce of lands, or half or third of moveables, or every other claim competent to her on my death," excepting any annuity which she might be found entitled to as his widow from the Indian Civil Service Fund. The deed concluded, "And I reserve power to revoke or alter these presents in whole or in part; and I dispense with the delivery hereof during my life, and I consent to registration hereof for preservation and execution."

On 19th August 1882 Mr Maclean executed a trust-disposition and settlement, in which he directed his trustees as to the disposal of his moveable estate. He appointed his wife to be the tutor and curator to his children during their minority, and declared—"And I hereby revoke and recal all former settlements and all writings of a testamentary character with the exception of a bond of annuity in favour of my wife dated 16th July 1881, executed by me prior to the date hereof, and I reserve full power to alter or revoke these presents in whole or in part."

Mr Maclean died upon 14th December 1889. He left a widow and four children, three daughters and one son, Alexander John Hew Maclean, who was in pupillarity, and who succeeded his father as heir of entail of the lands of Ardgour. In Mr Maclean's repositories was found a holograph will dated 29th November 1889. The first provision of this will was in these words, "I revoke all previous wills or testaments." He bequeathed to his successor in the entailed estate of Ardgour all the household furniture and farm plant, subject to the use during her life or widowhood by his wife of such portions as she might desire. "(4) I bequeath the rest of my property, wheresoever and whatsoever, to my said wife for her use as to the interest or income thereof during her life or widowhood." The value of the moveable estate left by Mr Maclean amounted to about £15,000, as specified in a schedule attached to the deed.

This special case was presented by (1) the heir of entail and his tutors and curators, and (2) Mrs Maclean, for the opinion of the Court on this question—"Does the holograph will dated 29th November 1889 revoke the bond of annuity dated 16th July 1881?"

The first party argued—The annuity was a testamentary writing which was revoked by the subsequent holograph writing. It might be difficult to have said what was the meaning of the words the testator used, but that he intended to recal this annuity appeared from two considerations—(1) the provision in the deed that it was to be accepted in lieu of terce made it a writing of a testamentary character; (2) because by the trust-disposition and settlement of 19th August 1882 the truster had revoked all previous "settlements and writings of a testamentary character," but he expressly excepted this annuity, showing that he considered it was a writing of a testamentary character, and if he had wished his widow to take anything under the bond of annuity as well as what she took under the holograph will he would have excepted it in that deed also.

Counsel for the second party were not called on.

At advising—

LORD JUSTICE-CLERK—I doubt if it is quite legitimate for us to look at the words in the previous deed as a glossary of the words in the holograph will. Taking the words in the holograph will, however, as they stand, "I revoke all previous wills or testaments," I think it cannot be said that they revoke this bond of annuity. I think there is nothing in them to lead to that conclusion. The revocation is one only of testamentary writings, and this bond cannot be said to be within that category although there were some words in it of a testamentary character, but I think it is not a testamentary deed in the ordinary meaning of that term. I therefore think we should answer the question in the negative.

LORD YOUNG—I am of the same opinion. I am not going into the question, but I wish to guard myself against being thought to have any decided opinion. I have none as to whether it is proper for us to examine the words in the first will and use them as a glossary to explain the second. I see two difficulties. In the first place, there is no ambiguity in the language of the deed, and it is generally only where there is some ambiguity in the words that we look to extrinsic evidence. Then again, referring to a will or deed which has been prepared by a professional man, and which has been revoked, as a glossary of words used in a later deed may be doubtful enough. But I do not express any opinion, because I do not think they afford any ground for putting another construction on the words than they would otherwise bear.

LORD RUTHERFURD CLARK—I am quite clear that the bond of annuity was not revoked.

LORD TRAYNER concurred.

The Court answered the question in the negative.

Counsel for the First Parties—Ure—E. F. Macpherson.

Counsel for the Second Party—Salvesen—C. K. Mackenzie. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, May 21.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

MACLEOD'S TRUSTEES *v.* MURRAY.

Title to Sue—Annuity of Victual out of Lands—Adjudication—Admission that Debt Paid.

Certain lands were burdened with an annuity of victual in 1666. In 1698 the annuity was adjudged in security of a debt due by the person in right of said annuity. The adjudger and his representatives continued to draw the annuity till 1888, when the owner of the lands burdened refused to continue payment. In an action at the instance of the adjudger's representatives to enforce payment, it was admitted by joint-minute that the pursuers had received from the said annuity sums more than sufficient to pay off the debt, principal and interest.

Held that the annuity being validly constituted upon the lands, the owners of the lands had no right to refuse payment, the representatives of the reverser being the only persons having an interest to dispute the pursuers' claim.

Title—Instrument of Sasine—Necessity of Signature of Witnesses and of Notary's Motto—What Symbols Necessary to Valid Sasine in Annuity of Victual—Adjudi-