

deed. These claimants desire to read this last clause as forming part of the 12th clause, and to be read along with it. I cannot so read it. I hold that the 12th clause ends at the words "until paid," and that what follows is a new and separate clause altogether, framed to meet the case of the whole other and minor purposes of the deed having failed by there being no children or issue of children in whom the estate of the testator could vest after his death. In that event he gifts one-half of his whole property to his widow absolutely, and after her death all that he has is to go to his nearest heirs, executors, or assignees. But the failure which is the condition of this provision is the failure of "all my lawful children and their issue." What is failure in that connection? I take it to be failure before the time for the vesting in them of shares, and that is expressly declared to be the occurrence of majority or marriage. There has not been such failure here, and therefore the event on the occurrence of which alone this last clause was to operate not having happened, the clause itself does not come into operation.

On these grounds I would move your Lordships to adhere to the interlocutor of the Lord Ordinary.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD LEE concurred.

Counsel for the Real Raisers (Respondents)—Cheyne—H. Johnston. Agents—Mackenzie & Kermack, W.S.

Counsel for the Claimants (Reclaimers)—Balfour, Q.C.—Ure. Agents—Melville & Lindsay, W.S.

Wednesday, February 27.

## FIRST DIVISION.

[Sheriff of Inverness, Nairn, and Elgin.]

LORD MACDONALD *v.* CAMPBELL.

*Landlord and Tenant—Condition in Landlord's Favour—Tenant not to Sell or Retail Spirits upon the Premises without Consent—Revocation of Consent.*

A building lease contained a clause prohibiting the tenant, *inter alia*, from selling or retailing "spirits upon the premises without the express consent of the proprietor, or his factor for the time being," the proprietor, "or the factor for the time, being the sole judges of all such matters." The tenant erected buildings and carried on business as a general merchant. Thereafter, with the factor's consent, he obtained a grocer's licence to sell malt liquors on the premises. For the purposes of his whisky trade he erected at the end of his house a store-shed of the value of about £50, and he was allowed, without opposition on the part of the landlord, to obtain for seven years a renewal of his licence. In consequence of irregularities in the conduct of the spirit business the landlord sought to put in force the prohibition in the lease.

*Held* that the consent which had been

given was limited in its nature; that nothing had followed thereon which gave to that consent a permanent character; that it was revocable on cause shown; and that the evidence showed sufficient justification of its withdrawal.

*Opinion* (per the Lord President and Lord Lee) that the consent could not have been withdrawn capriciously, or from enmity, or within the year in which it was granted.

*Opinion* (per Lord Adam) that as, by the terms of his lease, the landlord, or his factor, was the sole judge, it was not essential, in withdrawing a consent, to assign a reason therefor.

The Right Honourable Ronald Archibald Lord Macdonald, Armadale, Isle of Skye, raised an action in the Sheriff Court of Inverness against Samuel Campbell, merchant, Broadford, Invernesshire, to have the defender interdicted from selling or retailing spirits in the shop, store, or other premises occupied by him at Broadford.

In the proof allowed by the Sheriff-Substitute the following facts were established—By building lease, dated 2nd October 1875 and 2nd March 1876, entered into between the pursuer and defender, the pursuer let to the defender, and his heirs and assignees, for ninety-nine years from and after Whitsunday 1875, a piece of ground at Broadford measuring 2436 square yards or thereby, with the dwelling-house erected or to be erected thereon. By the lease it was expressly provided and declared that the defender or his foresaids "shall not sell or retail spirits upon the premises without the express consent of the proprietor, or his factor for the time being, the said Lord Macdonald, or the heirs of entail in possession of the said lands and estate, or the factor for the time, being the sole judge of all such matters." In the premises erected on the ground the defender carried on business as a fish-curer, meal merchant, and general dealer. In September 1876 he applied for a grocer's licence, after receiving the consent of the then factor, Mr Macdonald of Tormore, who, at the request of the defender, addressed the following circular letter to the licensing Justices in support of the application:—"My dear Sir,—As it is likely you will be one of the acting J.P.'s the day the Court is held at Portree for considering the applications for licences, I will be obliged if you will support the application of Mr Samuel Campbell, merchant, Broadford, for a grocer's licence to sell malt liquors, the same being approved by the proprietor." The factor deponed that he had no doubt that the consent of Lord Macdonald had been obtained before he wrote this letter. The defender succeeded in obtaining a grocer's licence. For the purposes of his whisky business he erected at the end of his house a shed of stone and lime of the value of about £50. In January 1883 the pursuer's factor wrote to the defender in the following terms:—"Sir,—I beg leave to bring under your notice that you are at present infringing upon the terms of your lease by selling whisky in direct contravention thereof, on the premises occupied by you at Broadford. It will be for Lord Macdonald to consider whether your selling whisky in this way is or is not for the benefit of his tenants and the people of the district generally. In the meantime I have to inform you that in my opinion, as

factor for Lord Macdonald, it certainly is not for their benefit, but the contrary." In April 1884 the defender failed to lodge an application for renewal of his licence, against which, at the same time, a petition was presented, signed, among others, by all the clergymen of the district. The licence was not renewed.

On 21st May 1884 the defender received from the pursuers' law agents Messrs John C. Brodie & Sons the following letter:—"Under the building lease of subjects at Broadford by Lord Macdonald to you, and dated 2nd October 1875 and 2nd March 1876, you are aware that it was provided and declared that spirits should not be sold or retailed upon the premises let without the express consent of the proprietor or his factor for the time being.

"We understand that, by permission of Lord Macdonald's former factor, you have for some time been selling and retailing spirits within the premises erected by you on the ground held from his Lordship under the above-mentioned lease. Lord Macdonald has recently had the matter under consideration, and he is of opinion, on public grounds, that a continuance of the permission granted to you to sell and retail spirits is unnecessary for the requirements of the district, besides being hurtful to the inhabitants, most of whom are his Lordship's tenants. We are therefore instructed to intimate to you that any permission granted to you under your lease to sell and retail spirits is now withdrawn, and we have to request that you will write us acknowledging receipt of this letter, and undertaking to discontinue the traffic in spirits within the premises erected on the ground leased to you by Lord Macdonald, within a month from this date."

In April 1885 the pursuer's law agents wrote to the Clerk to the Justices for the Skye district of Inverness-shire in the following terms—"We understand that Mr Samuel Campbell, merchant, Broadford, Skye, has presented an application to the Licensing Justices of the Skye district of Inverness-shire for a grocer's licence, with the intention of carrying on traffic in spirituous liquors in his premises at Broadford. As agents for and on behalf of Lord Macdonald, we object to the granting of a licence to Mr Campbell, on the ground that it is totally unnecessary, and indeed would be absolutely injurious to the public interest in the district. There is already a licensed house in Broadford, which is amply sufficient for the requirements of the place. Moreover, the shop in which Mr Campbell proposes to carry on his trade is erected on ground held from Lord Macdonald on a long lease, one of the conditions of which is that Mr Campbell shall not sell or retail spirits upon the premises without the express consent of Lord Macdonald. Mr Campbell has not obtained Lord Macdonald's consent, and consequently for this reason also his application ought to be refused. We are sending a copy of this letter under a registered cover addressed to Mr Campbell, and a certificate to that effect is subjoined hereto. We have to request that you will communicate to the presiding Justices our objections on behalf of Lord Macdonald to the granting of the licence when Mr Campbell's application comes on for hearing."

Application for renewal of the licence was

regularly made down to the date of this action and invariably refused. The defender continued to sell spirits under what was termed a "wholesale licence" obtained direct from the Excise without a certificate from the Justice of the Peace Court, and the agents for the pursuer accordingly wrote him the following letter on 25th May 1885:—"We wrote you on 21st May 1884 informing you that Lord Macdonald objected to the sale of spirits being carried on in the premises held by you under a long lease from him, and withdrawing any permission previously granted to you to do so. We understand that you are still carrying on a traffic in spirits notwithstanding the intimation that has been made to you, thus defying Lord Macdonald and ignoring his rights, and we now write to ask you to be so good as inform us in course of post whether you are to continue the sale of spirits, and are prepared to maintain your right to do so." As the defender continued to sell spirits in the manner above described the pursuer presented the present application for interdict in October 1885.

As to the circumstances which induced Lord Macdonald to withdraw the consent thus given, the defender's shopman deponed as follows—" (Q) While Mr Campbell had a grocer's licence do you know if people drank whisky in the stable or outhouses?—(A) I do not know that. (Q) Did they bring glasses out with them to drink it with?—(No answer). (Q) Did people sometimes drink in the shop?—(A) They were not allowed to drink whisky in the shop. (Q) Did they sometimes do it whether they were allowed or not?—(A) Not with our orders. (Q) Did they do it with or without orders?—(A) Mr Campbell often gave labourers who were working for him a glass of whisky in the shop. (Q) Did people sometimes drink the whisky which was sold in the shop?—(No answer). *Cross-examined*—The stable is about 150 or 200 yards from the shop, and as I am not in the habit of attending the stable I cannot say what takes place there. As far as I was concerned, people were never allowed to drink in the stable, nor in the shop as far as I could prevent it."

The Rev. Donald Mackinnon, D.D., deponed as follows—"I know Mr Campbell's premises at Broadford. I remember of an application being made by him for a licence—I think in 1872 or 1873. To the best of my belief the first application was made in October 1873, but I can only speak of the time when the licence was granted. . . I felt strongly in the matter, not because I had any objection of a personal character to Mr Campbell, but because I had formerly seen grocers who held wholesale licences get them converted into retail licences at Broadford, and saw such evils follow, that I determined to prevent a repetition of these evils in the future. Men and women and children, who would not have been seen going into a hotel, got whisky so freely that I objected to it. I was opposed to the principle of granting these licences entirely. . . Mr Campbell said he thought he was keeping the place very well. I said I had a different opinion. Mr Campbell asked my reasons for objecting to his licence, and although I was not obliged to tell him my reasons, I said I had seen people drinking and drunk upon his premises. He asked me when and where. I said I had

seen them in the end shed, and in the stable, and that such things were too common on the public road."

The pursuer pleaded—"(1) It being provided by the defender's lease that he shall not sell or retail spirits upon the premises let without the express consent of the pursuer, and the defender not having such consent, the defender is not entitled to sell or retail spirits on the said premises."

The defender pleaded, *inter alia*—" (3) The pursuer is barred by *mora* and acquiescence from insisting in the present action. (4) The prohibition founded on by the pursuer being in the circumstances vexatious and contrary to public policy, is not enforceable. (5) The prohibition founded on having been discharged by the pursuer's factor, and *rei interventus* having followed on the said discharge, the pursuer is not now entitled to revive and enforce the prohibition, and the *interim* interdict already granted ought to be recalled, and the action dismissed, with expenses."

On 10th April the Sheriff-Substitute pronounced the following interlocutor:—Finds in point of law that the pursuer by assent and acquiescence in the defender's use of the premises in question for the sale of exciseable liquors from the 31st October 1876 to 15th April 1884, must be held to have discharged the prohibition founded on, and to have lost the right to enforce it: Therefore to that extent and effect sustains third and fifth pleas-in-law for the defender, and recalls the interdict formerly granted, and assoliszes the defender from the conclusions of the petition, and decerns: Finds him entitled to expenses, &c.

In his note the Sheriff-Substitute, after stating the facts set forth and explaining the grounds on which his judgment was based, proceeded as follows:—"The agent for the defender pleaded at the debate that in consequence of the acquiescence by the pursuer for seven years and upwards in the actings of the defender, the prohibition could only be enforced by an action of declarator and interdict, and not by interdict only; but in the view I have taken of the evidence it is unnecessary to determine this plea. I may, however, refer to the cases below, as those upon which the defender mainly relies in support of it.

"Pursuer's authorities—*Gold v. Houldsworth*, 8 Macph. 1006; *Ewing v. Campbell*, 5 R. 230; *Earl of Zetland v. Hislop and Others*, *ut supra*; *Burnett v. Great North of Scotland Railway Company*, 11 R. 375, and 12 R. (H. of L.) 25; *Auld v. Glasgow Working Men's Provident Investment Building Society*, 12 R. 1320, and 14 R. (H. of L.) 27;

"Defender's authorities—Obligation passed from acquiescence—*Rankine on Leases*, 216; *Young, Ross, Richardson, and Company*, 2 S. 793 (N. E. 655), also 1 W. & S. 560; *Park v. Matthews* 1887), L. R., 3 Eq. 515; *Campbell v. Clydesdale Bank*, 6 Macph. 943; *Stewart v. Buntin*, 5 R. 1168; *Anderson v. Aberdeen Agricultural Hall Company*, 6 R. 901; *Lamb v. Mitchell's Trustees*, 10 R. 640. Interdict not proper remedy—*Fife Fary Trustees v. Magistrates of Dysart and Others*, 6 Shaw, 265; *Lord Lovat v. Fraser*, 8 D. 316; *Porterfield v. Macmillan*, 9 D. 1424; *Blackburn v. Finlay and Others*, 10 D. 590; *Dickson v. Lanark and Dumbarton Road Trustees*, 11 D. 115; *Lawson's Trustees v. Lamond*, 3 Macph. 53; *Calder v. Adam*, 8 Macph. 645; *Weir v. Macdonald*

and *Dempster*, 10 Macph. 94; *Begg and Others v. Jack*, 1 R. 366; *Johnstone v. Thomson*, 4 R. 868; *King v. Hamilton*, 6 D. 399."

The pursuer appealed to the Sheriff, who on 19th May pronounced the following interlocutor:—" . . . Finds (3) that the defender has failed to prove that the pursuer has discharged the said prohibition, or that he has, by acquiescence or otherwise, lost his right to enforce it; (4) that at the date when the present process of interdict was raised, and for some time previously, the defender was selling spirits upon the said premises, which were erected on the said piece of ground not only without the consent of the proprietor or his factor, but in opposition to their frequent remonstrances: Finds in law that the defender is not entitled to sell or retail spirits on the said premises without the express consent of the pursuer or his factor, and that the pursuer is entitled to interdict as craved: Therefore repels the defences, grants interdict in terms of the prayer of the petition, and decerns: Finds the pursuer entitled to expenses, &c.

"*Note*.—The prohibition against the defender's selling spirits without the express consent of the pursuer or his factor is clearly established by his lease. Further, it is not disputed that the defender has since 1884 been selling spirits on his premises without the consent of the pursuer or his factor. He maintains, however, that he is justified in doing so, on the ground that the pursuer, by his acts from 1876 to 1884, must be held to have discharged the prohibition in question, or at all events lost by acquiescence his right to enforce it. The *onus* of proving this admittedly lies on the defender, and in the Sheriff's opinion he has failed to substantiate it. Assuming it to have been proved—which the Sheriff thinks it has not—that the defender sold spirits on his premises from 1876 to 1884 with the express consent of the pursuer or his factor, this would by no means establish the defender's proposition that the pursuer had discharged the prohibition in question, or had, by acquiescence, lost his right to enforce it. The object of the pursuer in restricting the sale of spirits on his property around Broadford was no doubt to promote the best interests of the neighbourhood, and to secure for ninety-nine years at least that such a sale should be conducted by persons in whom he had confidence, and in a manner that would not be prejudicial to the well-being of the district. So long as he had confidence in the defender, and the latter conducted the business in a manner approved of by him, it was only reasonable that he should refrain from enforcing the prohibition without losing his right to enforce it in the event of the defender selling the premises to another, or of the defender himself conducting the business in an improper manner. For some time prior to 1884 the defender appears to have conducted his business in such a manner as to give offence to a large number of persons resident in the neighbourhood, and in April of that year, in consequence, *inter alia*, of certain objections taken to the renewal of the defender's licence, it was refused by the Justices at Portree. The defender having appealed to the Quarter Sessions at Inverness, a petition was presented against the renewal of the licence, on the ground that its continuance would be prejudicial to the welfare of the district. This petition was signed

by the Rev. Donald Mackinnon, Established Church minister of Strath, the Rev. Alexander Grant, Free Church minister, and the Rev. Donald Boll, Baptist minister there, and between three and four hundred other residents in the parish. The defender's application for a licence was therefore refused at Inverness, and it has since been renewed by the defender and refused by the Justices regularly every year since 1884. The Rev. Donald Mackinnon when asked what his objections were to the licence, said that he 'had seen people drinking and drunk upon his premises, . . . in the shed, and in the stable, and that such things were too common on the public road.' Seeing that there was a good and well conducted hotel at Broadford, where spirits could at all times be obtained by the inhabitants; that in consequence of the manner in which the defender had conducted his business, strong objections had been taken to the continuance of his licence by the parties above mentioned; and that the Justices, in consequence of these objections, have seen fit to refuse a renewal of his licence, the Sheriff cannot but consider that the pursuer not only acted within his legal rights, but also exercised a wise discretion in enforcing the prohibition in question by raising and insisting on the present action."

The defender appealed to the Court of Session, and argued—1. As to his present position—Since he lost his grocer's licence he held a wholesale licence under the Spirit Act 1860 (23 and 24 Vict. cap. 114), sec. 168, and such a licence was not prohibited by the terms of the lease. What was prohibited was to "sell or retail spirits;" the word "retail" was expository, and what was prohibited was selling by retail. 2. On the question of consent—The factor's letter to the Justices and the landlord's acquiescence in the defender obtaining, and for seven years continuing to obtain, a grocer's licence, barred him from now, as far as the defender was concerned, withdrawing his consent, on the faith of which the defender had laid out considerable sums of money, and made structural alterations on the buildings. There were three objections to the action of the pursuer—(1) He was personally barred; (2) he had acquiesced in what had been done; (3) the permission granted was irrevocable. The present question was raised in the interests of private parties and not in the interests of the public.—*Earl of Zetland v. Hislop*, March 18, 1881, 8 R. 675 and 9 R. (H. of L.) 40. The alterations on the building had proceeded unchallenged under the landlord's eye, and were ostensibly for the purposes of his trade; the landlord's non-interference showed acquiescence—*Cairncross v. Lorimer*, 3 Macq. 827; *Young*, 1825, 1 Wil. & Sh. App. Cas. 560. There was nothing in the way in which this business was carried on to cause a nuisance—*Skeene v. Maberly*, March 2, 1822, 1 Sh. 412. The consent once given was irrevocable as regarded the present tenant.

Argued for the pursuer—The object of the insertion of such a clause in the lease was to reserve to the landlord some control over the drink traffic in the public interest. In cases like the present there was always a *delectus personarum*, and a consent such as was given here was given, not to the premises, but to the individual, and was revocable if a change of circumstances

demanding it. It was not likely that the landlord would first insert a clause like this in the lease, and then give an unlimited consent to sell spirits, regardless of the person to whom the permission was given or of the manner in which the business was carried on. All that the landlord agreed to was that the defender should obtain a grocer's licence which had to be renewed yearly; this was a limited consent and could never be interpreted as a discharge for all time coming of the prohibition in the lease. There was nothing here of the nature of acquiescence—*Cowan v. Kinnaird*, December 15, 1865, 4 Macph. 236—in the proper sense of the word; there was more; there was a consent renewed each year by non-opposition, and which could be withdrawn on cause shown, and was properly withdrawn in the circumstances of the present case, both on public and private grounds.

At advising—

LORD PRESIDENT—The question here relates in the first place to the construction which is to be put upon a clause in a building lease; and second, to the effect which is to be allowed to a consent on the part of the landlord to dispense with the conditions contained in that clause in the lease.

First, then, as to the provisions of the clause in the lease. These so far as they go distinctly expressed a prohibition against the tenant selling or retailing "spirits upon the premises without the express consent of the proprietor or his factor for the time being, the said Lord Macdonald or his heirs of entail in possession of the said lands and estate, or the factor for the time, being the sole judge of all such matters." Now, looking to the language of this clause it is quite plain that without the consent specified the tenant cannot lawfully sell spirits upon the premises under any form of licence whatever, but he may lawfully sell spirits provided he obtains from the parties duly authorised the necessary consent. Now, the consent in this case was given verbally in 1876 by the then factor with Lord Macdonald's consent, and there is no dispute about the extent of this consent, which was that the tenant should apply for and obtain, if he could, a grocer's licence to sell malt liquor, and the factor at the same time supported the tenant's application to the justices by writing a circular letter asking them to support the tenant's application for such a licence.

The licence was granted, and it was renewed each year without any objection being taken on the part of the landlord for a period of six or seven years. There was thus, on the part of the landlord, an implied consent to the tenant selling spirits as a licensed grocer for that period. But the landlord had now changed his mind, and the question comes to be, whether the consent which Lord Macdonald gave through his factor in 1876 to his tenant obtaining a grocer's licence is revocable as regards the present tenant. There can be no doubt that a case might quite easily occur in the construction of a clause like the present, and when a consent similar to that which we have now before us had been given, in which the consent would not be revocable, as, for example, if the landlord had told his tenant to establish a public house, and had aided him in getting a licence, and the tenant on the faith of

what had been said and done had erected buildings and otherwise laid out money on the premises, then I think we should be prepared to hold that the arrangement had a permanent character attached to it.

But here there was little or no alteration of the premises required in order to enable the tenant to sell spirits in addition to his ordinary business as a grocer, and so the kind of case to which I have just referred does not give us any assistance in determining what is to be done here. It is, I think, quite clear that the consent once given by the landlord could not be recalled during the year in which it was granted. But is the landlord bound to a consent for any length of period? Certainly the landlord was not entitled capriciously or through enmity to the tenant to terminate his consent, but on the other hand it was intended by the provisions of this clause in the lease to reserve to the landlord a power to revoke any consent which might have been given if any change of circumstances arose warranting such a revocation.

It is expressly provided that the landlord and his factor are to be the sole judges, not only as to whether a consent to sell spirits is at any time to be given to the tenant, but also as to whether that consent is to be continued, and the landlord may certainly under this reserve power withdraw his consent upon cause shown. It is somewhat remarkable that we do not find any change of circumstances averred on record as warranting the landlord in withdrawing his consent. I do not know that this is essential however, as it appears that the tenant received due notice in May 1884 that the consent of the landlord to his continuing to sell spirits was to be withdrawn.

Besides, the evidence of Dr M'Kinnon and others, and especially the tenant's shopman, leaves no doubt in one's mind that, whether through the fault of the tenant or otherwise, the consent to sell spirits had been abused, as the spirits were in various cases being consumed on the premises. Campbell has no doubt acted in good faith and has tried as far as he could to prevent this, but he has not been successful.

Is the landlord not entitled then to terminate this consent in order to stop a nuisance and to promote the interests of the neighbourhood? I think that he is entitled to do this on reasonable cause shown, and that he has proved to us that a reasonable cause for his interference existed.

I am therefore for refusing the appeal.

**LORD ADAM**—The question between the parties depends upon the construction which is to be put on the clause in the appellant's lease, which prohibits him from selling spirits upon the premises without his first having obtained the consent of his landlord or the factor for the time being.

Now, the object of this clause being in the lease at all was just to give Lord Macdonald some control over the selling and retailing of spirits in these premises. But I hold, as was pointed out by the Dean of Faculty, that this selling of spirits was a continuing act which required a continuing consent. The consent which was first given by the landlord was a consent to the tenant applying for a grocer's licence, and when it was given the tenant was well aware that it might be recalled at any time, and neither party understood that the consent thus obtained was to be held as

in any way controlling the terms of the lease.

We are not called upon to decide here whether a consent which was in its nature terminable could be capriciously withdrawn by the landlord without cause shown, but it may be observed that there is nothing said in the lease about the landlord assigning a reason for the withdrawal of his consent, because by the express terms of the clause he is to be the sole judge of all such matters.

The landlord was satisfied that there were good reasons for withdrawing his consent, and certainly the proof justifies the course which he adopted. It is a matter of no importance whether the irregularities which took place were carried on with the defender's consent or not, provided that he was unable to prevent them.

I can see no room for the doctrine of acquiescence in the present case, because while we have sufficient evidence of the landlord's consent having been obtained to the appellant obtaining a grocer's licence, it is plain that the consent was limited in its character and was terminable at the landlord's pleasure.

If the acts which had followed upon this consent had been of such a kind as clearly to show that it was the intention of parties that it was to control the terms of the lease, as, for example, if the tenant had proceeded to erect extensive buildings, or to lay out large sums of money in consequence of the consent, then the question between the parties would have been a much more difficult one to determine, but all that was erected here was a mere shed for storage, and was in its temporary character quite referable to the nature of the consent given.

**LORD LEE**—I had at first some difficulty about this case, but I have now come to be of the same opinion as your Lordships.

I cannot quite assent to the construction of the provisions of this lease proposed by Lord Adam, and especially as to the view which his Lordship takes of the landlord being entitled without cause shown or reason assigned to withdraw his consent to the selling of spirits on the premises after that consent had once been given. Upon this clause of the lease I prefer the construction proposed by your Lordship, and I am prepared to adopt it.

I agree with your Lordship that there was nothing of the nature of acquiescence in the present case, because there was something more, there was consent, but that consent was limited in its character and amounted to nothing more than this, that Campbell was to apply for and obtain if he could a grocer's licence. This Campbell did, and he sold spirits under it for a period of seven years. Such a consent was not by any means irrevocable, but it was not a consent which I think the landlord was entitled capriciously to withdraw as for example within the year. But it might be withdrawn when this was warranted by a change of circumstances. The question therefore comes to be, whether there is in this case a sufficient change of circumstances alleged and proved to warrant the withdrawal of this consent? I think that the evidence shows that there was, and that the landlord was justified in the course which he adopted in order to preserve the amenity of the locality.

LORD MURE and LORD SHAND were absent from illness.

The Court refused the appeal.

Counsel for the Pursuer—D. F. Mackintosh, Q. C.—Gillespie. Agents—Dundas & Wilson, C. S.

Counsel for the Defender—R. V. Campbell—Ure. Agents—Wylie & Robertson, W. S.

Wednesday, February 27.

## SECOND DIVISION.

[Lord Fraser, Ordinary.]

BEGG v. BEGG.

(*Ante*, vol. 24, p. 367, February 25, 1887; *supra*, p. 81, November 15, 1888.)

*Proof—Perjury—Subornation of Perjury.*

On 15th November 1888 the Court pronounced the following interlocutor:—"The Lords having heard counsel for the parties on the reclaiming-note for the pursuer against Lord Fraser's interlocutor of 30th June 1888, Recal the said interlocutor *in hoc statu*: Allow the pursuer to amend the record and the defender to answer the amendments, and in order thereto, open up the record, and the amendments and answers having been made of new, close the record as amended: Before further answer, and reserving all questions of expenses, allow the pursuer a proof of her averments with regard to the subornation of Elizabeth Fairbairn and Christina Ramsay Fairbairn: Appoint the same to proceed before Lord Rutherford Clark at such time and place as his Lordship shall fix, and grant diligence at the instance of the pursuer against witnesses and havers."

Proof before answer was led, and the Court after considering the proof and hearing arguments, pronounced this interlocutor:—"The Lords having resumed consideration of the cause, with the proof adduced under the interlocutor of 15th November last, Find the averments of the pursuer irrelevant: Dismiss the action: Find the defender entitled to expenses."

Counsel for the Pursuer—Gloag—G. W. Burnett. Agent—Robert Stuart, S. S. C.

Counsel for the Defender—Balfour, Q. C.—Jameson. Agents—Stewart & Stewart, W. S.

Wednesday, February 27.

## FIRST DIVISION.

[Lord Trayner, Ordinary.]

JAMIESON AND OTHERS (LORD GLASGOW'S TRUSTEES) v. CLARK, *et e contra*.

*Sale—Sale of Lands—Entry—Rent Due and Payable after Term of Entry.*

A disposition of lands provided that the purchaser should have entry at Martinmas 1886, and that he should have right to the rents "due and payable from and after the said term of entry." *Held* that the purchaser was not entitled to a rent which was payable at Whitsunday 1887, but was for a period of possession prior to the term of entry.

*Sale of Land—Shooting Rent—Division of Rent between Seller and Purchaser.*

The shootings upon an estate were let for the season from 1st August 1886 to 31st March 1887. The lands were sold, the purchaser's entry being at Martinmas 1886. *Held* that the shooting rent fell to be divided, one portion from 1st August to 11th November going to the seller, while the remaining portion went to the purchaser.

By trust conveyance, dated 5th June 1885, the Earl of Glasgow conveyed his whole estates to George Auldjo Jamieson and others as trustees for certain purposes.

On 24th August 1886 the trustees exposed for sale by public roup the lands of Thirdpart and others belonging to Lord Glasgow. The articles of roup provided—"Tertio, The entry of the purchaser to the said lands and others shall be at the term of Martinmas 1886, and the purchaser shall have right to the rents to become due for the possession from and after that term, the exposers having right to the rents due for the possession prior to that term, notwithstanding the dates at which the same may be conventionally payable; and the price shall be payable to the exposers by the person preferred to the purchase at the said term of Martinmas 1886, and shall bear interest at the rate of 5 per centum per annum from and after the said term during the not-payment." The lands were purchased at the sale by John Clark, Largs, at the price of £12,500.

By the disposition which followed upon the sale the term of entry was Martinmas 1886. It contained this clause of assignation of rents—"And we, as trustees foresaid . . . assign the rents, feu-duties, and casualties of superiority due and payable from and after the said term of entry."

The lands consisted of two farms, both arable. At Whitsunday 1887 £122, 10s. was due and payable as rent for one of them, and £72, 10s. for the other—in all £195. These rents were payable for the possession prior to Martinmas 1886. Clark claimed these rents, and obtained payment thereof from the tenants.

Lord Glasgow's trustees raised the present action against Clark to obtain repayment of the £195, pleading "(2) the rents of the said farms due and paid at Whitsunday 1887 being for the