

pening with delivery, no clause giving any other effect to the deed than was usual in a deed of conveyance *inter vivos*, and the deed remaining in his hands, there was no authority for holding that any mode of dealing with the property could have the effect of converting this undelivered deed into a delivered deed. Deeds might, in some cases, receive effect without delivery—(1) where they did not require delivery, and (2) where remaining in the hands of the grantor, or his custodian for him, they were held to be in such custody for behoof of the grantee. Where the grantor may retain the deed, the authorities go this length, that where he is the natural custodian for the grantee the deed may be held to receive effect, as deeds held by the head of a family for his wife and minor children. But the present was not a case of that sort, and facts and circumstances were quite insufficient to enable the pursuers to found on this as a delivered deed.

The other Judges concurred, and the Lord Ordinary's interlocutor was therefore adhered to.

Agent for Pursuers—James Paris, S.S.C.

Agents for Defenders—Watt & Marwick, S.S.C., and Alex. Gifford, S.S.C.

Thursday, Feb. 21.

SECOND DIVISION.

CAMERON *v.* ROBERTSON AND OTHERS.

Landlord and Tenant—Removing—Title to Sue. A warrant of ejection granted by a Sheriff reduced in respect the petitioners for it had no title to sue, not being either proprietors or lessees of the subjects. Question whether tenants under an alleged verbal lease can pursue a removing.

This was an action of reduction and damages brought by the occupant of a croft on the farms of Corpach and Banavie, which form part of the estate of Lochiel. Reduction was sought of a summary warrant of ejection pronounced by the Sheriff-Substitute of Argyllshire, and damages were also claimed, the decree of ejection having been put in force. The defenders, at whose instance the decree of ejection was obtained, set forth that they are a committee of crofters on Corpach and Banavie. According to their statement, each crofter has his own separate portion of arable land, while the hill part of the farms is grazed by their young cattle in common. These possessions are held from year to year. The pursuer has possessed a croft since 1847, free of rent, in consideration of acting as cowherd for the crofters, for which he also received a shilling a year from each crofter who had cattle on the hill. He was engaged by the committee of crofters. The crofters' committee, in spring 1865, resolved to dismiss him, and accordingly one of their number intimated to him on the 3d April that he would not be required as cowherd after Whitsunday, and that he would then require to remove from the croft. On 1st June they presented a petition to the Sheriff for a warrant for his summary ejection, which the Sheriff, in absence, granted.

The Lord Ordinary (Barcaple) reduced the decree complained of, on the ground that the defenders, assuming them to represent the whole crofters, had no title to eject the pursuer. It did not appear, on their own statement, that they were tenants in common of the pursuer's croft,

and in possession of it through him. The arrangement by which a cowherd was to occupy a croft rent free was an accommodation to the other crofters, but was also for the benefit of the landlord, as enabling him to let the other crofts to advantage. When the notice was given, the crofters had clearly no control over the occupation of the pursuer's croft for the following year. It might be that when they took their crofts for that year, by tacit relocation or otherwise, they were entitled to rely upon the landlord continuing to give them the benefit of a cowherd being kept by him in possession of a croft rent free, to give them his services for a small fee. But that would be only a claim against the landlord, and not a right in the special subject entitling them to eject the pursuer.

The defenders reclaimed.

TRAYNER (CLARK with him) was heard for the reclaimers.

WATSON and RHIND, for the pursuer, were not called on.

At advising,

The LORD JUSTICE-CLERK said he had no doubt. It was by no means clear whether, in any circumstances, tenants under a verbal lease could pursue a summary removing. No authority had been produced to show this. But here the defenders were not tenants at all of the pursuer's croft. They had no written lease of it, nor had they possession of it under a verbal lease; and there could be no verbal lease without possession. The only person who could have legally ejected the pursuer was Mr Cameron of Lochiel, the proprietor. The general body of crofters had a perfect right to prevent the pursuer from taking charge of their cattle any longer; but they had none to eject him from his croft.

The other Judges concurred.

The interlocutor of the Lord Ordinary was therefore adhered to.

Agents for Pursuer—D. Crawford and J. Y. Guthrie, S.S.C.

Agent for Defenders—W. Mitchell, S.S.C.

Saturday, Feb. 23.

FIRST DIVISION.

GORDON *v.* SCOTTISH NORTH-EASTERN RAILWAY.

Process. A case having been transmitted to the Inner House by notice of trial, warrant for its retransmission granted, the pursuer being desirous to move the Lord Ordinary to fix a day for trial before himself.

In this case the defenders had given notice of trial for the sittings which had the effect of transferring the case to the Inner House. The pursuer now wished to move the Lord Ordinary to fix a day for trial before himself in the Outer House, but he could not do so as the process was not in the Outer House. He therefore moved the Court to order the transmission of the process to the Outer House.

The defenders objected, but the Court, following the case of Taylor in 1859 (unreported), granted warrant to re-transmit the process to the Outer House.

Counsel for Pursuer—Mr H. J. Moncreiff. Agent—Æneas MacBean, W.S.

Counsel for Defenders—Mr Birnie and Mr Asher. Agents—James Webster, S.S.C., and John Henry, S.S.C.