

## COURT OF SESSION.

Thursday, November 12.

## FIRST DIVISION.

[Lord Craighill, Ordinary.]

RUSSELL *v.* RUSSELL.*Process—Reclaiming Note—31 and 32 Vict., c. 100.*

Held that when the last day for lodging a reclaiming note under the Court of Session Act of 1868 fell upon a Sunday, it was timeously lodged upon the Monday, the plain intention of the statute in saying that a reclaiming note must be lodged within a certain number of days being to give the claimer that full number of days.

Counsel for the Reclaimers and Respondents—Maclean. Agents—J. & R. D. Ross, W.S.

Counsel for the Petitioners—R. V. Campbell. Agents—Morton, Neilson, & Smart, W.S.

Friday, November 13.

## FIRST DIVISION.

[Lord Curriehill, Ordinary.]

PETITION—DAVID BERWICK AND OTHERS  
(WALKER'S TRUSTEES).

*Trustee—Lease—Remuneration—Special Powers—Petition—Competency.*

Trustees were empowered by the deed of appointment "to let said lands and estates on such leases and conditions as they may think proper, and to grant and enter into articles of roup, submissions, conveyances, tacks, and all other writs and deeds as shall be required for fully and effectually executing and carrying out the purposes of the trust." In virtue of these powers the trustees granted a lease of the trust estate. After possessing under the said lease for nine years, the tenant intimated to the trustees that he would be ruined unless he was allowed to renounce the lease. The trustees presented a petition for power to accept the renunciation, which was *dismissed* as incompetent.

This was a petition presented by David Berwick, David Edie, and Walter Walker, the accepting and acting trustees under the trust-disposition and settlement of Walter Walker of Kingask, for power to accept renunciation of a lease which they had granted of the farm of Kingask. Mr Berwick was the only survivor of the original trustees appointed by the trust-deed, and had assumed the other petitioners Mr Edie and Mr Walker. In the trust-deed the trustees were also appointed tutors and curators.

The following powers were given to the trustees in the trust-deed:—"And I hereby authorise and empower my trustees to let said lands and estates on such leases and conditions as they may think proper, and I empower my trustees to grant and enter into articles of roup, submissions, conveyances, tacks, and all other writs and deeds as shall be required for fully and effectually executing and carrying out the purposes of the trust hereby conferred on them."

In pursuance of these powers, the trustees let the

farm at an increased rent in 1865, and the tenant continued to possess under that lease until 1874, when he intimated to the trustees that he could carry on the farm no longer at the increased rent, that he was losing money every year, and that he would shortly be left without means at all, unless he was allowed to leave the farm, or had a considerably reduced rent.

The trustees were of opinion that the rent was not excessive, but as they otherwise believed the tenant's statement, they presented this petition for power to accept renunciation of the lease.

The Lord Ordinary (CURRIEHILL) reported the case to the First Division.

At advising—

LORD PRESIDENT—I think that this is not an application for special powers by a tutor-nominate, but by trustees. For although the first trustee is also tutor-nominate, the petition is not presented by him in that capacity, but as one of the trustees. In the case of a tutor-nominate the Court has occasionally granted powers when the necessity was very high. But a tutor-nominate has not definite powers given by the father, but powers defined by law. But in the case of trustees under a settlement, the trustor himself has settled what the powers of the trustees are, and the Court will not give different or higher powers. In the present case very high powers have been given by the trustor, and I do not give any opinion whether under these powers they are entitled to do what they now propose. If they are not entitled to do so under the powers in the deed, then the Court cannot give them the power, and the trustees are not entitled to come and ask us, whether the power is given or not. I think therefore that this petition must be dismissed as incompetent.

LORD DEAS—The petitioners are here as trustees, and in no other capacity. What they want to be empowered to do is an act of management. The question is, whether or not it is expedient for them to accept renunciation of a lease which they granted, because the tenant which they chose cannot make the rent out of the farm. There could be no clearer case for trustees to exercise their own discretion. They might as well come to us for power to accept a certain rent. If we granted this petition, it would just be taking the management of the estate into our own hands. I therefore agree with your Lordship.

LORDS ARMILLAN and MURE concurred.

Petition dismissed as incompetent.

Counsel for Petitioners—T. B. Johnstone. Agents—Frasers, Stodart, & Mackenzie, W.S.

Friday, November 13.

## FIRST DIVISION.

[Lord Young, Ordinary.]

CUNNINGHAM *v.* LEE.

*Principal and Agent—Stock Exchange—Broker—“Carrying over”—Sale.*

A, who was not a stockbroker, purchased stocks in his own name for B, for settlement on a certain day. When settling day arrived, B refused to give A any instructions, so A closed his account with B, "carried over" the stocks to next settling day, and intimated