

Agricultural Holdings Case Law Update **Robert Sutherland, Terra Firma Chambers**

The following are a digest of the most significant decisions issued by the Courts since August 2007.

Scottish Youth Hostels Association v Paterson, 2007 SLCR 1 (SLC/16/07, 21 August 2007) and 1 February 2008

A written agreement had been entered into in 1997 to take a series of grazing lets for the period of 1 February to 31 December in each of the 10 years covered by the agreement, concluding on 31 December 2006. The agreement specified that either party could bring it to an end at the end of the fifth period. The agreement specified the rent to be paid for the first five periods, and provided for a rent review for the last five periods. There was an obligation to maintain fences, hedges gates and others ‘during the whole of the tenancy’ The agreement specified that it was a let for grazing of sheep, cattle or horses only. It also specified that the tenant’s whole stock had to be removed on termination of each period of lease. A further clause permitted the landlord to terminate the letting arrangement if the tenant was in breach of any of his obligations in terms of the offer. Clause 12 of the agreement contained a provision about stamp duty which referred to ‘this lease’. The tenant argued that it was a lease of land for 10 years, with a break after 5 years. The obligation to maintain fences lasted throughout the whole ten years, and therefore it could not be said that the lease was limited to only the specified periods as occupation was necessary for the whole period to fulfil that obligation. In any event occupation was for a period of 110 months over the 10 years, which was not a shorter period than from year to year. On an *esto* basis the tenant argued that if the agreement was for 10 separate grazing leases, then each lease would be covered by Section 2(2)(a) of the 1991 Act, and that as one of the leases was in effect as at 27 November 2003 it would be covered by paragraph 2 of The Agricultural Holdings (Scotland) Act 2003 (Commencement No. 3, Transitional and Savings Provisions) Order 2003. The effect was that the 2003 lease period terminated on 31 December 2003, the 2004 lease period was

covered by Section 3 of the 2003 Act, but that Section 3(2) of the 2003 Act did not apply because the land was already the subject of the 1997 agreement. The consequence was that the tenant remained in occupation under a short limited duration tenancy.

Held There is nothing about single contract arrangements which takes them out of the ambit of Section 2(2)(a) of the 1991 Act. For Section 2(2)(a) to apply it will be necessary to show that the agreement creates not one lease but a succession of individual leases. It was not averred that the 1997 agreement was a sham or did not contain the whole of the terms of the agreement. The 'break clause' was not intended as a break in the period of the lease, but referred to it as breaking off the agreement. The agreement bore to be an offer and acceptance of a succession of grazing leases. Each of the leases came within Section 2, with the result that there was no secure tenancy under the 1991 Act. Section 3 of the 2003 Act allows the land to be used for limited periods and for limited purposes without creating a tenancy, on the condition that there should not be a continuation of the same arrangements without a break. The requirement for such a break involves the same person not being entitled to occupy for the same purpose on the day after the Section 3 lease expires. The same person is allowed to become entitled to occupy for the same purpose again on the day after that., and that is the sense in which 'let' in Section 3(2) should be taken to mean. As the tenant was not entitled to occupy the same subjects on 1 January 2005 the successive lease arrangements never become a short limited duration tenancy under Section 4(1). A SLDT under Section 4(2) does not arise either because there is no suggestion in the pleadings that the tenant did remain in possession after the expiry of the period of let, and even if he had that would have been in breach of the obligation in the lease to remove and without the consent of the landlord. Nor in any event would there have been a basis for suggesting that, even if there had been an SLDT, that it could have endured beyond 31 December 2006.

On appeal, held that the clauses in the lease were not inconsistent with there being a succession of tenancies. Although there was a reference to 'this lease' in clause 12, which on its own would have favoured the tenant, the provision was a formal one aimed at the requirements of the Inland Revenue rather than being a necessary term of the letting agreement.

In 1989 the owner of a farm granted an oral lease of 33.633 acres. The lease ran from year to year. The subjects were let for use for the business of a riding school and were divided into 2 fields. The tenant was allowed to graze horses on the subjects and to crop hay for their winter feed. Thereafter the tenant moved a static caravan onto the subjects and went to live there. He also erected sheds and placed some shipping containers on the land for the purposes of the riding school. Riding tuition took place on this field. It was set out with jumps. A second field was formerly used for the growing of the hay. More recently horses grazed on it. At January 2006 there were 10 horses grazing there. Although the riding school operated seven days a week, most of the teaching was done at weekends. In 1992 the pursuer bought the farm. He allowed the lease to continue. In 1994 a dispute arose between the parties about the defender's alleged breaches of his obligations to maintain and repair the subjects. The pursuer's solicitors served a notice to quit on the defender. The defender's solicitors contested it by counter notice in terms of Section 22(1) of the 1991 Act. The pursuer applied to the Scottish Land Court for its consent to the operation of the notice to quit, but did not pursue the application. On 13 July 2004 the pursuer's solicitors served on the defender a notice to quit. This notice was not in the form required by Section 21 of the 1991 Act. It referred to the defender's alleged breaches of the lease and intimated that the pursuer was terminating the lease on the ground that the breaches had not been remedied.

Held For the lease to constitute a lease of an agricultural holding, the land had to be used for agriculture. The subjects in this case were let for the purpose of being used for the operation of a riding school. That purpose was non-agricultural. The permission conferred on the tenant to graze his horses thereon did not affect that conclusion. *Rutherford v Maurer*, [1962] 1 QB 16 was to be distinguished because in that case the purpose of the let had been for grazing only. The grazing which took place in the present case only arose because the horses were part of a commercial enterprise, and no matter how extensive the grazing was it was not the predominant use but was ancillary to the commercial purpose of the lease. Since the lease was a commercial lease running from year to year, relocation could have been prevented in any given year by any overt intimation by either party that he did not consent to the prolongation of the lease. The landlord's notice to quit constituted such an intimation.

Since the notice specified a date later than the true anniversary date, the tenant had not been prejudiced in any way by the error.

Obiter The Court of Appeal decision in *Rutherford v Maurer* had been wrongly decided. The horses that were to be grazed on the field were not "livestock" within the statutory definition, which is the same as in Section 85(1) of the 1991 Act. The Court of Appeal's reasoning was that because the definition of agriculture included "the use of the land as grazing land" and because the field in question was used for grazing, the field was therefore used for agriculture. That is a *non sequitur*. Because agriculture includes grazing, it does not follow that all forms of grazing constitute agriculture. The grazing to which the definition refers should not be considered in isolation. It has to be seen in the context of the various activities that the definition is said to include and in the context of the definition of livestock.

North Berwick Trust v Miller and others, 2007 SLCR 40

The landlords of an agricultural holding applied to the Scottish Land Court for consent to a notice to quit the holding under Section 24(1)(b) of the 1991 Act [sound management of the estate], and for consent to a notice to quit the holding under Section 24(1)(d) of the 1991 Act [greater hardship caused by withholding consent]. In February 2004 the landlords had entered into an agreement granting developers an option over 10 acres, with the developers to obtain the necessary planning permission for development of the whole of the holding and negotiating any other requirements of the local authority, and thereafter for the developers and landlords to co-operate in the sale of parcels of land to other developers. The tenant had registered a notice of interest in acquiring the land under Section 25 of the 2003 Act. The holding constituted the entire estate of the landlords. The land had been part of the common good of the Royal Burgh of North Berwick and was held in trust for the benefit of the people of North Berwick. The original tenant had been selected because he was aware of the background and would release the land as and when it was required for development. Although the 10 acres in the option agreement in favour of the developers was excluded under Section 27(1)(g)(v) of the 2003 Act, the remainder of the holding was caught, preventing the landlords from promoting and marketing the land as envisaged in the options

agreement. The potential value of the land to the landlords was approximately £13m, with net proceeds of £12m. The current rental income was £6180. The tenant owned another farm. The landlords argued that the registration of the tenant's right to buy prevented the sound management of the landlord's estate by preventing them from being able to promote the development of the land. The landlord also argued that greater hardship would be caused to the landlord by refusing consent than would be caused to the tenant by granting consent. The landlords stated that they could not afford to obtain planning permission without involving developers. As a result the right to buy had the effect of preventing the landlord from being able to promote the development of the land themselves and obtain planning permission so as to be able to serve an incontestable notice to quit under Section 22(2)(b) of the 1991 Act.

Held The applicants were correct in saying that the right to buy was triggered at the earliest stage of any negotiations with a view to a transfer. As a result, an agreement to seek planning permission would not involve action with a view to a transfer, but an options agreement would as it did envisage a sale. There is an apparent lacuna in Section 29 of the 2003 Act because the right to buy is triggered where the landlord enters into negotiations to transfer the land. The 2003 Act does not provide for what should happen if the landlord enters into negotiations without giving the tenant notice of this (triggering the right to buy under Section 28(1)(b) and (3)(b)), but the negotiations prove fruitless and the landlord decides not to proceed with the transfer. That was not a matter the court would consider further, but it was a foreseeable problem where an incontestable notice to quit was served under Section 22(1)(b) of the 1991 Act and it transpired that there had been earlier negotiations as part of the process of obtaining planning permission. A case based on the discriminatory effect of the right to buy legislation was not allowed to go to proof. Whilst it could be seen that the effect of the legislation meant that an impoverished landlord would find it harder to obtain planning permission for the holding than a wealthy landlord, it is not necessary to resolve that issue by requiring a particular construction of Section 24 of the 1991 Act to avoid those effects. An argument was made that any 'hope value' which might attach to the land was to be excluded under Section 34(2)(f)(ii) of the 2003 Act from the valuation of the land. This argument was on the basis that the expectation of use which was reflected by hope value was based on a use which was not yet lawful as at the date of valuation. This was rejected. If it had been

intended to exclude the hope value of development, then the legislation could be expected to say so rather than leave it as an implication. The valuation exercise would take into account the prospects of achieving any development. The application for consent based on the sound management of the estate was dismissed. 'Sound management of the estate' for the purposes of the legislation was concerned with the proposed use of the land rather than the personal financial circumstances of the landlord. The use of land by individual house owners would mean that there was no unit being managed in any relevant sense. The purpose of the exercise would necessarily lead to the break up of the estate and to each unit being operated individually and that is not an 'estate' for the purposes of Section 24. The application for consent based on greater hardship was permitted to go to proof. The applicants stand in the shoes of the original landlords, and the interests of the beneficiaries under a trust is a relevant element in the balance of hardship. The Court would have to weigh the impact of the loss of the tenancy on the respondent against the impact of the loss of the full development value on the landlords and their trust purposes.

[An appeal against this decision is due to be heard in February 2009].

Johnstone v Milligan, 2007 SLCR 61

The owner of a farm applied to the Scottish Land Court for declaratory orders that there was no lease of the farm under the 1991 Act nor under the Leases Act 1449 and that the tenant should remove. The agreement was dated 4 February 1984, referred to the name of the farm, an approximate acreage and noted fields excepted from the agreement. It referred to an annual rent to be paid $\frac{1}{2}$ yearly, with a rent review every 5 years, the next being February 1989. The period of let was specified as being for a minimum of 10 years. It also provided that if the farm were sold then compensation would be paid for all improvements and that there was a 'first option on sale'.

Held An argument that the Court should allow a proof to hear direct evidence as to the intention of the parties was rejected. The issue was one of construction of the agreement, and direct evidence as to the intention of the parties was irrelevant to that exercise. It was also necessary to distinguish between what the expectations of the parties were, and what they had agreed to. They had expected that the agreement would continue after 10 years, but they had

only agreed to be bound for 10 years. The tenant would not have been entitled to abandon the fields and stop paying rent within the first 10 years, but he could have taken off his stock and ceased paying rent once that period expired. Nothing in the lease bound the tenant to remain there forever, and an argument that the lease was therefore for an indefinite period was rejected. The use of the word 'minimum' did not mean that the parties were bound for any longer period. The agreement had effect as an agreement for a term of years, and could have been brought to an end as at 4 February 1994. Occupation after that date was to be viewed as tacit relocation, and so the lease continued from year to year. Tacit relocation does not create a new agreement (*Douglas v Vassillis and Culzean Estates*, 1944 SC 355 applied). The appeal against refusal to grant the declaratory orders applied for was refused.

Tawne Overseas Holding Limited v Firm of Newmiln Farm, 2008 Hous LR 18

Owners of a large house and a farm sold it, and then leased them back from the purchasers under two separate leases in respect of the farm and the house. Because of difficulties in meeting the rent payments the parties eventually agreed to vary the leases. The variation agreements reduced the levels of rent but also a number of other changes were made, including the insertion of break options and the removal of shooting rights for the tenant from the agricultural lease. There was also a provision affecting both leases which stated that if the rent was unpaid one month after the due date in respect of either lease the landlord would be entitled to the original higher rents for both leases. The tenants continued to have problems meeting the rent due. Rent demands were sent by the landlords agents requiring payment of the accumulated arrears of rent for both leases within 14 days of the date of notice, failing which court proceedings would be raised for declarator of irritancy and ejection. The tenants responded by sending three cheques which in total equalised the amount of the arrears. One of these cheques was post-dated to a date after the 14 days notice period. These cheques were not accepted and were returned. The tenants then sent the cheques to the landlord. Two of the cheques were cashed and cleared at around the same date as the post dated cheque, but the post dated cheque was not presented. Subsequent rent demands asked for rent at the original rent levels. Cheques for payment at the reduced rent levels were tendered but were not accepted and eventually court actions were raised for

declarator of irritancy and removal, and for payment, in respect of both leases. The landlords argued that the period of notice specified in Section 4 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 was directory but not mandatory, that the provisions as regards the new rent levels and that if the rent fell into arrears then the original higher rent would become due was a concession as to the amount of rent by the landlord which they were entitled to withdraw when the rent fell into arrears, and that the landlord had an absolute right to terminate the farm lease.

Held (1) that as regards the house lease, the notices demanding payment of rent did not comply with the requirements of Section 4 of the 1985 Act because the notices had demanded payment within 14 days of the date of the notice, whereas Section 4 provided that the period of notice should be 14 days from the date of service of the notice, and the terms of Section 4 were mandatory; (2) that as regards the house lease, the provision increasing the level of rent to the original rent in the event of a delay in payment was to be treated as a penalty clause which was unenforceable at common law as the original leases were altered in various material respects and the original rent agreements no longer remained alive; and in respect of the farm lease the provision was also contrary to Section 48 of the Agricultural Holdings (Scotland) Act 1991; (3) by the time the irritancy notices were served the landlord had been demanding payment of rent at the higher levels and had rejected the rent proffered at the lower level, and the demands for payment must be seen as an attempt to extract the higher penal rent rather than a desire to irritate the lease because of earlier delays in payment and accordingly the landlords had waived any right to irritate the leases due to any earlier delays in making payment, and having elected to demand the penal rent the landlord could not jettison that position and seek another justification for the irritancy of the leases as that would amount to an unfairness or oppression which would be a justifiable defence to an irritancy; and the defenders assoilzied from all four actions.

Buccleuch Estates Ltd v Telfer, SLC/101/07, 15 February 2008

A lease provided that the tenant accepted that the houses, offices and other fixed equipment were in a sufficient tenantable and habitable condition and adequate for the purposes of the let, and a post lease agreement obliged the tenant to maintain and keep the whole of the fixed

equipment in good order and condition and in a thorough and tenantable state of repair. The Court held in *Telfer v Buccleuch Estates Limited (II)*, 2005 SLCR 51 that these provisions did not relieve the landlord of the liability to replace items as may be rendered necessary by fair wear and tear. There was a dispute as to the extent of the landlords obligations arising from a letter dated 9 June 2005, where the tenant had set out 19 items of fixed equipment said to require repair or renewal due to natural decay and fair wear and tear or reasons outwith the control of the tenant.

Held The landlords were entitled to a proof to determine who is ultimately liable to pay for the work. The lease did not oblige the landlord to modernise or upgrade the fixed equipment. While the common law might be thought to prohibit the landlord from changing the fixed equipment so as to increase the tenant's burden, that did not matter as the common law had been superseded by the provisions of Section 5(2)(a) of the 1991 Act. The obligation to repair or renew is not the same as an obligation to modernise, upgrade or improve. There is no obligation on a landlord to modernise or upgrade equipment after the commencement of the tenancy, whether the need to modernise arises from a statutory provision or from changing practices. One of the pieces of fixed equipment was a road, and whatever might turn out to be the purpose of the road the landlords are not obliged to upgrade the road to meet modern standards. Normally it is solely for the landlord to determine what work is actually required and the standard to which it is carried out. If the fixed equipment was compliant with the statutory obligation but was of poor quality that would have to be reflected in the rent. Normally prior approval of the court would not be necessary, nor would that approval prevent a breach by the landlord if there was a subsequent need for the equipment to be replaced. In trying to draw a distinction between repair and renewal, replacement of a minor element might fall into the category of repair but it was doubtful in connection with a building that the stage of renewal only arose when the whole building was worn out. In other areas the issue may be more complex. Where a portion of a dyke deteriorated to the point where it required to be rebuilt from the foundations, the appropriate 'unit' to be considered could be that 'section' of the dyke. This work might be more readily seen as a work of renewal rather than a repair.

Telfer v Buccleuch Estates Ltd, SLC/119/07, 15 February 2008

The tenant applied to the court for an order that the landlords remove partridge feeders from a specified part of the holding (which included the grouse moor) and that they do not shoot or drive partridges, pheasants or other reared birds on or from the specified area. The lease contained a reservation to the landlords which included the sole right to the whole game of every kind, and the fish in the rivers, burns, lakes and ponds within the land let, with full power to hunt, shoot, course or fish and sport on the lease subjects, and that the tenant was bound to preserve game of all kinds to his utmost power, to interrupt poachers and all trespassers, and to inform the landlord of the same. The tenant complained of a recent substantial increase in partridge shooting and of substantial disruption to his use of the farm which resulted.

Held The reservation in the lease did no more than make explicit, and were no more extensive than, the landlord's common law rights to game. It did not expressly allow for preservation, feeding, rearing or even keeping activities. In the absence of a relevant provision in the lease, the landlord must exercise his sporting rights reasonably and with due regard to the interests of the agricultural tenant. Where there is no relevant contractual provision the tenant must accept the game numbers on the holding at the outset of the lease, and the landlord is not entitled to bring about any material increase during the currency of the lease. It is implicit in the reservation of sporting rights that the landlord may take steps to preserve the stocks of game available. This includes keeping operations to put down vermin and prevent poaching, and the possible introduction of artificially reared birds. The landlord is not restricted to the actual number of game stock on the holding at the outset of the lease. The right would be measured by what use of the landlords sporting rights was reasonably contemplated for the maintenance of a 'fair average stocking'. That would be measured not just by the stock at the outset but also other factors such as the typical stocking on similar holdings. A landlords right to occupy the most appropriate locations for shooting purposes did not give the right to occupy the best locations for shooting purposes. The most appropriate location was one which best balanced the interests of the sport and the needs of the farmer. A fundamental aspect of reasonableness includes an obligation to give notice of shooting activity. The terms of the lease did not restrict the landlords ability to feed and rear birds off the lease subjects for sport on the holding. The terms of the lease did not indicate

any special intention to increase stocking or shooting activities. The extent of any permissible increase may be one of degree. It may be easier to draw the inference that the level of activity was outwith the contemplation of the parties if it has a perceptible effect on the profitability of the tenant's farming activities. A proof before answer was allowed, the court noting potential problems which might arise as to being able to formulate an appropriate order.

Telfer v Buccleuch Estates Ltd, SLC/141/07, 15 February 2008

The tenant applied for an order finding that the landlord had not been entitled to resume a cottage from the lease, which failing for an order reducing the rent. It was accepted that the cottage had been in a reasonable tenable order at the start of the lease and had a farm worker living in it at that time, although it would not have been an attractive home for an incoming worker. The cottage had been kept in a reasonable state of repair but it needed modernisation works and had been unoccupied since 1980 as no one wanted to live in it.

Held With reference to the case SLC/101/07, it is not part of the landlords obligation in respect of fixed equipment to modernise and upgrade the equipment. The fact that the cottage ceased to be attractive as accommodation for a farm worker cannot be attributed to any breach of obligations by the landlords. If the tenant could establish that the landlord should have recognised the need for some different type of accommodation the tenant's remedy may have been to build new accommodation as an improvement. If the tenant can prove that new accommodation is reasonable and desirable on agricultural grounds for the efficient management of the holding any objections by the landlords would be unlikely to prevail. A proof would be allowed on issues relating to the reduction of rent.

Salvesen v Graham, SLC/242/20, 18 March 2008

The landlord had applied for declarators that a 1974 lease (entry from 28 November 1973) had come to an end, and for removal. The lease had been granted to a grandfather and father as partners of their firm for a period of 10 years. In 1997 the father died, and his son succeeded to his interest in the lease. The grandfather took no active part in running the farm

and in practical terms was no more than a nominal joint tenant. The grandfather died in 2001 and notice was given that his grandson had acquired his interest in the lease. The landlord did not object but subsequently a notice to quit was served on the grandson in his capacity as the successor to his late grandfather's interest in the 1974 lease. The notice to quit was given in terms of Section 22(2)(g) of the 1991 Act and therefore did not require to specify the ground upon which it was given. No counter notice was served by the grandson. Subsequent negotiations took place about a new lease, but no new lease document was actually finalised. The court decided (25 July 2006, unreported) that no new lease agreement had been reached as a result of verbal discussions between the parties or by inference from subsequent acts, the landlord had not waived any right to enforce the notice to quit, the notice to quit however was incompetent as it was served against the grandson only in respect of one of his interests as successor to the one of the original joint tenants. The two interests in which the grandson held the tenancy had merged so that he had become sole tenant. The landlord appealed, but following *Stephen v Innes Ker*, 2007 SLT 625 the appeal was restricted to a question as to whether the notice to quit given in respect of the grandfather's share was to be treated as a valid notice to quit in respect of the whole tenancy. If that was the case then the notice to quit would be effective and did not require the consent of the court since no counter notice had been served.

Held The statement in the notice to quit that it was given in respect of the grandson's interest in the lease as successor to his grandfather did not fall to be treated as *pro non scripto*. The notice to quit is to be read as intended to be qualified by the final paragraph. The notice was directed at one inherited interest only. The court went on to express the view that if a landlord served a notice to quit in order to rely on Section 22(2) of the 1991 Act he could not rely on the notice for the purposes of Section 22(1). In the case of a notice to quit based on the grounds in Section 22(2)(a)-(f) the notice required to state explicitly the grounds upon which the notice proceeded. A party setting out a clear express ground may be taken to have excluded proceeding on any other ground. A landlord could frame a notice to quit in the alternative, or serve separate notices, so as to show clearly that if the grounds for the notice were not established under Section 22(2) the notice was still intended to proceed under Section 22(1). In terms of the possible extension of time under Section 23(3), the one month time limit on the tenant serving a counter notice to the Section 22(1) notice to quit would

only start to run from the date of the final determination of the full court, or from the date of expiry of any time for an appeal. The court left open the further question of the effect of an appeal from the Scottish Land Court to the Court of Session under Section 88 of the 2003 Act.

Loudon v Hamilton & others, Scottish Land Court, SLC/69/06, 10 April 2008

An application to the Scottish Land Court for declarator of an agricultural tenancy under the 1991 Act over Easter Gartfarran Farm, Gartmore, Stirlingshire, along with subsidiary craves in respect of reinstatement of demolished buildings and damages resulting from their demolition. The applicant was the farmer of another farm. The respondents were: firstly, the former owner of the subjects of the application; secondly, the present owner of the bulk of the farm; and, third to seventh, the owners of various parcels of land which had been sold out of the subjects since the original agreement giving occupation to the applicant. The applicant claimed that in March 2000 he entered into a 1991 Act tenancy of the farm with the first respondent. The subjects occupied included a number of buildings which were all demolished by the fourth respondents. The Court decided that the original agreement was a seasonal grazing let. Although critical of the evidence of the applicant, and only marginally less so about the evidence of the first respondent, they found that the first respondent's evidence was corroborated (a) by the applicant having entered the subjects on his IACS forms for the years 2000-2004, and (b) his failure over a number of years to claim the existence of a 1991 Act tenancy in the face of a number of encroachments onto the subjects being let, including the demolition of the buildings he had been occupying prior to their demolition, and his withdrawal of stock from areas sold off to the respondents. Nor was there an agreement covering aspects such as an ish, rent reviews or the maintenance of fixed equipment.

The Court had to decide a number of legal issues. The first issue was the crave for declarator which extended to the whole farm, notwithstanding that the evidence indicated that there were various buildings, including the farmhouse, which had never been occupied or claimed to be occupied by the applicant. The Court decided that in terms of its powers under Rule 38 of the Scottish Land Court Rules, it could have granted a declarator restricted to

some parts of the larger subjects had it concluded that the applicant had a 1991 Act tenancy over any part of the subjects. The second legal issue for the Court was in respect of the duration of the agreement. The Court found that it had been agreed that entry would take place on 1 April 2000. Although there was an absence of any clear evidence as to an agreed or defined duration for the let, it was accepted that it was understood at the outset by both parties that the intention was to avoid any security of tenure being created. Since this meant that occupation could not be for more than 364 days, the Court decided by a process of inference that the period of let was 364 days. It was also found by the Court that there was no explicit renewal of the agreement, but it had been contemplated that the original agreement would be repeated in subsequent years. Applying *Reid v Dawson*, [1954] 3 All ER 498 and *Mackenzie v Laird*, 1959 SLT 268 the Court held that occupation in subsequent years was governed by the same terms and conditions as the first year.

A further issue was raised concerning personal bar. This was not a matter the Court had to decide, but it made a number of comments. The second respondent sought to insist on a personal bar plea in order to forestall any argument that continued occupation by the applicant beyond the period of let subsequently gave rise to a short limited duration tenancy under the 2003 Act. Since the applicant had only sought to establish that he had a full 1991 Act tenancy the Court refused to consider that question. The more general point raised by the applicant was whether personal bar operated so as to effectively terminate the right to security of tenure over a 1991 Act tenancy, or part of that tenancy. The applicant's argument was that apart from irritancy, renunciation or abandonment, the only way to terminate a lease was by giving notice under Section 21(1) of the 1991 Act. The Court took the view that having regard to *Knapdale (Nominees) Ltd v Donald*, 2001 SLT 617, *Kildrummy (Jersey) Ltd v Calder*, 1994 SLT 888 and *Morrison's Executors v Rendall*, 1986 SLT 227, a tenant could agree to give up a 1991 Act lease, and that if one party acted upon that agreement to the knowledge of the other party then personal bar could apply so as to prevent the tenant from subsequently claiming that the tenancy had not been validly terminated. There was no logical reason why the same rationale could not apply to only part of the subjects as much as to the whole lease. On the facts of the case, had it been found that the applicant did have a 1991 Act tenancy then pleas of personal bar by the respondents would have been upheld to stop the

applicant from insisting that he continued to have a 1991 Act tenancy over those areas that had been sold off to the respondents.

Gordon's Inter Vivos Trust v A & J C Craig, SLC/18/06

The tenant occupied 3 areas of ground. The landlord served notices to quit against each of the three areas. The tenant did not serve counter notices. At debate the tenant argued that three areas of ground were occupied as one holding, and that the notices were oppressive. The court held that the three areas of ground were held as separate holdings. While it was possible to plead a case of oppression against a notice to quit, the tenant did not succeed on the facts of the case. It would be necessary for a tenant to aver the actings of the landlord which induced the tenant to forego the statutory right to serve a counter-notice.

Grant v Glengarry Estate Trust, SLC/92/08

The tenant had given notice of a proposed diversification scheme for the generation of hydro-electric power. The landlord had objected to the proposed scheme, but subsequently withdrew the objection. There were two different means by which the scheme could proceed, one of which required the laying of underground power cables across the lease subjects and was the tenant's preferred method. The landlord refused to consent to the granting of a wayleave to the electricity company for this purpose. The tenant applied to the Scottish Land Court for declarator that the landlord was obliged to enter into the wayleave agreement, and for decree ordaining the landlord to do so.