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fund; because the obligation undertaken by them is general, and is, that Admiral Keith Stewart should faithfully execute the office of Receiver General, and contains this express provision, "that the said Keith Stewart shall well and truly "execute the said office, by himself or his sufficient deputy "or deputies, for whom he hereby declares himself answer-"able for, and during the time he shall continue in the said "office." Thus the obligation as surety for the office, extends without limitation to the whole time that he shall continue to exercise such office. This being the general and leading feature, the sense and meaning of the sureties' obligation, it cannot be limited in any degree by the enumeration of particulars which follow it, because the particulars do not affect the general obligation, to "well and truly exercise the "said office, so long as he held the same."

After hearing counsel, it was

Ordered and adjudged, That the cause be remitted* back to the Court of Session in Scotland, to consider whether the sureties in the bond of September 1784 are liable, and to what amount, in this proceeding, on account of the fund of the Court of Session received by the late Admiral Stewart.

For Appellants, *Wm. Adam, Wm. Erskine.*
For Respondents, *J. Mitford, R. Dundas, Wm. Grant. J. Abercromby.*

* No further trace of this case in the reports.

[2 Bell's Leases 101-2. Note, Hunter, p. 766.]

JOHN MACMICHAN, Esq. of Balmae, *Appellant;*
THOMAS HUTCHESON, Tenant in Corbieton, *Respondent.*

House of Lords, 5th May 1801.

LEASE—CLAUSE—WAY-GOING CROP.—A tenant entered into a lease of a farm at Whitsunday 1791, without any right to a grain crop at his entry. A clause in his lease provided, that if the estate was sold, there was to be a liberty of break in the lease after seven years, if the purchaser wished to enter and take possession; upon which event, the tenant was to receive a full year's rent on leaving the farm, for defraying the expense of sowing out the lands that year in tillage, with grass seed and clover, and in consideration of leaving the whole lands in grass, and removing at Whitsunday. Nothing was said about a way-going grain crop. In the Court of

Session, held the tenant entitled to a way-going grain crop; Reversed in the House of Lords.

The lands of Corbieton, situated in Kirkcudbright, belonged to William Riddock, and were let on lease by his trustees, extending to 247 Scots acres, together with the mansion house, offices, and garden, for the space of twenty-one years from and after Whitsunday 1791, at a yearly rent of £192, payable half yearly.

The tenant was taken bound to have part of the lands in tillage every year during the currency of the lease. He had also power to give up the lease seven years after the commencement of the same, on giving a year's notice to the landlord. And the landlord, on his part, had a similar stipulation as to a break in the lease, upon which the present question arises. The clause as to him ran thus: "That "in case the said William Riddock, or his foresaids, shall "think proper, or find it necessary to sell his estate of Cor-"bieton, and that the purchaser shall incline to reassume "the possession of the lands, and others hereby let, it shall "be in his power so to do, at the period of seven years from "the commencement of this lease, *or at any term of Whit-"sunday thereafter*, during the currency hereof, upon making "due and lawful intimation of such his intention, to the "said Thomas Hutcheson and John Fead, or their fore-"saids, by a notary public before witnesses, *at least one "year previous thereto*, and allowing to the said tenants one "full year's rent for defraying the expense of sowing out "the lands that year in tillage, with grass seeds and clover, "and in consideration of leaving the whole lands in grass, "and removing from the same at a term of Whitsunday."

Under this contract, the respondent, Hutcheson, entered into possession, but Fead, his co-lessee renounced. He entered at Whitsunday 1791, without any right to a grain crop at entering, and so he could not reap any such crop until harvest 1792, although the full year's rent was made payable at Whitsunday 1792, some three or four months previously. Apart, therefore, from the stipulations of the lease, it was alleged, that at the termination of the lease he was entitled to a way-going crop.

The estate was sold to the appellant in 1799, that is, more than seven years after the commencement of the lease, and the purchaser, in terms of the above clause, gave notarial intimation on the 1st of April 1800, signifying his reso-

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lution to take possession of the whole premises let at Whitsunday 1801; and further signifying his willingness to allow the tenant, in terms of the covenant, one full year's rent for defraying the expense of sowing out the lands in tillage for the crop 1800, with grass seeds and clover, and in consideration of his leaving the whole farm in grass, and removing at Whitsunday. By the same notice, he required the tenant to sow the lands under tillage that season with grass seeds, so that the whole farm might be in grass at Whitsunday 1801, otherwise that he should be liable in damages, &c.

The question was, Whether the tenant was entitled to a way-going grain crop, as well as to the full year's rent, in consideration of giving up the lease before the expiry of the same; and what was the true interpretation of the lease on that subject?

In advocations of a judgment by the Steward of Kirckudbright, pronounced in a removing and interdict against the tenant's remaining on the lands, and against his ploughing for way-going crop, the Lord Ordinary conjoined the two advo-

Dec. 19, 1800. cations, and pronounced this interlocutor: "Having heard "parties, and considered the lease founded on, which pro- "vides and declares, that in case the said William Riddock, "or his foresaids, shall think proper, or find it necessary "to sell the estate of Corbieton, and that the purchaser "should incline to reassume the possession of the lands and "others thereby let, it should be in his power so to do at "the period of seven years from the commencement of the "said lease, or at any term of Whitsunday thereafter, du- "ring the currency thereof, upon making due and lawful "intimation of such his intention to the said Thomas "Hutcheson and John Fead, or their foresaids, by a notary "public, before witnesses, at least one year previous thereto, "and allowing to the said tenants one full year's rent for "defraying the expenses of sowing out the lands that year "in tillage with grass seeds and clover, and in considera- "tion of their leaving the whole lands in grass, and remo- "ving from the same at the term of Whitsunday, advocates "the cause, continues the interdict pronounced by the "stewart-depute, against ploughing and sowing, super- "seding the consideration of damages or expenses claimed "by the landlord in respect of ploughing done by the ten- "ant this season, until the point of interdict shall become "final."

On reclaiming petition, the Court altered, removed the interdict, and decerned. On reclaiming petition by the appellant, the Court adhered.

Against these two interlocutors the present appeal was brought to the House of Lords.

Jan. 31, 1801
Feb. 5, 1801.

Pleaded for the Appellant.—The question is, Whether, with reference to the particular contract between the parties, the tenant is at liberty to plough and sow the ground prior to the Whitsunday of his leaving, so as to reap the "crop posterior to that Whitsunday," at the season when it is usually reaped? The tenant contends, that by this special contract, he is so entitled to plough, sow, and reap; that, apart from such contract, he would have been so entitled, and that this lease does not infringe on, or alter that rule in any degree. But, in the appellant's apprehension, it is perfectly clear that the parties, by their contract of lease, meant to prevent the very thing contended for by the respondent, namely, a way-going crop, and hence the express stipulation for possession on the part of the landlord at Whitsunday, for which he was to get a full year's rent, as "a consideration of leaving the whole lands in grass, and "removing at a term of Whitsunday." The very expression, to leave the whole lands in grass at the Whitsunday of leaving, is utterly repugnant with the idea of any right to plough the tillage land; but the tillage land in that year was to be sown and turned into grass according to the express agreement. Nor was this stipulation of leaving at Whitsunday in these circumstances agreed to without full and adequate consideration. On the contrary, the payment of a full year's rent was to be given, but what the respondent wants here, is both payment of the full year's rent, and a way-going crop at same time.

Pleaded for the Respondent.—1. In the construction of contracts or deeds, the rule is, that a doubtful clause is to be interpreted most strongly against him in whose favour it has been introduced. 2. It is to be interpreted so as to give effect to the whole clause, and not merely to detached parts of it. And, 3. In such a manner that the effect of the clause may be upon the whole reasonable and just, and as near as can be to the probable intention of the parties. On all these grounds the interlocutors appealed from are well founded.

The clause was in favour of the landlord, and ought to have been more clear and unambiguous. The clause is not so framed. It is confused and imperfectly expressed, owing

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to the ignorance of the framer, who was not aware, that in order to exclude the respondent's right to a way-going crop, such must be expressly inserted in the contract. The appellant's construction of the contract rests upon a few loose and general words near the end of the clause, and is in opposition to the plain meaning of the whole. The right of putting an end to the lease is not to be enforced at the middle of a year, but "at the period of seven years from the "commencement of the lease, or at any term of Whitsunday "thereafter." He is to give an allowance of a full year's rent, which implies that the respondent was to have one full year's possession without payment of rent; and the conditions which follow are intended merely as a burden upon this premium. The appellant's construction would, in these circumstances, be manifestly unjust, because it necessarily implies that the tenant was to get no consideration whatever for being deprived of the lease during the currency thereof, and when he wished to retain it. And the only consideration he was to get, was that for allowing the landlord possession to the whole lands sooner than he was otherwise entitled. In short, according to his argument, he is not only to renounce his lease, but to suffer a heavy loss besides. He is to be at the expense of purchasing and sowing grass seeds and clover for eighty acres. His crop is to suffer the injury which the sowing of clover and grass seeds at an improper season must occasion. In addition, during the last year of his lease, he is to lose the use of one-third, and by far the most valuable part of the lands, and for which he could at any time receive a sum equal nearly to three rents of the whole. But the respondent maintains that law will never impose such an unjust construction on the present contract.

After hearing counsel,

It was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby *reversed*.

For Appellant, *William Adam*, *William Erskine*.

For Respondent, *Rob. Craigie*, *John Clerk*.

NOTE.—It was observed on the Bench, in the Court of Session, that the notice to quit was, for a year, too early; that notice in April 1800 should have been for Whitsunday 1802, and thereby full time allowed for laying down the lands in grass.