cap. 64) speaks of the resumption of land for "building, planting, feuing, or other purposes." These words seem to me to refer to a distinction which has always been familiar to lawyers between terminating a lease as regards either the whole or a part of the subjects let, on the one hand, and resuming either the whole or a portion of the subjects for some particular purpose. Accordingly it is essential to the idea of resumption that the landlord should have some definite purpose in view—I mean a purpose different from simply terminating a tenancy in order that he may be free to re-let the property to anyone else. The effect of section 18 (5) is that we must read this lease and see whether it contains a *bona fide* clause of resumption, or whether under the guise of resumption it authorises the landlord to terminate the lease on giving some short notice such as the law allowed prior to the Act of 1908, and such as it has been suggested that the Act of 1908 will not tolerate.

Now the clause in the lease is plainly a *bona fide* clause of resumption, because, although the purposes are extremely wide —"any purpose whatever"—the right of the landlord is so limited that he must not resume for the purpose of letting to another agricultural tenant. In other words, he must not resume for the purpose of terminating the lease.

Accordingly I agree with your Lordship in thinking that the Lord Ordinary was right, and that we should affirm his interlocutor.

The Court adhered.

Counsel for the Complainer (Respondent) —Solicitor-General (Morison, K.C.)—Lippe. Agent—John S. Morton, W.S.

Counsel for the Respondent (Reclaimer) — Pitman — Wilton. Agents — J. & F. Anderson, W.S.

Friday, July 3.

FIRST DIVISION.

FIFE COUNTY COUNCIL AND ANOTHER *v.* FIFE COAL COMPANY, LIMITED, AND OTHERS.

Local Government—County—Water—Public and Domestic Water-Rates Levied Prior to Supply of Water—Kirkcaldy District Water Order Confirmation Act 1913 (2 *and* 3 *Geo. V, cap. clxix*)—*Kirkcaldy District Water Order* 1913, *secs.* 58, 59, 60, *and* 66.

Sections of a local Act of Parliament under which *held* that the local authority was entitled to levy a public and a domestic water-rate before it was in a position to supply water.

The Kirkcaldy District Water Order 1913 (confirmed by the Kirkcaldy District Water Order Confirmation Act 1913, 2 and 3 Geo. V, cap. clxix), sec. 58, enacts—"The District Committee shall, and they are hereby authorised and required, once in every year, on or before the fifteenth day of August, to lodge with the Clerk to the County Council an estimate of the expenses incurred or to be incurred for the purposes of the undertaking and water supply under the Order of 1910 and this Order, and of the water revenues other than assessments for and during the year next ensuing the fifteenth day of May then last past, including the sums necessary for payment of interest on and repayment of principal of any money borrowed for providing such supply." Section 59 — "The estimate to be made up in manner before provided shall be submitted to the Finance Committee of the County Council, who shall revise the same and submit the estimate so revised to the County Council at their meeting in the month of October in each year, and the County Council may, and they are hereby authorised and required annually to impose and levy an assessment, to be called the domestic water-rate, upon all lands and heritages within the limits of supply, at such rate in the pound as shall be sufficient when supplemented by the public water-rate (if any) after mentioned, and the other water revenues received under the powers of this Order, to defray the expenses referred to in the immediately preceding section: Provided that as regards all persons who shall be the owners or occupiers of any dwelling-houses, railway stations, or other buildings (other than tenements situated in a private close or place), they shall not be liable to be assessed in respect thereof for the domestic water-rate unless such dwelling-houses, railway stations, or other buildings shall have been actually supplied with water under this Order, or unless some pipe of the District Committee, or through which the District Committee is entitled to give a supply to such premises, shall be laid down within one hundred yards of the same, measuring from the outer wall of such dwelling-houses, railway stations, or other buildings, or of any domestic offices in contact with and occupied as appurtenances of such dwelling-houses, railway stations, or other buildings; and that as regards the owners or occupiers of tenements situated in a private close or place, they shall not be liable to be assessed in respect of such tenements for the said domestic water-rate unless such tenements shall have been actually supplied with water under this Order, or unless some pipe of the District Committee or through which the District Committee is entitled to give a supply to such premises shall be laid down within one hundred yards of the entrance to such close or place, or the nearest part thereof. . . ." Provision is also made that in the case of agricultural subjects only the dwelling-houses and their appurtenances shall be subject to domestic water-rate, and that canals, railways, tramways, water-works, gas-works, electric power or electric supply works, and underground water, gas, or electric pipes, and all mines, minerals, and quarries, shall for the purposes of the domestic rate be rated on one-fourth of the annual value. Section 60 — "The County Council may, if they shall think

fit, annually impose and levy an assessment (to be called 'the public water-rate') upon all lands and heritages within the limits of supply." Section 66—"Until the District Committee are supplying water for domestic purposes from the works which they are by this Order and the Order of 1910 authorised to construct, or from some of such works, the County Council may from time to time pay all interest and instalments of principal as the same respectively may become due and require to be paid or set aside in respect of the moneys borrowed under this Order in respect of such works, and shall accumulate such payments with interest at such rate as the County Council may determine, not exceeding 4 per centum per annum, and shall charge the same against the rates leviable by them under this Order, and when and so soon as the domestic water-rate authorised by this Order shall become leviable the County Council may, and they are hereby authorised and required, from time to time to levy that rate to such an increased annual amount as when supplemented by the public water-rate (if any) may be required to repay any moneys so accumulated by them as aforesaid within such period from the date of borrowing as they may determine. . . ."

A Special Case was presented by the County Council of the County of Fife and the Kirkcaldy District Committee thereof, *first parties*, and the Fife Coal Company, Limited, and others, *second parties*, to have it determined whether the first parties were entitled to levy certain water-rates under the Kirkcaldy District Water Order 1913, which was confirmed by the Kirkcaldy District Water Order Confirmation Act 1913.

Before the water-works were constructed the District Committee, acting under section 58, prepared an estimate of their financial requirements for the year 15th May 1913 to 15th May 1914. The estimate was approved by the County Council, who resolved to levy for the year a public water-rate at 3d. per £1 and a domestic water-rate at 9d. per £1. Demand notes for these rates were accordingly sent out, and the second parties, who were all ratepayers within the limits of supply, were served with these notes. The second parties lodged appeals with the County Clerk against payment of the rates, and the present case was brought for the determination of the matters in dispute.

The *questions of law* for the opinion of the Court were—"1. Are the first parties entitled to levy from the second parties a domestic water-rate for the year ending 15th May 1914? 2. Are the first parties entitled to levy from the second parties a public water-rate for the year ending 15th May 1914."

The second parties *maintained* that the first parties could not legally levy either a public or a domestic water-rate before they were in a position to supply water.

LORD PRESIDENT—The rating clauses in this statute appear to me to be as clear as their policy seems unimpeachable. An imperative duty is imposed upon the District Committee once a year before 15th August to make up an estimate of the expense incurred or to be incurred in connection with the Order. And we see from the items that there are a variety of these expenses which must be paid at once, or within a certain limited period defined by the statute. The District Committee proceeded to discharge its duty under the 58th section. It made up a list of its financial requirements. We have the items before us. None of these items is challenged. In compliance with the statutory directions it submitted its budget—if I may so call it—to the County Council. And the County Council are clearly authorised by this Act of Parliament to impose, in order to meet this expenditure, a domestic water-rate sufficient, when it is added to the public water-rate (if any) and the revenues which the Committee draw from the consumers of water, to meet the expenditure. There are certain persons who, when this domestic water-rate is imposed, are entitled to exemption — those who are owners of dwelling-houses, railway stations, and all other buildings which are not actually supplied with water, and the owners or occupiers of farm-houses that have not a pipe within 100 yards. Agricultural lands appear to be exempt, and there are certain statutory limitations on the valuation of other accessible subjects.

Now it is expressly admitted in the case that the County Council, when it imposed the domestic water-rate which is here challenged, gave exemption to those persons who by virtue of those statutory provisions are entitled to be released from any claim. And the only objection taken to the imposition of this domestic water-rate is that the District Committee are not yet in a position to supply water. Well, why should they not impose the domestic water-rate before they are actually in a position to supply water? The statute does not forbid them to do so. The statute, on the other hand, lays upon them statutory obligations to meet which it seems to be imperative that the domestic water-rate should be levied; and in the absence of any statutory provisions to the contrary, and being confronted with a clear statutory authority to impose the rate, I think it would be out of the question to say that we should interdict—for it would come to that—the County Council from imposing this domestic water-rate which the statute authorises them to impose, because they are not yet in a position to supply water to these consumers.

Appeal has been made to the 66th section of the statute for the purpose, I suppose, of showing that there was a way out of their difficulty opened up by the statute to the County Council to secure their money without imposing a rate. But I think that the answer, which is two-fold, is complete—(first) that the 66th section is optional and not imperative; and (second) that its operation is confined to a mere accumulation of instalments and interest of money borrowed for the purpose of constructing the works.

I am therefore of opinion that the domestic water-rate may be levied now by the County Council.

With regard to the public water-rate, I

really think there can be no arguable question raised. The 60th section of the statute is clear and distinct in its terms and is unqualified. [*His Lordship proceeded to deal with a question with which this report is not concerned.*]

LORD JOHNSTON—I agree in the result which your Lordship has come to, but I desire respectfully to dissociate myself on one point from your Lordship's expression of opinion. Your Lordship indicated that the enactments on this question of rating and assessment were clear. I regret to say I think they are clear. But your Lordship added, as I understood, that the policy was unimpeachable. That I venture to doubt, because, as it seems to me, the result is a perfect *reductio ad absurdum* of rating for a purpose such as that in question. The works authorised by the Order are not under construction, and even if undertaken are certain not to be finished for a considerable time. During that period all the money which is required by the County Council and District Committee for the annual service, in providing what is truly intended to be a water supply for domestic use, will be cast, not upon the shoulders of those for whom that domestic supply is being provided, but upon the shoulders of others who do not now need, and never will need, a domestic supply. The result seems to me to be grotesque. At the same time, owing, I think, to somewhat inconsiderate adoption of provisions from former private Acts and Orders, and inconsiderate introduction of exceptions in this Order, that result cannot be prevented.

Under these circumstances, regret it as much as I may, I am bound to concur with your Lordship in answering the first question as your Lordship proposes. On the second question I have no difficulty whatever, and entirely agree with your Lordship.

LORD SKERRINGTON—I concur with your Lordships in the result at which you have arrived, but I think it my duty to say that I do not discover in any of the clauses of the statute the anomalies which seem to have struck my brother Lord Johnston.

The difficulty in this case, if there be a difficulty, seems to me to arise from the form of the first and second questions, which ask whether the rating authority is entitled to levy from the second parties, in the first place, the domestic water-rate, and in the second place the public water-rate. It appears, however, from the Special Case, that the second parties admit that any special exemptions to which the Provisional Order entitled them have been given effect to. Accordingly the proper form for the first two questions was whether the rating authority was entitled, for the year in question, to impose and levy these assessments?

When one looks at sections 58, 59, and 60 of the Provisional Order, it is plain that only one answer can be made to these questions, namely, in the affirmative. The sole argument to the contrary is that when one reads section 59 one discovers that there are so many exemptions from which particular classes of ratepayers will be entitled to take benefit that in the final result injustice may be done to persons who own canals, railways, tramways, water-works, gas-works, mines, minerals, and quarries.

I am not in the least concerned—nor do I think the Provisional Order was in the least concerned—with the question whether in particular circumstances what may seem to be a heavy incidence of taxation might fall upon particular persons. People must just take their chance of things of that kind. Such considerations throw no light upon the construction of sections 59 and 60, and do not avail to displace their plain meaning. I accordingly agree with your Lordships that the first and second questions must be answered in the affirmative.

LORD MACKENZIE was not present.

The Court answered both questions in the affirmative.

Counsel for First Parties — Constable, K.C.—Cochran-Patrick. Agents — Ronald & Ritchie, W.S.

Counsel for Second Parties — Macmillan, K.C.—W. T. Watson. Agents—Davidson & Syme, W.S.

Friday, July 3.

FIRST DIVISION.

(SINGLE BILLS.)

SPENCE *v.* SPENCE.

Process—Reclaiming Note—Competency—Reclaiming Note prior to Closing of Record.

In an action of declarator of marriage the pursuer, prior to the closing of the record, craved leave to amend the summons by adding an alternative conclusion for damages for breach of promise and seduction. The Lord Ordinary *refused* the amendment and granted leave to reclaim.

Held that a reclaiming note against his interlocutor was competent although the record had not been closed.

Mrs Isabella Gray or Spence, assistant in the Carlton Hotel, Edinburgh, *pursuer*, brought an action against Lockhart James Spence, medical student, 17 Archibald Place, Edinburgh, *defender*, concluding for declarator of marriage. Before the record was closed the pursuer by minute craved leave to amend the summons by adding an alternative conclusion for damages for breach of promise and seduction.

The Lord Ordinary (DEWAR) on 23rd June 1914 pronounced the following interlocutor:—" . . . Refuses said minute; . . . continues the adjustment of record . . .; and grants leave to reclaim."

Against this interlocutor the pursuer reclaimed, and on the case appearing in Single Bills counsel for the defender objected to the competency of the reclaiming note.

Argued for the defender—It would have been incompetent for the Lord Ordinary to