

are no buildings on the holding. The holding is used by the applicant for the grazing and feeding of his stock, which consists of five cows and a horse. "The applicant is and has for the last twenty-two years been a dairykeeper, supplying the village of Muirkirk with milk. In his dairy business he sells milk produced by his own five cows, and the milk of other ten cows belonging to neighbouring farmers, which he buys from them. His horse is used for the purpose of his holding and also for conveying the milk to the village of Muirkirk."

Now from these facts it appears to me that the applicant has a business or calling, and only one business or calling, that, namely, of selling milk. Does he hold the permanent grass park for the purposes of that business or calling? In my opinion he does. The only purpose for which he grazes the permanent grass park with cows is to obtain from them milk to be sold to the customers of his dairy.

Can it be said that this business or calling of selling milk as carried on by the applicant is primarily pastoral? In my opinion it cannot. The greater part of the milk which he sells is purchased by him in the first instance, and then resold to his customers. It seems to me that with respect to that milk his business is a purely commercial or mercantile undertaking or venture, and cannot be described as primarily agricultural or pastoral, and certainly not in any other sense than the business of the butcher or cattle dealer referred to in the statute can be so described. If so, does the fact that in addition to the milk which is bought in the first instance from other people he sells milk which is the produce of cows belonging to himself and grazed on the permanent pasture held by him make any difference? In my opinion it does not. It seems to me that it is a mere accident that some of the milk retailed by him to his customers is the produce of cows belonging to the applicant, provided that the true inference from the facts stated is that the milk is disposed of by him along with other milk in the course of a business which is, to borrow a word from the statute, primarily mercantile or commercial, and such is the only inference which it seems to me is warranted by the circumstances disclosed in the present case. I do not read the facts set forth as instructing that the applicant is a dairy farmer, and I offer no opinion one way or another as to the applicability of the section to such. I am prepared to answer the question of law submitted to this Court in the affirmative.

LORD JOHNSTON and LORD MACKENZIE were absent.

The Court answered the question of law in the negative.

Counsel for the Appellant—Chree, K.C.—Macquisten. Agents—Connell & Campbell, S.S.C.

Friday, December 19.

FIRST DIVISION.

[Scottish Land Court.]

MARQUIS OF BREADALBANE v.  
ROBERTSON.

*Landlord and Tenant—Insurance—Small Holding — "Present Rent" — Tenant's Share of Fire Insurance Premium — Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), secs. 13 and 26 (3) and (10).*

The Small Landholders (Scotland) Act 1911, sec. 13, defines "present rent" as "the yearly rent, including money and any prestations other than money."

In an application by a tenant of a holding for an order under the Small Landholders (Scotland) Act 1911 fixing a first fair rent, the proprietor objected to the competency of the application, on the ground that the Act did not apply (sec. 26 (3) and (10)), as the "present rent" of the holding exceeded £50. The sum entered in the valuation roll for the holding was £50, 1s. 10d., the 1s. 10d. being the proportion payable by the tenant of the premium of a fire insurance policy effected by the proprietor over farm buildings.

Held (*diss.* Lord Johnston) that the tenant's proportion of the premium was not part of the "present rent" within the meaning of section 26, sub-section 3 (10), of the Act.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 13, so far as necessary, is quoted *supra* in rubric. Section 26 enacts—". . . (3) A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of (a) any land the present rent of which within the meaning of this Act exceeds £50 in money. . . . (10) A person shall not be subject to the provisions of this Act regarding statutory small tenants who in terms of this section would be disqualified from being an existing yearly tenant or a qualified leaseholder."

This was a Special Case stated by the Scottish Land Court at the request of the Marquis of Breadalbane, *appellant*, in an application under the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) by Donald Robertson, tenant of the holding of Moiearlanich, Killin, *respondent*, for an order fixing a first fair rent for the holding.

The Case stated—"1. Donald Robertson, farmer, residing at Easter Moiearlanich, in the parish of Kenmore and county of Perth (the applicant), was at the commencement of the Small Landholders (Scotland) Act 1911, on first April 1912, the resident and cultivating tenant from year to year of the holding of Easter Moiearlanich, situated in said parish and county, in the tenancy of which he succeeded his father. The holding has been occupied by the same family since about 1827, and the written lease last granted was in favour of the applicant's father, dated 20th and 24th July 1846. The period of en-

duration was for one year from Whitsunday 1846, and the rent then payable was £58 per annum. From and after Whitsunday 1847 the applicant's father continued in possession as a tenant from year to year till his death, and thereafter the applicant succeeded him, and has continued in possession of the holding also as tenant from year to year. About 1885 the proprietor reduced the original rent of £58 by £8. . . .

"4. The holding, exclusive of common pasture, exceeds 50 acres. The sum entered in the valuation roll for the county of Perth as the rent of the applicant's holding for the year current at the commencement of the said Act was £50, 1s. 10d. per annum. This 1s. 10d. represents the proportion payable by the said Donald Robertson of the premium of an insurance policy against fire effected by the respondent, the proprietor, over a large number of farm buildings upon the estate, which policy includes the byre and stable occupied by the said Donald Robertson. This insurance policy was effected many years later than the reduction of the rent of £58 by the sum of £8 above mentioned. There was no proof of any specific agreement by the tenant to pay the said 1s. 10d., but this sum was charged to and paid by him yearly each year from 1905 to 1912 inclusive. The rent was payable half-yearly at Whitsunday and Martinmas, and the said 1s. 10d. was collected yearly along with the Whitsunday rent. The notices to pay and receipts for payment produced by the tenant which relate to a Martinmas term contain only 'half-year's rent of possessions at Moiearlanich, twenty-five pounds,' while those which relate to a Whitsunday term contain separately (first) 'half-year's rent of possessions at Moiearlanich, twenty-five pounds,' and (second) 'insurance on buildings for year, one shilling and tenpence.'

"5. The application came before the Scottish Land Court for hearing at Killin on 28th March 1913. At the hearing the proprietor (respondent therein) appeared by an agent and objected to the competency of the application, in respect that the applicant, being tenant of a holding exceeding (exclusive of common pasture) 50 acres in extent, and also exceeding £50 of yearly rent, was not as at 1st April 1912, an 'existing yearly tenant' within the meaning of the said Act, and particularly of section 26, sub-sections (3) (a) and (10), and section 13 (b) thereof, and was therefore neither a landholder nor a statutory small tenant within the meaning of the Small Landholders (Scotland) Acts 1886 to 1911.

"6. On 18th June 1913 the following final order was issued by the Land Court—"Repel the objections to the competency stated for the respondent under reference to the annexed note: Find that the applicant is a statutory small tenant in and of the holding described in the application, and that no ground of objection to the applicant as tenant has been stated: Therefore find that he is entitled, in virtue of the 32nd section of the Act of 1911, to a renewal of his tenancy and to have an equitable rent fixed; and having considered all the circumstances of the case, holding and district, fix and deter-

mine the period of renewal at two years, and the equitable annual rent payable by the applicant at twenty pounds sterling, each to run from Whitsunday Nineteen hundred and twelve.' . . .

"7. It is maintained by the proprietor that the said final order is erroneous in point of law, in so far as it repels the objection to competency founded on the rent of the holding exceeding £50 and the extent of the holding exceeding 50 acres. It is maintained by the proprietor that in determining whether the applicant is an existing yearly tenant under the Small Landholders (Scotland) Act 1911 the proportion of insurance premium payable by the applicant must be taken into account in computing the 'present rent' of the holding within the meaning of section 13 and section 26, sub-section 3 (a), of said Act."

The questions of law included the following—"1. Whether in computing the applicant's 'present rent' within the meaning of section 26, sub-section (3) (a), of the said Act, the said proportion of insurance premium payable by the applicant ought to have been taken into account?"

Argued for appellant—*Esto* that the tenant's share of the insurance premium was a consideration other than rent, it was none the less part of the return for which the subjects were let. It formed therefore part of the yearly rent or value—*Armour on Rating* (2nd ed.), 149; *Walker*, March 25, 1862, 24 D. 1453. *Esto* that the obligation to insure was one in favour of the landlord—*Rankine on Leases* (2nd ed.), 220-21—"the payment of half the premium by the tenant was just an additional rent"—*Duke of Hamilton's Trustees v. Fleming*, December 23, 1870, 9 Macph. 329, per Lord Ardmillan at p. 338, 8 S.L.R. 266. "Present rent" in the sense of the Small Landholders Act 1911 (1 and 2 Geo. V, cap. 49) meant "the yearly rent, including money and any prestations other than money"—sec. 13. That being so, it included the premium in question, which was a liquid prestation of the nature of rent.

Argued for respondent—The question whether the tenant's half of the premium was part of the rent depended on (1) the common law definition of rent, and (2) sec. 13 of the Act of 1911. At common law, rent was the return for the possession and use of the subject let—*Rankine on Leases*, p. 287. The idea underlying insurance was different, viz., the creation of a security for the restoration of the subjects. A landlord would not be entitled to sequester for non-payment of the insurance premium—*Bennie v. Mack*, January 28, 1832, 10 S. 255, per Lord Moncreiff (Ordinary) at p. 258. Nor could he raise an action of removing if the tenant failed to pay it. [LORD MACKENZIE referred on this point to *Earl of Morton v. Murray*, 1793, M. 13,872.] The Act of 1911 had not enlarged the common law notion of rent, nor was the definition itself a new one, for it was taken from the Crofters' Holdings (Scotland) Act 1886 (49 and 50 Vict., cap. 29), sec. 4. The words "prestations other than money" meant services or payments

in kind. The same distinction was recognised in the Agricultural Holdings (Scotland) Act 1883 (46 and 47 Vict. cap. 62), sec. 6. The dictum in *Hamilton (cit.)* that the premium was an additional rent was *obiter*, and in any event inaccurate. *Esto* that the obligation to insure was in favour of the landlord, that did not entitle him to put the premium into his pocket along with the rent, for unless the landlord insured the tenant would not be bound to pay. The analogy of the valuation roll was unsound, for what was there set forth was the "yearly value," and not the "rent" in the strict sense of the term.

At advising—

LORD PRESIDENT—The applicant in this case is tenant of a holding which extends to more than 50 acres, and accordingly he cannot be considered to be a statutory small tenant within the meaning of the Small Landholders (Scotland) Act if the present rent of his holding exceeds £50 in money.

Now when we turn to the entry in the valuation roll we find that the applicant's rent for the holding for the year current at the commencement of the Act was £50, 1s. 10d. per annum. But then this 1s. 10d. represents the proportion payable by the tenant of the premium of an insurance policy against fire effected by the respondent over a large number of farm buildings upon the estate, which policy includes the byre and stable occupied by the applicant. This rent of £50 was payable half-yearly at Whitsunday and Martinmas, the said sum of 1s. 10d. being collected yearly along with the Whitsunday rent. The question which rises sharply therefore is this—Is the insurance premium of 1s. 10d. to be taken into account in computing the "present rent" of the holding? I am of opinion that it is not, and that rent is one thing and insurance premium a totally different thing. Rent is a payment by the tenant for the use and possession of the land and buildings, whereas the insurance premium is paid in order to secure reinstatement of the buildings and indemnification in the case of loss by fire. And I find, on turning to the note appended to the final order, that the Land Court considered that rent means the return in money, or in produce, or in kind, due by the tenant for his possession and use of the subjects let to him by the landlord, which is in substance really the definition of rent which you find in a familiar text book—Professor Rankine's work on "Leases" (2nd ed.), p. 287—where he defines rent thus—"Rent in law, as distinguished from political economy, is the return in money, produce, or other moveables, due by a tenant for the possession and use of the subject of a lease." In short, these two payments are made for a totally different purpose. They are payments which differ in quality, and the parties to this agreement obviously so regarded them, for the case distinctly sets out that the notices to pay and the receipts for payment produced by the tenant, which relate to a Martinmas term, contain only "half-year's rent of possessions at Moiearlanich, twenty-five

pounds," while those which relate to a Whitsunday term contain separately "half-year's rent for possessions at Moiearlanich, twenty-five pounds," and (second) "Insurance on buildings for one year, one shilling and tenpence." Parties therefore were able quite clearly to distinguish between the two payments, the one rent and the other insurance premium. Now the best definition I can find of insurance is that given by the Lord Justice-Clerk (Moncreiff) in the case of the *Scottish Amicable Heritable Securities Association v. Northern Assurance Company*, 11 R. at p. 303, 21 S.L.R. 189, at 198, where he says insurance "is a contract belonging to a very ordinary class, by which the insurer undertakes, in consideration of the payment of an estimated equivalent beforehand, to make up to the insured any loss he may sustain by the occurrence of an uncertain contingency." The uncertain contingency in this case is fire, and the pre-estimated equivalent for indemnification is the fire insurance premium. I think, therefore, holding the opinion that the quality of the two payments is entirely different, that it is unnecessary to consider, because immaterial to decide, whether the tenant would be entitled to compel the landlord to devote the money received from the insurance company if a fire took place to the reinstatement of the premises. In the general case it is clear, I think, that he would not, but that in no way affects the quality of the payment. The payment is none the less a payment to secure reinstatement or indemnification in case of loss by fire because the tenant would not be entitled to compel the landlord so to apply it.

We were referred in the course of the discussion to the case of the *Duke of Hamilton's Trustees v. Fleming*, 9 Macph. 329, not for the decision pronounced by the Court in that case, but because of certain dicta of the Judges of this Division which were said to support the contention that a payment for the use and possession of subjects was exactly the same as a payment in order to secure reinstatement of the subjects in the event of loss by fire. I am of opinion that the dicta in that case do not support that view. The judgment in the case was on a totally different point from that which is raised for our consideration here. The tenant obliged himself—he was the tenant of a mill with machinery—to have the whole houses and machinery constantly insured in some respectable insurance office to the extent of £1200 sterling, the policy to be taken in name of the proprietor, he relieving the tenant of one-half of the premium of insurance. Lord President Inglis, in construing that clause, a fire having taken place and the landlord having recovered the insurance money, says—"It appears to me that this insurance is for the interest of the landlord only. It is a common stipulation, particularly in agricultural leases, and the obligation of the tenant to pay the whole or the half of the premium is just an addition to his rent." I think it quite clear that it is an addition to his rent. The two payments—insurance premium and rent—are

certainly similar in this regard, that they are both paid at the Whitsunday term by the tenant to the landlord, but that in no way alters the quality of the payment; and I accept, therefore, without hesitation the dictum of the Lord President to the effect that the payment of half of the insurance premium is just an addition to the tenant's rent. But he does not say, nor does he indicate, that a premium of insurance is rent. And in the same way Lord Deas in expressing his opinion, differing on the main question from the Lord President, says—"The whole insurance is on the buildings and machinery, both being the property of the landlord, and the words of the policy show that it was effected for the sole behoof of the landlord. The tenant pays a portion of the premium, that is, his rent is increased by that amount. But that does not entitle him to participate in the benefit of this insurance." I think we are all agreed that the rent is increased by the amount of 1s. 10d. per annum here. But that does not lead to the inference that the two payments are of the same quality and the same kind. Lord Ardmillan further expresses his opinion on this part of the case thus—"Neither landlord nor tenant was bound to rebuild, and, apart from special obligation, neither party was bound in law to insure. The obligation to insure contained in the lease is in favour of the landlord; the payment of half the premium by the tenant was just an additional rent." Now if by the expression "additional rent" Lord Ardmillan means what the Lord President in I think more accurate language expresses by the phrase "an addition to the rent," I am well content, but if he means by the use of the words "additional rent" that a payment for the use and possession of subjects is exactly the same as a payment in order to secure reinstatement of the subjects in the event of loss by fire, then I respectfully differ. Lord Kinloch in his opinion uses this expression—"Though half the premium was to be paid by the tenant, this was in substance nothing more than so much additional rent, just as the payment of so much of the landlord's taxes might be"—a statement which is not objectionable in itself, because in substance it is a money payment though in quality it is entirely different because made for an entirely different purpose.

A capital test as it appears to me would be this—not whether the tenant would be entitled to demand exhibition of the receipt for the premium before he pays the 1s. 10d., which I think he would, but this—whether the landlord's hypothec at the time it existed would have covered an obligation by the tenant in his favour to pay an insurance premium—whether, in short, a landlord could take out sequestration, where the rent was paid, for an unpaid premium of insurance. I do not think anyone would maintain that the landlord's rights could be so extended, and reading between the lines in Lord Moncreiff's opinion in the case cited to us of *Bennie v. Mack*, 10 S. 255, I can quite clearly see that he would not have so held. On the whole matter I come to the same

conclusion as the Land Court, that the two payments were entirely different in quality, that the payment of the insurance premium was a personal contract apart from the contract of lease, and accordingly that we ought to answer the first question which is put to us in the negative, and find it unnecessary to answer the second question.

LORD JOHNSTON—A statutory small tenant, coupling section 26 (3) and (10) with section 32 of the Small Landholders (Scotland) Act 1911, is a tenant from year to year or a leaseholder (first) who has not provided the buildings and permanent improvements on the holding, or the greater part of them, and (second) the present rent of whose holding within the meaning of the Act does not exceed £50 in money, or if the rent does exceed £50 in money, whose holding does not exceed 50 acres in extent.

The respondent here conforms to the first condition. The question is, does he comply with the second? and that is answered if we know what is his present rent within the meaning of the Act, for there is no question that his farm does exceed 50 acres in extent. The only definition of "present rent" is found in section 13, and it is very awkwardly expressed, especially in relation to section 26 (3). For the one speaks of the consideration as being "money, and any prestations other than money," while the other speaks of it as if it was "money" only. They cannot both be "present rent" unless the consideration first referred to is to be reduced to money. Whether this can be done in the ordinary case under the Act is not for determination here.

In the present case we are relieved of this difficulty. If the appellant is right on the facts, there is, putting it at the lowest for him, a consideration given for this lease in money and in a prestation which sounds in money, because it is to pay something in money for the appellant's benefit. Where I think that the Land Court has been misled is in approaching the case on the assumption that the present rent of section 26 (3) was only the money part of the present rent of section 13 to the exclusion of considerations other than money, and further, on the assumption that the additional prestation or consideration here, though sounding in money, might be also excluded because it was an ancillary consideration, or for some other reason that I cannot suggest.

In point of fact, what has been paid for some years past for the farm is £50 and 1s. 10d., the latter being half the share of the premium on a covering policy of insurance over the buildings effecting to this particular holding. As the case is stated I must assume that it has been paid as matter of obligation. The case has been inadequately prepared and stated, and if desired I should not be averse to sending it back for further inquiry and re-statement. But on the case as stated I must take the facts as I have given them.

The Land Court have held that only the £50 falls to be considered as rent under the statute. I think that their judgment is not well founded. We are, in my opinion, fore-

closed by contrary precedent, which the Land Court have ignored.

I cannot get rid of the decision in *Walker's* case, (1862) 24 D. 1453, by merely saying, as the Land Court do, that an obligation to pay insurance premiums may, for the purposes of the Valuation Acts, be treated as a consideration other than the stipulated rent, because I find the Judges of the Valuation Appeal Court in that case arriving at their determination, not on anything special to the Valuation Acts, but on the general consideration expressed by them thus—"In respect that by the lease the subjects are let not merely for the money stipulated for but for the further consideration of the tenant insuring the buildings."

And I find that in the more important case of *Duke of Hamilton v. Fleming*, (1870) 9 Macph. 329, the opinions of the Judges are entirely consistent with the finding in *Walker's* case, and explain at more length the principle on which *Walker's* case and the case in which they were then sitting proceed. The Lord President (Inglis) speaks to the effect that the obligation of the tenant to pay the whole or part of the insurance is just an addition to his rent, and why, because the insurance is entirely for the benefit of the landlord. There is, unless it is specially provided by the lease, no obligation on the landlord to give the tenant any share of the sum recovered or to rebuild. He may put the sum in his pocket, and the tenant's only remedy is to abandon the subjects, which *ex hypothesi* have been destroyed by an act of God.

Lord Deas considers "that the insurance was for the benefit of the landlord alone . . . The tenant pays a portion of the premium—that is, his rent is increased by that amount, but that does not entitle him to participate in the benefit of this insurance."

Lords Ardmillan and Kinloch express themselves in similar though even stronger terms.

I cannot ignore these judgments, or regard their Lordships' opinions as *obiter*, or as otherwise than the foundation of their judgments on the second branch of the case before them. And if the facts here are as I have assumed them, there was being paid in the year the Act came into force, as consideration for the lease of these lands, a sum of £50, 1s. 10d., and if so, the Act does not apply to this farm.

I was, at the discussion, inclined to the view that the stipulation that the landlord should insure and the tenant repay half the premium was based on the assumption that they had both an interest in reinstatement, and taking the broad axe to it that that interest might be regarded as justifying the premium being shared equally, and further, and consequently, inclined to the view that there was an implied obligation on the landlord to devote the policy money to reinstatement. Had my impression been well founded, it would have led to a different conclusion on the question at issue. But a more careful perusal of the case of *Duke of Hamilton* has satisfied me that my impression was erroneous. Its premiss, indeed, was faulty. For the Lord President (Inglis)

says in that case—"The obligation to insure is put upon him (the tenant) for the obvious reason that as the occupant he is the party more immediately concerned with the occurrence of fire." Any doubt that there might have been on the point has been resolved by the recent decision of *Clark v. Hume*, 5 F. 252, 40 S.L.R. 229.

LORD MACKENZIE—I am of opinion that the Land Court have come to the right conclusion. The term "rent" as used in the statute is the return due by the tenant for the possession and use of the subject of the lease. That in the present case is £50. The 1s. 10d. is payable under a collateral contract, by which, if and when the landlord produces the receipt vouching payment of the premium of insurance, the tenant is under obligation to relieve him to that extent. It is not necessary to affirm that there is an obligation on the landlord to expend the proceeds of the policy in rebuilding in case of fire. It is enough to say that the tenant pays in the expectation that in point of fact the money will be so applied.

LORD SKERRINGTON—In my opinion the legal inferences which ought to be drawn from the facts stated in the Special Case, and particularly from the terms of the receipt, are as follows, viz.—(1) that the landlord was under no obligation to insure the buildings on the holding against fire, but that if he chose to do so the tenant was bound to repay to him the annual premium amounting to 1s. 10d.; (2) that if the landlord chose so to insure, he insured his own interest only and not that of the tenant; and (3) that if the landlord received payment of the insurance money he came under no obligation towards the tenant to restore the buildings. These propositions follow from the decisions in *Hamilton's Trustees v. Fleming*, (1870) 9 Macph. 329, and *Clark v. Hume*, (1902) 5 F. 252. I may here observe that the conditional character of the tenant's obligation to pay the premium of 1s. 10d. per annum as contrasted with the absolute obligation to pay £25 each half year in name of "rent" is not necessarily inconsistent with the view that the true rent of the holding was £50, 1s. 10d. Over and above an absolute obligation to pay a fixed rent in money or in kind a tenant is occasionally taken bound to perform services, but that only if required by the landlord. Such services are part of the rent.

So far I do not think that I have said anything inconsistent with the contentions put forward at the debate by counsel on both sides. The landlord's counsel, however, went a step further and argued that as a matter of law the rent of the subjects must be held to be £50, 1s. 10d. although the receipt states the rent at only £50. If the parties regarded the larger sum as the annual value of the subjects to a tenant, the only explanation why part of the rent should have been payable conditionally must have been the trifling amount involved. It seems, however, more probable and also more consistent with the language of the receipt that the tenant expected to receive some benefit in the event of the landlord insuring the

buildings, and that he regarded such benefit as worth 1s. 10d. per annum, although he did not think it necessary to secure it either by a trust or by a contract. The yearly tenant of a small farm might reasonably be apprehensive that in the event of the buildings being destroyed by fire his landlord might not think it worth his while to advance money in order to restore them, but might prefer to terminate the yearly lease and to add the ground to another of his farms. In such a case the existence or non-existence of a policy of insurance in favour of the landlord might determine his line of action in the matter of rebuilding. Accordingly it is impossible to infer as a matter of law that the tenant in the present case would have agreed to pay a rent of £50, 1s. 10d. for the subjects. On the contrary, the proper legal inference in my view is that the tenant agreed to pay the yearly sum of 1s. 10d., not as part of the consideration for the right to occupy and use the heritable subjects, but in return for something which was not in its nature heritable. Of course it might be the fact, and might be proved, that in the special circumstances of this particular case the insurance was not regarded by the tenant as of any value to him, and that if he had not been required to pay 1s. 10d. as the annual premium he would have been willing to pay that sum as an addition to his rent. But that fact, even if proved or admitted, would not lead to the conclusion that the sum of 1s. 10d. mentioned in the receipt was paid as part of the rent. The only result would be to demonstrate that the rent agreed upon between the parties was too low and did not represent the amount at which the subjects might reasonably be expected to let from year to year. In short, the obligation to pay the yearly premium would on investigation be a "consideration other than rent" within the meaning of the Valuation Acts. The Valuation Appeal Court so decided in the case of *Walker*, (1864) 24 D. 1453.

For these reasons I agree with the result arrived at by the Land Court. There are expressions in the opinions of the Judges in the case of *Hamilton's Trustees* to the effect that a payment by a tenant for insuring the buildings is "an addition to the rent" or "additional rent," but they are merely *obiter*. All that the Court had to decide was whether the tenant had or had not legal interest in the insurance money. Further, I have not overlooked the fact that the question to be decided turns primarily upon the meaning of the statutory definition of the word "rent" or of the expression "yearly rent" contained in section 13 of the Small Landholders (Scotland) Act 1911, which supersedes section 4 of the Crofters Holdings (Scotland) Act 1886. These definitions were, in my opinion, intended to include every form of rent, viz., money, kind, and services, but did not otherwise enlarge the ordinary and popular conception of the word.

The Court answered the first question of law in the negative.

Counsel for Appellant—Wilson, K.C.—Wilton. Agents—Davidson & Syme, W.S.

Counsel for Respondent—Chree, K.C.—Aitchison. Agents—Balfour & Manson, S.S.C.

Thursday, December 18.

SECOND DIVISION.

[Lord Skerrington, Ordinary.

R. v. S.

*Reparation—Slander—Personal Bar—Veritas—Letter of Apology and Admission of Falsity of Slanderous Statements.*

*Held (diss. Lord Dundas and rev. judgment of Lord Skerrington, Ordinary)* that the defender in an action of damages for slander was not barred from pleading *veritas* by a previous letter of apology admitting that statements to the same effect were false and undertaking not to repeat them.

Miss M. J. R., *pursuer*, brought an action against Mrs H. M. or S. and against J. F. S., her husband, as an individual and as curator and administrator-in-law of his wife, *defenders*, in which she claimed £400 damages for slander.

The pursuer averred, *inter alia*—" (Cond. 1) The pursuer resides with her father in a tenement house at 36 P. Terrace, Edinburgh. The pursuer's brother A. R. leases a house in the said tenement for his business . . . which he carries on in the vicinity. The defenders occupy another house in the same tenement. (Cond. 2) In November and December 1912 the defenders began to make statements reflecting on the pursuer's conduct with men to the pursuer's neighbours. In particular, the female defender, in December 1912, stated to Miss C., 35 P. Terrace, within her shop there, that the pursuer was in the habit of misconducting herself and having intercourse, meaning thereby carnal intercourse, with G. N. at the foot of the common stair at 36 P. Terrace, and that she was little better than a prostitute. She also made statements of like import and effect on other occasions within the months of November and December 1912 to Mrs D. . . . and also on a different occasion within the said period to Mrs H. . . . The male defender also, during the month of December 1912, stated to the pursuer's brother, the said A. R., in the common stair at 36 P. Terrace fore-said, that the pursuer was misconducting herself and having sexual connection with the said G. N. He also made statements of like import and effect to the employees of the said A. R. in the said common stair, and during the said month. Said statements to A. R. and the said employees were made in a loud voice with great publicity, and were heard by the inmates of the houses in said stair, as they were intended to be. The statements in answer are denied. Explained that in January 1913 the pursuer, having been informed of the charges made against her by the defenders, and in particular of those now set out by them in answer, consulted her law agent and in-