

Friday, December 15.

SECOND DIVISION.

[Sheriff of the Lothians.

MILLER v. STEWART.

*Lease—Lease of Furnished House—Right of Tenant to Remove Pictures—Reasonable Use.*

The tenant of a furnished house proceeded to remove from the walls a number of pictures belonging to the landlord, and to store them away, while replacing them by others of his own. In an application for interdict by the landlord during the currency of the lease, he did not aver that any damage had been done to the pictures or was likely to result from their removal and storage.

*Held (diss. Lord Young)* that the landlord had no abstract right, apart from special stipulation in lease, and apart from any actual or possible damage, to prevent the removal of pictures to suit the tenant's convenience, and interdict *refused*.

By missives of lease dated 19th December 1898 and 2nd January 1899, Mrs Miller let to Mrs Stewart a furnished house for two years.

When Mrs Stewart took possession there were on the walls of the dining-room, drawing-room, and morning-room a number of pictures and engravings belonging to Mrs Miller, which were valued by her at the sum of £889, 17s. Many of these were removed from the walls by the tenant, who had them packed and stored, and replaced them on the walls by pictures belonging to herself. The lessor raised this action for the purpose of having the lessee interdicted from removing any of the pictures from the walls, and ordained to restore those which had been removed. She averred—“(Cond. 3) It has come to the knowledge of the pursuer that the defender since her entry is unwarrantably, and without consent asked or given, in the course of removing or has removed from the walls of the dining-room, drawing-room, and morning-room in said house the pictures and others belonging to the pursuer which are mentioned, and which were hanging there at the beginning of said lease, and is storing or has stored the same in a room or loft above the stables belonging to said house, or is otherwise interfering with them.” The number of pictures stated to have been removed was 103. They were carefully packed and stored in a room above the stable, but afterwards, in deference to the pursuer's remonstrances, were stored in a room in the house. There was no averment of damage having been suffered by any of the pictures, and it was admitted in argument that experts had examined them, and given the opinion that everything possible had been done to preserve and protect them, and that in fact no damage was done to them.

The pursuer pleaded—“(1) The defender not being entitled, as lessee of the said furnished house, to remove the said pictures from their places upon the walls of the said house, the pursuer is entitled to have the defender interdicted therefrom, and from storing or keeping the said pictures in the stable buildings, or any of the out-buildings or offices at said house, or in any place or places other than their proper places on the walls of said house. (2) The defender, so far as she has removed said pictures from said walls of said house, having done so unwarrantably and contrary to the conditions of let, and without the consent of the pursuer, and the pursuer being prejudiced thereby, she is entitled to have the said pictures restored to said walls by the defender at the defender's expense.”

The defender pleaded—“(1) The action is irrelevant. (4) The defender having acted within her rights in removing the said pictures from the walls, *et separatim*, she having received the consent of the pursuer to do so, the prayer of the petition to ordain her to restore them to the walls should be refused, and the defender should be assoilzied with expenses. (5) The removals complained of not having been injurious, nor likely to be injurious to the pictures, the present application was uncalled for, and should be refused with expenses.”

The Sheriff-Substitute (HAMILTON) pronounced the following interlocutor:—“Sustains the first plea-in-law for the defender, dismisses the action, and decerns,” &c.

*Note.*—“Counsel for the pursuer maintained that he was entitled to the interdict craved as matter of abstract legal right and apart from the question of actual or possible damage to the paintings and engravings mentioned on record. The Sheriff-Substitute is not prepared to assent to that proposition, especially as it was not supported by a reference to any authority.”

The pursuer appealed, and argued—It is not maintained that no single picture or engraving in a furnished house can be moved without the landlord's permission, but the tenant has no right to remove them to the extent to which it was done here. A house let as a furnished house must be occupied as such—*Campbell Smith v. Henderson*, 24 R. 1102. There is an implied obligation on the part of the lessee to allow the decorations of a house, such as pictures, to remain.

Argued for the defender—This is a case of interdict, and interdict is not granted unless on an averment of damage having been done or being immediately apprehended—*Winans v. Macrae*, 12 R. 1051. The rule as to hiring of moveables is stated in Addison on Contracts (9th ed.), p. 723. The test of the use is, what might a prudent and cautious man do? Everything which prudence can suggest for the care of the pictures has been done.

At advising—

LORD JUSTICE-CLERK—The pursuer let to the defender a furnished house, in which there were a number of pictures and

engravings hanging on the walls, some of which are said to be valuable. The defender desiring to have pictures of her own upon the walls has taken down these pictures and engravings and placed them together in a room in the house. The pursuer in the prayer asks in effect that interdict be granted against the removal of the pictures and engravings, and that the defender be ordained to replace them in their former positions, and further that interdict be granted against her keeping the pictures anywhere else than in their places on the walls of the house, where they were when the lease was granted. We have no case before us of allegation of damages already caused or likely to be caused to these works of art by their being kept in the place in which they now are, or that any damage has been done to them in their removal and storing. Therefore the only question is the legality of what has been done. It is maintained on the part of the pursuer that a tenant has no right to change the position of moveable articles in the house from room to room, or to store in any one room articles which the tenant does not desire to use. I am unable to assent to that proposition. I see no legal ground for holding that if the owner of moveable articles lets a house along with these to a tenant, the tenant is under any legal obligation to keep the moveable articles in the same positions in which he found them during the currency of his tenancy. I hold that he is entitled to use them as he may find best for comfort and amenity. The arrangement of furniture in particular rooms may be unsuitable for his family requirements, or he may find it more satisfactory to use one room for a particular purpose, different from that to which the party letting to him applied it. I can see nothing contrary to the rights of his landlord in that. In the same way it may be unsuitable, looking to his wishes as regards the particular use of rooms, that pictures should remain upon the walls of the room, or he may not like to have particular pictures on the walls. I am unable to hold that he is bound, apart from any stipulation made in the lease, to keep each and all of the pictures hanging where they are. The landlord can of course make any stipulation he pleases as a condition of granting the lease at all, and I can quite understand there being cases where it might be a reasonable stipulation that the pictures or even certain articles of furniture were not to be moved without his consent. But when no such stipulation is made, I cannot hold that it is an implied condition of a lease of a furnished house, that furniture or pictures shall not be moved or stored during the currency of the lease, provided this be done in such a manner that injury will not be caused to them—provided always that he does nothing which tends to damage or deteriorate what is let. Apart from such stipulation I think that he may use the subjects as suits him best. But the pursuer in this case declines to put her demand on the ground of any injury done or likely to be done; she maintains her right, apart from all questions of

deterioration or damage, to insist that the pictures stored shall be again hung on the walls in the places which they formerly occupied, and that the lessee is bound to keep them so hung during the currency of the lease. I am unable to hold that the pursuer can maintain such a right, and therefore I am in favour of adhering to the judgment under review.

LORD YOUNG—This is in some respects a trivial case, for the pictures are not very numerous and not very valuable, but I think the question which the Sheriff has decided is one of notable importance to the community.

The question is between the lessor and the lessee of a furnished house. It regards what is to be implied when there is no specified bargain beyond the mere contract of letting and hiring the house in a furnished state. A furnished house is let for a specified term. There is no special matter of contract except some trifling obligations in regard to which no question arises here. I should have thought an important part of the furnishing consisted of the pictures. They are furniture, and are used as such—that is, the pictures with which the walls of the house are decorated are part of the subject let. I should have thought that, looking to the terms of the contract, the subject was let furnished as it stood. We have got a catalogue of the pictures which shows the total value of the whole to be, on the pursuer's estimate, £889, 17s. I think it is impossible to look at this statement without coming to the conclusion that the wall decorations were an important feature of this house.

Now this house was let furnished with the pictures. Would it have been a violation of his contract if the landlord had taken them down and stored them away? I think it would. Therefore his contract with the tenant was to leave the pictures where they were. Now, I do not take account here of the case of the landlord removing one picture or even two. That would make no notable change to the tenant. But to make any notable change upon the condition of these rooms would in my opinion have been a violation of the landlord's contract which the tenant could have objected to.

Well, the tenant here had it in view when she entered into the contract to take a furnished house to remove from storage a quantity of pictures belonging to her, packing and storing away the landlord's pictures, and that, it was contended, was a use of the landlord's pictures. Now, taking down and storing pictures is not using them. We have a prayer to interdict the tenant from removing any more and to order her to bring back any that had been removed. I think we must consider the case on the right maintained by the tenant to do what it is admitted she did, namely, to remove the pictures of the landlord, pack them and store them away. I do not think the place where they were stored makes any difference. The defender's fourth plea is the important one in the case. Was it her right to do what she did? I think the

only argument we had was—Can you say that a tenant of a furnished house may not take down a print and put up another? And if one why not two? and if two why not three? and if three why not a hundred? Can you find anything to the contrary in Stair or Erskine?

If the landlord objects to the removing of a print, the objection may be so ridiculous that we would not listen to it. We must attend to the case in hand. My opinion is that it is not the right of the tenant to remove pictures wholesale as was done here. I venture to put the case of a mansion-house in which there might have been a picture gallery. Is it the right of the tenant to take these pictures down from the walls and store them away? That may be a very strong case the other way. And that may bring it to this—Is the landlord's complaint so trifling that we would not entertain it? Mr M'Clure referred to Addison on Contracts, p. 723, and we were told the tenant would be responsible for any damage. Well, I should doubt if that were true if storing them away were a reasonable use, for she is not responsible for the reasonable use, and there is no limit to the reasonable use. Although pictures are as a rule exposed to great risk in being removed, even the largest may be removed without injury. But is the landlord bound to allow them to be exposed to any risk? That is no part of the contract. The only thing of which he takes the responsibility is the tenant's reasonable use.

The only question before us is one of relevancy where the complaint is reasonable, and according to the landlord's right I am of opinion that it is reasonable, and that the pictures should be ordered to be replaced and interdict granted against more being removed.

LORD TRAYNER—This case arises out of a dispute between two ladies — one of them the lessor, and the other the lessee, of a furnished house. The latter (the lessee) has removed a number of the pictures from the places which they occupied in the house at the time she took possession of it; this is resented by the lessor, who asks us to ordain the defender to put the pictures back to their former position, and to interdict her from removing them again. It is now conceded by the pursuer that none of the pictures have been damaged by their removal, and that no damage will be sustained by them in the place where the defender has put them. This concession is made in respect of the opinion expressed by experts, who have examined the pictures since the action was raised, and been made acquainted with the grounds of the pursuer's complaints. I think that the pursuer might have been satisfied with getting this report from the experts, and have proceeded no further with this case. But she insists on a judgment deciding the abstract question that the lessee of a furnished house is not entitled to take down the pictures hanging on the walls without the leave of the lessor. Well, all I shall say on that matter is that I know of no authority or any good reason for that proposition, and I am not

prepared to affirm it. The pursuer's counsel, indeed, would not maintain it. He admitted that a lessee might remove two or three pictures; he might perhaps remove half-a-dozen, but he hesitated to admit that the lessee might remove a score. Now, are we to determine that a lessee may lawfully remove nineteen pictures, but acts wrongfully if he removes twenty? I think the Supreme Court is not intended to settle frivolous questions of that sort. If the pictures or a single picture had been subjected to damage, or treatment that threatened damage, the pursuer might have been listened to. But that is now out of the case. I think the appeal should be dismissed.

LORD MONCREIFF—It appears from the Sheriff-Substitute's note that at the hearing before him counsel for the pursuer maintained that the pursuer was entitled to the interdict craved as matter of abstract legal right, and apart from the question of actual or possible damage to the paintings and engravings mentioned on record.

When the case first came before us I understood that the appellant was desirous of proving that the pictures which had been removed from the walls by the defender had been or were likely to be damaged, but counsel has now departed from that position, and desires without proof a judgment in the pursuer's favour upon the precise ground mentioned by the Sheriff-Substitute. We must therefore assume that no damage has been caused or is to be apprehended in consequence of the removal of the pictures from the walls.

That being so, I am of opinion that there is no principle or precedent for deciding that when a house is let furnished, the tenant is not entitled to shift the furniture or the pictures so as to suit his own occupancy, provided always that at the termination of the lease he replaces the furniture and the pictures in the position which they previously occupied, and makes good any damage done to the walls. If it could be proved that there was serious risk of injury to the furniture or pictures if removed, it may be that the landlord would be entitled to interdict, but the condition of the present argument is that in this case no injury has been caused or is to be apprehended, and therefore the landlord has no interest, even if he had the right, to insist on their being replaced.

The pursuer, while admitting that the defenders might be entitled to remove a few of the pictures, maintained that she is not entitled to remove a hundred of them. But no particular number is suggested beyond which removal would constitute a violation of the lease, and I find no *termini habiles* on which we could pronounce an operative interdict.

The Court dismissed the appeal.

Counsel for Pursuer—Graham Stewart. Agents — Cairns, M'Intosh, & Morton, W.S.

Counsel for Defender—M'Clure. Agents —J. W. & J. Mackenzie, W.S.