

from the village of Coldingham Shore to the public seashore at the point called Burnmouth Harbour, and on to St Abb's Head, and to the seashore at Petticurwick or Pettico Wick, and to the harbour there, in or near the direction indicated by a line coloured yellow on the plan, No. 9 of process, which line is marked by the letters H E G C.

FRASER and DUNCAN, for the defenders, objected to these issues, that they did not put in issue, but assumed that the seashore and harbour mentioned in them were public places.

GIFFORD, for the pursuers, consented to strike out the word "public" in each issue, and also to put in a minute consenting that the question as to the seashore and harbour being public places should be determined at the trial. He had offered to do so in the Outer House.

The Court allowed this to be done without expressing any opinion as to whether or not it was necessary.

Agent for Pursuers—Thomas White S.S.C.

Agents for Defenders—Jardine, Stodart, & Frasers, W.S.

SECOND DIVISION.

WITHAMS v. WHITE AND YOUNG.

Landlord and Tenant—Sequestration—Landlord's Hypothec—Rotation—Mismanagement. A landlord presented a petition of sequestration for rent, in respect he had contravened the third year rotation. Held that the contravention took place when the lease was not operative, and there being, therefore, no action under the lease, petition dismissed.

This was an advocacy of a judgement of the Steward of Kirkcubright. A petition of sequestration for rent under the landlord's hypothec was presented by Mr and Mrs Maxwell Witham, of Kirkconnel, against Andrew White, writer in Cumnock, as trustee on the sequestrated estate of Alexander Young, lately farmer at Woodside, in the parish of Troqueer, and against the said Alexander Young for his interest. By letter Young agreed to conditions of let for fifteen years under certain modifications. A formal lease was afterwards entered into, dated 22d May 1862. The entry to the house, grass, and fallow, was at Whitsunday 1862, and to the land in crop at the year's separation. The farm was to be laboured on a five-course rotation. The rotation prescribed for the third year is the point on which the present case turns, and is as follows:—"The third year to be white crop sown out with at least two bushels of the best perennial ryegrass seed, and not less than six pounds of red clover and two pounds of white clover to the acre." The lease also contained a clause stipulating that if the tenant should mismanage or miscrop the farm he should be liable in a sum of £10 of additional rent per acre for each acre to which the mismanagement extended. Young entered in the third year of the rotation, and in accordance with the provisions of his lease and the usage of the district, he got possession between Candlemas and Whitsunday 1862. He sowed out "Timothy" grass seed along with the waygoing crop, and the petitioners say that this was a breach of the third-year rotation, which required him to sow out ryegrass and cloverseed. They accordingly say that he has brought himself under the obligation of the clause imposing addi-

tional rent. Young became bankrupt in May 1864, and the claim is applied to the two years of his occupation.

The respondent averred that he was allowed by the landlord to sow "Timothy" grass-seed, and the Steward-Substitute (Dunbar) allowed him a proof of his averment. The Steward (Hector) held that the formal lease must be the criterion of the obligations of parties, and as it contained no obligation on the respondent to sow out ryegrass seed with the waygoing crop of the preceding tenant, he had not incurred the penalty of additional rent. The Steward accordingly dismissed the petition.

The petitioners advocated.

GUTHRIE (with him JOHN MARSHALL) for them argued that the result of sowing "Timothy" grass seed instead of ryegrass and cloverseed was that by the failure of the former there was no hay crop and no pasture for the last year of the rotation. This proved that the respondent was guilty of mismanagement, and if guilty of mismanagement he had incurred the penalty of additional rent, because although the act libelled was done before Whitsunday—the date of the respondent's entry—he had got possession and had commenced operations under and in anticipation of the provisions of the lease.

WATSON and M'KIE for the respondents were not called upon.

The Court unanimously adhered to the judgment of the Steward, holding that although it was clearly proved that the respondent had committed a legal wrong, the act in which the wrong lay was performed at a time when the provisions of the lease were not operative between the parties. Whatever remedy the petitioners might have for the wrong which had been committed they had no action under the lease.

Lord COWAN remarked that if the Court could have held the respondent to be under the obligation of the clause imposing additional rent, it would have been a question for serious consideration, notwithstanding of the judgment in Robertson v. Clark, 4 D. 1317, whether additional pactional rent of the nature of that claimed in the present action was secured by the landlord's hypothec.

Agents for the Petitioners—Scott, Bruce, & Glover, W.S.

Agent for the Respondents—James Somerville, S.S.C.

Friday, June 15.

FIRST DIVISION.

MP.—BRITISH LINEN COMPANY v.

MACKENZIE AND OTHERS.

Donation—Deposit-Receipt—Proof. A deposit-receipt having been delivered to a party by a person deceased who had previously indorsed it, held (1) that it was competent to prove by parole evidence *quo animo* it was delivered; and (2) that it had been proved that it was delivered with the intention of making a donation of the contents.

This multiplepointing was raised in regard to a sum of £100 contained in a deposit-receipt granted by the British Linen Company to the late Peter Ross, Justice of Peace Officer, College Wynd, Edinburgh, on 16th March 1863. The sum was claimed by his executors-dative and next of kin on the ground that Ross had died intestate, and also by Mrs Margaret Bertram or Muir, 86 Sauchiehall Street, Glasgow, on the ground that the deposit-