

The Court adhered.

Counsel for the Pursuer and Respondent—Dundas, K.C.—Craigie. Agents—MacKenzie & Black, W.S.

Counsel for the Defenders and Reclaimers—Johnston, K.C.—M'Clure. Agents—Cowan & Dalmahy, W.S.

Friday, July 10.

## SECOND DIVISION.

[Sheriff Court at Edinburgh.

BRASH v. J. K. MUNRO & HALL.

*Lease—Removing—Ejection—Ejection without Warrant—Tenant with ex facie Valid Title—Lease Obtained by Fraud and Misrepresentation—Reparation.*

By missive of lease a firm of house factors let a house for half-a-year to a woman who paid a quarter's rent in advance, and to whom they handed the keys. The house factors having been informed that the woman lived with a man who had been tried for an offence under the Immoral Traffic Act (which had been found not proven), and that the woman was a prostitute, three days after the tenants had entered on possession of the house requested them to leave, and upon their refusing to do so removed the door of the house, and so compelled the tenants to quit possession.

In an action of damages against the house factors, they stated in defence that the house had been got from them by misrepresentations and for immoral purposes. *Held* that even if this were so, the defenders were not entitled at their own hand to make the house uninhabitable and thus compel tenants, who were in possession upon an *ex facie* valid title, to leave it, and that they were liable in damages for doing so.

Gabriel Brash, commission agent, Edinburgh, raised an action in the Sheriff Court at Edinburgh against J. K. Munro & Hall, house factors, Edinburgh. The conclusions of the action were (1) for payment of £3, 10s. with interest at 5 per cent. from 18th October 1902, being a quarter's rent paid in advance for the lease of a house 16 Beaumont Place, which the defenders had let to the pursuer for half-a-year from Martinmas 1902, and (2) payment of £100 as damages for forcing the pursuer to leave the house by removing the outside door a few days after the pursuer had entered it.

The defenders averred that the lease of the house had been got from them by false and fraudulent misrepresentations and for immoral purposes, and that they were entitled in the circumstances to act as they did.

A proof was led before the Sheriff-Substitute (HENDESON). The facts of the case are fully stated in his interlocutors.

On 1st June 1903 the Sheriff-Substitute pronounced the following interlocutor:—  
“Finds in fact; (1) that on 18th October a woman, who calls herself Margaret Reid or Brash, and says she is the wife of the pursuer, called at the defenders' office and inquired as to houses to let; (2) that she was given the address of some houses and went away to inspect them; (3) that on the following day she returned to the defenders' office and stated that she was prepared to take the house No. 16 Beaumont Place; (4) that in reply to questions she said that her husband's name was James Reid, and that he was a commercial traveller from Leeds, and that their furniture was at the railway station; (5) that she was unable to find security but would pay a quarter's rent in advance; (6) that thereupon the missive No. 21 of process was made out whereby the house 16 Beaumont Place was let to 'James Reid' for the half-year from Martinmas 1902 to Whitsunday 1903, at the yearly rent of £14, and the woman paid £3, 10s. as a quarter's rent in advance and was given the keys of the house with leave to take immediate possession; (7) that the woman signed 'James Reid' to this missive, and at the defenders' request also signed what she said was her own name 'Margaret Reid'; (8) that on 21st October the woman who had taken the house from the defenders, along with the pursuer and the witness Schuleman, who lodged with them, took possession of the house No. 16 Beaumont Place, and placed their furniture, which they removed from a house in Panmure Place, in which they had been living for some time, in it; (9) that the defenders having heard that the real name of the man was not 'James Reid' but 'Gabriel Brash,' a man who had in September been tried in the Police Court for an offence under the 'Immoral Traffic Act,' sent a clerk on the same forenoon to 16 Beaumont Place with a message ordering the occupants of the house at once to leave it; (10) that these persons refused to do so, contending that as they had paid the quarter's rent in advance and had signed a missive of let and received the keys they were entitled to remain in the house; (11) that after the defenders had made other attempts to induce the occupants of the house to remove from it, they eventually on the next day, 22nd October, sent an assistant with a joiner and two policemen to the house, when the joiner proceeded to take off the outer door of the house and so left the house open to the common stair; (12) that the occupants remained in the house suffering considerable inconvenience for that night and the following day and night, but eventually, as the woman was in a delicate state of health, and by the advice of her doctor, they left the house on the night of 24th October and have not since returned to it; (13) that the woman was confined on 8th November; (14) that although the pursuer was tried for the offence under the 'Immoral Traffic Act' of living upon the proceeds of the prostitution of the woman who called herself his wife, the charge was found not proven; (15) that there can be little doubt that the woman

was a prostitute, but that there was no evidence that there had been any attempt at immoral practices while they were in occupation of 16 Beaumont Place; (16) that on 24th October the defenders served a summons of ejection against the pursuer, who was therein designed as Gabriel Brash *alias* James Reid, and the service copy of which is No. 16 of process; (17) that said proceedings have now been withdrawn: In these circumstances, Finds in law that the defenders having let to the pursuer under the name of James Reid the house in question, and having taken payment of a quarter's rent in advance, and having accepted the missive of let No. 21 of process and given up the keys, after which possession had been taken of the house, were not entitled at their own hand to remove the door from the house and thereby render it uninhabitable and so compel the tenants to leave the house, and that having done so they are (*First*) bound to repay the quarter's rent of £3, 10s, and are also (*Second*) liable to the pursuer in damages for their illegal actings: Assesses said damages at £25 sterling: Grants decree against the defenders for the said sums of £3, 10s., and £25 accordingly."

The defenders appealed, and argued—The contract of lease was bad, as they had been induced to enter into it by false misrepresentations and active deceit on the part of the pursuer or those acting on his behalf—*Carham v. Barry*, 1855, 15 C.B. 597. The pursuer's title being thus rendered void, he was thus in the position of a squatter, and the defenders were entitled to take means to remove him without a warrant—*Macdonald v. Watson*, July 4, 1883, 10 R. 1079, 20 S.L.R. 727. Further, the pursuer was not entitled to sue for breach of a contract which he had impetrated by fraud. To allow him to do so would enable him to take advantage of his own fraud.

Counsel for the pursuer and respondent was not called upon.

LORD JUSTICE-CLERK—This may be, as stated by the counsel for the appellants, an important case for house-agents, but I suppose that it is the first time that a house-agent has taken the law into his own hands and has defended his action on the plea that he was induced by fraud to enter into the contract of let. This plea is not to be listened to for a moment. House factors ought to make inquiries, and if they fail to do so, and subsequently discover that the tenants to whom they have let the house are not desirable, they are not at liberty at their own hand to proceed to evict them, either by force or—as in this case—by rendering the house uninhabitable.

As regards the amount of damages given, the Sheriff-Substitute who tried the case is the best judge, and I see no reason for altering his award.

LORD TRAYNER—I concur. I have a very clear opinion of the case, but I do not think it necessary to waste any further time by expressing it.

LORD MONCREIFF—I have never heard of a case in which a landlord who has entered into a written contract of lease has been allowed to eject his tenant *brevi manu* and without process of law, simply because of information which he subsequently acquired as to his tenant's character. If a landlord has been induced to enter into a lease by misrepresentation and fraud the law does not leave him helpless, for it is open to him to have the contract rescinded, and in a case of urgency a summary remedy might be given. I do not say that in the present case the actings and statements of the respondents amounted to such misrepresentation and fraud as would have warranted ejection. But there can be no doubt that the course which the landlord did take—that of summary ejection without a warrant—was wholly unjustifiable, seeing that the respondents were in possession of the house upon a title which was *ex facie* valid. I am of opinion that the interlocutor appealed against should be affirmed.

LORD YOUNG was absent.

The Court pronounced this interlocutor—

"Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Of new grant decree for the sums of £3, 10s, and £25, with interest thereon at the rate of 5 per centum since the date of citation."

Counsel for the Pursuers and Respondents—A. M. Anderson. Agent—Charles Garrow, Solicitor.

Counsel for the Defenders and Appellants—Jameson, K.C. — T. B. Morison. Agents—P. Morison & Son, S.S.C.

Wednesday, June 10.

## SECOND DIVISION.

[Sheriff-Substitute at Hamilton.]

DAVIDSON *v.* SUMMERLEE AND  
MOSEND IRON AND STEEL  
COMPANY, LIMITED.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1 (3), Schedule I., secs. 11 and 12—Medical Examination—Refusal or Obstruction—Right to Arbitration—Agreement—Memorandum not Registered—Suspension of Compensation.*

A workman was injured in May 1901, and his employers admitted liability for compensation and made the maximum payments exigible under the Workmen's Compensation Act 1897 down to 30th September 1902. No memorandum of agreement was registered. The workman then submitted himself, at his employers' request, to a medical man of their selection, who reported that he had recovered from his injuries