

feet of minerals at one point and considerably less at another point, but I find it almost impossible upon the evidence to specify with any degree of accuracy the particular minerals which at any particular point ought, for the safety of the navigation, to remain *in situ*, and it is still more impossible to specify what particular minerals the company thinks ought to be so left. In construing a section the meaning of which is ambiguous, considerations of this nature are not without relevance.

For the reasons I have given I think the power in question is discretionary and permissive, and in no way obligatory, and I am also of opinion that the company has not in the present case affected or even intended to exercise it. The appeal fails on this ground and it is unnecessary to determine any other point.

Their Lordships pronounced this order—

“ . . . It is ordered and adjudged by the Lords Spiritual and Temporal in the Court of Parliament of His Majesty the King assembled that the said interlocutors complained of in the said original appeal be, and the same are hereby, affirmed, except so far as they assoilzie the defenders from the first conclusion of the summons and so far as they refer to expenses: And it is hereby ordered that the said first conclusion do stand dismissed as unnecessary, no judgment being pronounced in this House on the subject of whether the seams of shale or oil-shale were embraced within the term ‘mines and minerals’ as used in the Act 57 Geo. III, cap. 56: And it is further ordered that the said cross appeal be, and the same is hereby, dismissed this House: And it is further ordered that the appellants in the original appeal do pay, or cause to be paid, to the said respondents in the original appeal the costs incurred by them in the Court of Session, and also the costs incurred by them in respect of the said original and cross appeals in this House, the amount of such last-mentioned costs to be certified by the Clerk of the Parliaments. . . .”

Counsel for the Appellants (Pursuers)—Clyde, K.C., M.P.—Hon. W. Watson, K.C., M.P. Agents—Hope, Simson, & Lennox, W.S., Edinburgh—Grahames, Currey, & Spens, London.

Counsel for the Respondents (Defenders)—Sir Robert Finlay, K.C., M.P.—Macmillan, K.C.—Aubrey S. Lawrence. Agents—James Watson, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

## COURT OF SESSION.

Friday, June 5.

### FIRST DIVISION.

(SINGLE BILLS.)

NEWTON v. METHVEN.

*Process—Appeal—Printing of Record—Failure to Print Amendments—C.A.S., D, iii, 1.*

The Codifying Act of Sederunt, Book D, chapter iii, sec. 1, enacts—“The appellant shall . . . print and box the note of appeal, record, interlocutors, and proof, if any, . . . and if the appellant shall fail . . . to print and box . . . the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except upon being reponed as hereinafter provided.”

In an appeal from the Sheriff Court where the prints of the record boxed did not contain adjustments made at the closing of the record, the Court allowed the appellant to box and lodge corrected prints.

Richard Newton, 46 Watson Street, Dundee, brought an action in the Sheriff Court at Dundee against J. C. Methven, “The Cottage,” Lochee, Dundee, for payment of £100 as damages for injuries sustained in a collision between his (the pursuer’s) motor cycle and the defender’s motor car through, as he alleged, the fault of the defender’s chauffeur. On 17th February 1914 the Sheriff-Substitute (NEISH) assoilzied the defender. The pursuer appealed.

On the case appearing in the Single Bills the appellant presented a note to the Lord President stating that he had, following the usual practice, printed the record from the certified copy initial writ; that the certified copy did not contain adjustments of parties put on at the closing of the record so as to correspond with the principal initial writ as adjusted; and that the record as printed was thus inaccurate. In these circumstances he craved leave to correct the record by including the amendments referred to.

Counsel for the respondent submitted that the Court had no discretionary power to grant the motion, and that the appeal was therefore incompetent. He cited—C.A.S., D, iii, 1; *Taylor v. Macilwain*, October 18, 1900, 3 F. 1, 38 S.L.R. 1; *Lee v. Maxton*, February 2, 1904, 6 F. 346, 41 S.L.R. 281; and *Bennie v. Cross & Company*, March 8, 1904, 6 F. 538, 41 S.L.R. 381.

LORD PRESIDENT—In this case the failure, as I understand, has been to print the adjustments which were made in the Sheriff Court upon the open record, and there are mere inaccuracies to be corrected. The appellant proposes to box clean prints giving effect to these adjustments, and seeks to be allowed to do so. The record has been printed and boxed timeously, and

accordingly I think this proposal is reasonable, and that the motion should be granted.

LORD MACKENZIE—I agree. The mere fact that there are certain inaccuracies in the print does not make the case one in which there was any failure to lodge timeously.

LORD SKERRINGTON—I agree.

LORD JOHNSTON was absent.

The Court pronounced this interlocutor—

“Allow the appellants to box and lodge corrected prints of the record containing the amendments made on the initial writ, the expense thereof to be borne by the appellant: Find the respondent entitled to the modified sum of two pounds two shillings of expenses, and decern against the appellant for payment accordingly.”

Counsel for Pursuer (Appellant)—A. A. Fraser. Agents—Clark & Macdonald, S.S.C.

Counsel for Defender (Respondent)—W. A. Fleming. Agents—Thomson, Dickson, & Shaw, W.S.

Thursday, May 21.

## FIRST DIVISION.

[Scottish Land Court.

### YOOL v. SHEPHERD.

*Landlord and Tenant*—“*Holding*”—*Agricultural Holdings (Scotland) Act 1908* (8 Edw. VII, cap. 64), sec. 35 (1)—*The Small Landholders (Scotland) Act 1911* (1 and 2 Geo. V, cap. 49), sec. 26 (3).

“All and whole the buildings (with water-wheel, shaft, and spur-wheel) of the carding-mill at Miltonduff, . . . with the croft of land and houses attached thereto,” were let at a yearly rent of £19, 5s., and it was admitted that the rent might fairly be held to have been £10, 5s. for the mill and £9 for the land and dwelling-house. In an application by the tenant to the Land Court to fix an equitable rent and to fix the period of renewal of his tenancy, held (rev. the Land Court) that the subjects in question did not comprise a “holding” in the sense of the *Agricultural Holdings (Scotland) Act 1908*, sec. 35 (1), not being “either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral,” and accordingly were excluded from the operation of the *Small Landholders (Scotland) Act 1911* by section 26 (3) thereof.

The *Agricultural Holdings (Scotland) Act 1908* (8 Edw. VII, cap. 64), sec. 35 (1), enacts—“In this Act, unless the context otherwise requires, . . . ‘holding’ means any piece of land held by a tenant, which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market

garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord.”

The *Small Landholders (Scotland) Act 1911* (1 and 2 Geo. V, cap. 49), sec. 26 (3), enacts—“A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of—(f) any land that is not a holding within the meaning of the *Agricultural Holdings (Scotland) Act 1908*.”

Thomas Yool, Kirkhill, near Elgin, *appellant*, being dissatisfied with a decision of the *Scottish Land Court* in the matter of an application by William Shepherd, Carding-Mill, Miltonduff, Elgin, *applicant and respondent*, to the Land Court to fix an equitable rent for certain subjects and to fix the period of renewal of his tenancy thereof, requested the Land Court to state a Case for the opinion of the Court.

The Case stated, *inter alia*—“1. William Shepherd, along with Alexander Lawson Fraser, entered into a lease with William Stuart, of Miltonduff, then proprietor of the subjects dealt with in the after-mentioned application to the Land Court, under which they became tenants of the said subjects for the space of ten years from and after the term of Whitsunday 1892 as regards the houses, grass, and pasture land, and land intended for green crop, and the separation of the crop of that year from the ground as regards the land under grain crop, at a *cumulo* yearly rent of £19, 5s. [The subjects let were thus described in the lease—“All and whole the buildings (with water-wheel, shaft, and spur-wheel) of the carding-mill at Miltonduff, as presently occupied by Alexander Macdonald, with the croft of land and houses attached thereto, extending to nine acres and nine poles or thereby of arable land, and three roods and fourteen poles or thereby of pasture, conform to plan prepared by Peter MacBey, land surveyor, Elgin, in the year Eighteen hundred and sixty-six.”] Thomas Yool, respondent in said application, became proprietor by purchase of the estate of Miltonduff, including said subjects, from William Stuart’s trustees before the passing of the *Small Landholders (Scotland) Act 1911*.

“2. When the lease expired the tenants continued to occupy under tacit relocation, but Alexander Lawson Fraser retired from the occupancy some years ago, and the applicant continued as sole occupant.

“3. On 29th April 1912 the said William Shepherd presented an application to the Land Court to fix an equitable rent for the subjects described in said lease, subsequently amended by the Court by adding a conclusion to fix the period of renewal of his tenancy thereof. The respondent therein, Thomas Yool, pleaded, *inter alia*, that the application was incompetent, . . . (b) because the subjects were not a holding as defined by the *Small Landholders Act 1911*. . . .

“6. It was admitted by joint-minute of admissions that the mill presently existing on the land in question was originally a carding-mill, spinning-mill, weaving-mill, and waulkmill, and that no part of it was