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FIRST DIVISION.

[Scottish Land Court.

VON SCHRODER'S TRUSTEES *v.* THE BOARD OF AGRICULTURE FOR SCOTLAND.

Landlord and Tenant—Small Landholder—Statute—Enlargement of Holding on One Property with Land on Another, not by Agreement—Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. cap.* 29), *sec.* 13—*Small Landholders (Scotland) Act* 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 16 (2), 26 (2).

Held (*dub.* Lord Johnston) that under the Small Landholders (Scotland) Act 1911, land belonging to one proprietor can competently be taken, otherwise than by agreement, for the enlargement of a holding on the property of another proprietor.

The Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29), section 13, enacts—"(1) Land shall not be deemed available land for the purposes of this Act unless it lies contiguous or near to land already in the occupancy of the crofters making the application, and belongs to the same landlord or landlords as the land occupied by the said crofters. . . . (3) It shall not be competent for the Crofters Commission to assign land for the enlargement of the crofters' holdings . . . (*e*) if the land form part of a deer forest. . . ."

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) enacts—Sec. 16 (2)—"Section 13 of the Act of 1886, with the exception of sub-section 3 (*e*) thereof, shall cease to have effect, provided that land shall not be deemed available land for the enlargement of a holding otherwise than by agreement, unless it is land in respect of which a person would be admissible to registration otherwise than by agreement as a new holder under this Act. . . ." Sec. 26 (2)—"A person shall not be admissible to registration as a new holder under this Act in respect of land belonging to more than one landlord. . . ."

On 10th January 1914 the Board of Agriculture for Scotland, *respondents*, presented to the Scottish Land Court (*a*) an application for approval of a scheme for constituting a new holding on the farm of Conchra forming part of the estate of Attadale, Strathcarron, in the county of Ross and Cromarty, belonging to the trustees of the deceased Baron William Henry Von Schroder, late of the Rookery, Nantwich, in the county of Cheshire, and of the said estate of Attadale, *appellants*; and (*b*) an application for approval of a scheme for enlargement of the holdings of persons who are landholders upon the estate of Lochalsh belonging to Sir Kenneth James Matheson, Baronet, of Gledfield, Ardgay, Ross-shire, by assigning to them land on and from the said farm of Conchra. The said trustees lodged answers to the said applications and appeared before the Land Court to oppose the same. The applications were also opposed by Mr James Paul Helm, to whom the farm of Conchra was let on a lease for fourteen years as from the term of Whitsunday 1913. The Land Court having heard counsel for the applicants and for the objectors, on 26th March 1914 repelled the objections to the competency of the application, and continued the application for hearing on the merits.

Note.—". . . The objection to this application for enlargement is, that on a sound construction of the provisions relating to enlargement in the Small Landholders Acts 1886 to 1911, the land is not available (otherwise than by agreement) for enlargement of holdings which are situated on the land of Sir Kenneth Matheson. It is maintained that no land is available for enlargement of holdings unless it belongs to the same landlord or landlords as the land of the holdings which are sought to be enlarged.

"If this contention is valid, this application is incompetent.

"It is certain that by the express and unambiguous words of section 13 (1) of the Act of 1886 no land was available land for the purpose of enlargement of holdings unless it belonged to the same landlord or landlords as the land held by the crofters applying for enlargement.

"But the whole of this 13th section, with the single exception of sub-section 3 (*e*) relating to land forming part of a deer forest, has been repealed by the Act of 1911 section 16 (2) and Second Schedule].

"The limitation contained in the repealed section above quoted has not been re-enacted in express words by the Act of 1911. Therefore the question is whether it ought to be held as re-enacted by implication from the general words and scheme of the enlargement sections of the Act of 1886 (so far as not repealed) and the sections of the Act of 1911 which amend the provisions of the Act of 1886 with regard to enlargement—particularly section 16 of the Act of 1911.

"This limitation having been expressly repealed by the Act of 1911, it lies on the objector who pleads it to show that it has been re-enacted. If it is doubtful whether it has or has not been re-enacted the objection fails. That the Legislature had this limitation directly under consideration is evident. Now the ordinary and simple course if the Legislature intended that this limitation should continue in force would have been either to except from repeal the part of section 13 (1) of the Act of 1886, in which this limitation is clearly expressed [as has been done in the case of section 13 (3) (*e*)], or to re-enact it in the same or equally clear words by the amending section (section 16) of the Act of 1911.

"It may be observed that the express amendments by the Act of 1911 of the enlargement provisions of the Act of 1886 are not limiting but extending amendments. For example, instead of five landholders *one* may apply, instead of a part varying from one-third to two-thirds according to annual value, the whole of the farm may be assigned in enlargement; the limitation to such part as can be assigned without material damage to the remainder disappears; the limitation that no holding can be enlarged so as to raise its total annual value higher than £15 is replaced by a provision which allows a holding to be enlarged up to the full limit of rent or acreage competent in the case of any new holding, namely, £50 of rent in money, unless the acreage (exclusive of common pasture) does not exceed fifty acres. And the Board of Agriculture has been charged with the duty of applying for enlargement of existing holdings as well as for the constitution of new holdings, and also empowered to grant assistance to landholders for adapting and improving land assigned in enlargement.

"This shows that the general intention and policy of the Legislature were to favour the extension and increase of the system of enlargement of existing holdings which was first introduced by the Act of 1886 and has worked beneficially.

"In the next place, it is worth notice that sections 11 and 12 of the Act of 1886 taken alone, either as they stood or as amended by the Act of 1911, rather suggest that land is available for enlargements whether it belongs or does not belong to the same landlord as the landlord of the holdings which are sought to be enlarged. The limitation was introduced solely by the now repealed sub-section (1) of section 13, which defined what land should be available for enlargements.

"The new or substituted description of what land is 'available' for enlargements is found in section 16 (2) of the Act of 1911. The part of the description bearing directly on the point in dispute runs as follows:—Land shall not be deemed 'available land' for the purpose of the enlargement of a holding otherwise than by agreement, '*unless it is land in respect of which a person would be admissible to registration otherwise than by agreement as a new holder under this Act.*' This carries out the general scheme of the Act of 1911, which places, with the necessary modifications, applications for enlargement on the same footing as applications for constitution of new holdings.

"Now the sections of the Act which determine what is land in respect of which a person would be admissible to registration as a new holder under the Act (otherwise than by agreement) are section 7 (16) (*a*) and (*b*), section 26 (4), and, it may be, section 26 (2) of the Act of 1911.

"Section 7 (16) (*a*) and (*b*) apply to enlargements in virtue of the express provisions in section 16 (1) of this Act. They do not affect the competency of the present application.

"Accordingly, what section 16 (2) refers us to is section 26, and clearly section 26 (4)—'A person shall not be admissible to registration as a new holder under this Act in respect of any land referred to in paragraphs (*a*), (*b*), (*c*), (*d*), or (*e*), or, except by agreement, in respect of any land referred to in paragraphs (*g*), (*h*), or (*i*),' being the whole exclusions enumerated in the preceding third sub-section of section 26, other than (*f*). These paragraphs except (*a*) exclude certain kinds of 'land' because of their character and use. Paragraph (*a*) in its application to enlargements by section 16 (2) determines the limit of rent and acreage up to which an existing holding may be enlarged.

"Paragraphs (*b*) and (*g*) repeat exclusions which section 13 (3) (*a*) and (*d*) of the Act of 1886 had enacted and are now repealed by the Act of 1911.

"The reasons and grounds of these exclusions apply with equal force to enlargements and to new holdings. But the present case does not fall within any exclusion expressed or incorporated by reference in sub-section 4 of section 26.

"It was argued for the Board of Agriculture that the reference in section 16 (2) should be construed as a reference only to sub-section (4) of section 26, which, as already noted, relates to exclusions for reasons and grounds depending on the use and character of the land.

"No doubt the main reference is to sub-section (4) of section 26. But the second sub-section of section 26 begins—'A person shall not be admissible to registration under this Act in respect of land belonging to more than one landlord, or in respect of more than one holding.'

"It is a point in favour of the Board's contention that while the words 'otherwise than by agreement' specified in the referring words of section 16 (2) are substantially repeated in section 26 (4), they do not occur in section 26 (2). Section 26 (2) applies to every registration of a new holder, irrespective of whether the new holding is constituted by agreement or otherwise than by agreement.

"This is an indication that the fourth sub-section of section 26 is the sub-section directly and primarily referred to. But we do not think that it warrants the inference that section 26 (2), which certainly covers the registration of new holders *otherwise than by agreement*, is excluded from the scope of the reference in section 16 (2).

"Accordingly, we have next to consider whether section 26 (2) forbids enlargements to be assigned from any land except land belonging to the landlord of the existing holdings which are craved to be enlarged.

"The question depends directly on the first part of this second sub-section. The latter part, though it may supply a useful analogy, deals only with existing holdings under the Act of 1911.

"It must also be observed that there is no 'registration' in the case either of enlargements of existing holdings or of existing holdings of any kind. 'Registration' applies solely to *new* holders—See *e.g.* section 2 (1) (iv), section 7 (1), (4), (13), (14), section 13 (*c*) of the Act of 1911 by which registration is introduced. The register referred to in section 33 of the Act of 1911 is merely a record for statistical purposes.

"An enlargement is, by section 15 of the Act of 1886, deemed to be part of the holding to which it is assigned. Assignment of enlargements corresponds to registration of new holdings.

"Accordingly, making the modifications necessary to apply this sub-section 2 of section 26 to the case of enlargements, the first part of it reads as follows—'A landholder shall not be assigned an enlargement of his holding under the Acts 1886-1911 *out of land belonging to more than one landlord.*' In short, land belonging to more than one landlord is not 'land available either for the enlargement of an existing holding or holdings of landholders or for the constitution of new holdings otherwise than by agreement.'

"But the land which by this application is craved to be assigned in enlargement of the holdings of the specified landholders is not 'land belonging to more than one landlord.' The whole land comprised in the application belongs to the objectors, Baron Von Schroder's trustees.

"Therefore, if the words are to be taken in their ordinary meaning, the plea of incompetency fails.

"The argument for the landlords that these words of section 26 (2) ought to be interpreted to mean in the case of enlargements 'land belonging to any landlord except the landlord of the holdings sought to be enlarged' was mainly rested on the grounds that any other construction (1) was inconsistent with the provisions of sections 12 and 15 of the Act of 1886, and (2) would involve great inconveniences and difficulties to the landlords concerned as regards payment of rent, resumption, or renunciation of or removal from the enlarged holding.

"(1) The part of section 12 founded on is the direction to ascertain as far as possible how far the small size of the holdings has been due to the action of the landlord or of the landholders.

"This is certainly a circumstance to be taken into account where it exists and is ascertained. That it is not more than a circumstance is clear from the subsequent part of the section which specifies of what facts the Court must be satisfied before making an Order for enlargement.

"Whether the small size of the holding is due to the action of the landholders or their predecessors, *e.g.*, by sub-division of their holdings with consent of the landlord at their request, is material whether the enlargement is craved from the lands of the same or of a different landlord. The small size may not be due to the action either of landholders or of landlords or the predecessors of either of them. Or it may be due to the action of a predecessor of the landlord from whose land an enlargement is sought at a time when estates now separate were held by the same landlord. In short, this is a circumstance which may or may not exist, or be capable of ascertainment in any particular case. Therefore it affords very slender ground for limiting a general enactment.

"Section 15 provides that an enlargement assigned shall be deemed to be part of the holding to which it is assigned and subject to the provisions of the Act. This in itself expresses what naturally follows from enlargement of a holding.

"(2) With regard to the inconveniences and difficulties suggested, it must be kept in view that all of them may arise, and have in fact frequently arisen, under the Acts of 1886 or 1911.

"These may arise, and have in fact arisen, by reason of sales of, or succession to, lands occupied by landholders' holdings, most frequently as regards common pastures or grazings. Individual holdings may be alienated or bequeathed by the landlord to one or more persons, and the common pastures or grazings to another or other persons, so that one or more holdings originally held all from the same landlord may come to be held each from two or any number of distinct landlords by the existing landholder or landholders.

"In the next place, these inconveniences and difficulties also arise under the exception in favour of existing yearly tenants or qualified leaseholders who hold land belonging to more than one landlord but work such land as one holding, enacted by the

concluding part of this second sub-section of section 26 of the Act of 1911.

"There is no difficulty as to the allocation of a fair rent between different landlords—it has been done under the Act of 1886. Nor is there any difficulty as to resumption, for resumption may be either of the whole or of any part of a holding.

"There are difficulties in working out the provisions of the Acts as to removal from or renunciation of any holding which happens to be held from different landlords. But it is evident that the Legislature did not regard these difficulties either as sufficient to weigh down the advantages to landholders in the exceptional position contemplated by the latter part of this second sub-section or as requiring any qualification or provision to meet them either in that case or in the more usual case of the landholder where these arise through the exercise by the landlord of his powers of alienation or bequest.

"The main answer to this argument is substantially the answer which the Supreme Court gave in the case of *Traill's Trustees* v. *Grieve*, 11th July 1890, 17 R. 1115, 27 S.L.R. 884, where the inconveniences and difficulties of the enlargement sections (as they originally stood in the Act of 1886) were pleaded as a reason for narrowing the ordinary meaning of the language used in these sections. Lord President Inglis, while sympathising with the 'extreme hardship and difficulty of the position of landlord and tenant,' pointed out that these considerations could not affect the construction of the statute, which seemed too clear to be overridden by extraneous considerations. Lord Shand, while also of opinion that many troublesome and difficult questions resulted, agreed that the Court could not on that account refrain from giving full effect to the words of the sections concerned which appeared to be clear.

"If it were necessary to discuss the question of the policy of the Act of 1911 it might be pointed out that there are many cases (some of them, as already indicated, arising out of the alienation or bequest by a landlord of part or parts of his estate) where, unless enlargement can be granted from lands belonging to a landlord who is not the landlord of the holdings sought to be enlarged, no enlargement of existing holdings would be possible, however great the need for enlargement might be. It is often more convenient and usually less expensive to enlarge a landholder's existing holding (which is equipped with buildings) to a size adequate to support him than to constitute and equip a new holding for a landholder on renunciation of his undersized holding.

"It seems probable that Parliament expressly repealed the limitation by section 13 (1) of the Act of 1886 of land available for enlargements to land belonging to the same landlord as the land of the holdings sought to be enlarged, in order to remedy this hardship to landholders in need of enlargement which had resulted from that limitation. There may not be yet a complete remedy for every conceivable case of hardship, but cases where land for enlargement of holdings which need enlargement cannot be found on some one estate in the same or an adjacent parish, as such holdings (section 11 of the Act of 1886) must be comparatively few.

"The main ground on which we proceed in repelling the plea to competency is that the original clearly expressed limitation in section 13 (1) of the Act of 1886, which would have excluded the present application, has been expressly repealed, while the limitation substituted therefor by the Act of 1911, on the plain construction of the different terms in which it is expressed, is a different and lesser limitation, which does not exclude the present application.

"Accordingly, inquiry into the merits of this application must be made."

The objectors took a Stated Case, in which the *question of law* for the opinion of the Court was—"Whether, on a sound construction of the provisions of the Small Landholders Acts 1886 to 1911, relating to enlargement of holdings, the said application for enlargement of holdings was competent?"

Argued for the appellants—The general scheme of the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) showed that it was not intended that the land of one proprietor should be added to that of another. Had it been intended it would have been expressly provided for in the Act. Though in the Act of 1911 the prohibition against so doing contained in the Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29) was repealed, that did not amount to enacting the contrary. A "holding" implied the relationship of a landlord and a tenant and not a composite relationship, such as was suggested, which would lead to anomalies regarding such matters as rent, buildings, vacant holdings, and compensation, for none of which provision was made in the statute. When a proprietor contributed land without buildings the hardship would be acute. The case of *Traill's Trustees* v. *Grieve and Others*, July 11, 1890, 17 R. 1115, 27 S.L.R. 884, was different from the present in respect that there the lease was dated subsequent to the Act. The following sections of the Act of 1886 were quoted—sections 8, 11, 12, 13, 15, 34, and of the Act of 1911 sections 7, 16 (1), 16 (2), 26 (2), 26 (3), 26 (4).

Argued for the respondents—Difficulties in the application of the Act of 1911 were irrelevant and must be set aside, and only the competency of the proposed construction of the Act considered. In point of fact the provisions of the Act were perfectly consistent with those of the Act of 1886. All land within the prescribed area was available for registration for small holdings with certain exceptions contained in sections 26 (2), (3), (4) of the Act of 1911. Unless it fell within such exceptions any difficulties in the application of the Act which arose were merely matters for the administration of the Land Court. Section 11 of the Act of 1886 was still unrepealed, and there were no fetters on its provisions other than those

in section 16 (2) of the Act of 1911. In this sense the land proposed to be taken was "available land"—*Traill's Trustees* v. *Grieve and Others* (*cit. sup.*), Lord President (Inglis) at 1118.

At advising—

LORD PRESIDENT—This case raises a question of general interest under the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49). It is this—whether land belonging to one proprietor can competently be taken for the enlargement of a holding on the estate of another proprietor. I am of opinion that it can. The statute itself, in its 16th section and 2nd sub-section, furnishes us with a plain and decisive test. Could the land proposed to be taken for an enlargement competently be taken for a new holding? If it can, then it is available for enlargement. In the present case it is not disputed that the portion of the farm of Conchra, belonging to the appellants, proposed to be taken for enlargement, might competently be taken for a new holding, and therefore it may competently be taken for an enlargement. The portion of land in question falls entirely outside the prohibited categories as set out in section 7 (16) (*a*) and (*b*), and section 26 (4), and inasmuch as it falls outside of these prohibited categories, it may competently be taken for the enlargement of the holding.

That appears to me to be the whole case. But it is worthy of note that the 11th and 12th sections of the Crofters Act 1886 (49 and 50 Vict. cap. 29), which for the first time gave power compulsorily to enlarge holdings, do not limit the choice to land belonging to the same proprietor as the landlord of the existing holding. In order to effect that exclusion, section 13 (1) was enacted, but, by the Statute of 1911, section 13 (1) is repealed, and therefore the original enactment still stands which confessedly would entitle you to take the land of one proprietor to enlarge the holding on the estate of another proprietor. By these two different routes the same result is reached.

What I have said is merely an abridgement of the more expanded reasoning to be found in the note appended to the Order—reasoning with which I agree. But we were urged to refuse to give the statute its plain meaning on the ground that to do so would be to create difficulties of administration which might in some cases be serious. I am not satisfied that any formidable difficulties of administration will arise as the result of the interpretation I am prepared to put upon this statute if both landholders and landlords act as reasonable men. The emergence, however—the possible emergence—of difficulties of administration do not I think entitle me to misconstrue the statute. As Lord President Inglis observed in the case of *Traill's Trustees*, 17 R. 1115, at p. 1126, "these considerations" cannot "affect the construction of the statute"—and he was construing the words of the Statute of 1886—"which seems to me to be too clear to be overridden by any extraneous considerations."

For the reasons, then, which are given in the lengthy and elaborate note affixed to the Order, I am of opinion that the Order itself is unassailable, and I therefore propose to your Lordships that we should answer the question put to us in the affirmative.

LORD JOHNSTON—The question which we have to determine is whether under the Small Landholders Act an application for the enlargement of a holding can be granted when the land proposed to be added belongs to a different estate from that on which the original holding is situated.

That should be a simple question, but it is made extraordinarily difficult by reason of the Legislature having proceeded in the manner in which this sort of legislation is now so commonly sought to be effected, viz., by engrafting one legislative proposition on to another, and then after certain repeals in detail declaring that the two are to be read together. Your Lordships in affirming the Land Court are, I understand, prepared to answer the question in the affirmative, and to hold that it is no objection to an application for enlargement that the land proposed to be added is to be taken from another estate so that the small landholder will for the future hold his holding off two not joint but several landlords. I accept your Lordships' decision with the greatest hesitation, and though in the circumstances I do not feel sufficient confidence in my own opinion to differ from your Lordships, I think it right to state the grounds of my doubts.

The possibility of the enlarging of a holding is first of all introduced by the Crofters Act of 1886, and I think it convenient to commence by considering how the matter stood when that statute alone ruled. Under that Act (section 34) "a holding" means the land held by a crofter at the date of the Act, including his right in any common pasture. The provisions for enlarging such holdings are contained in sections 11-15. Now I think that these sections show that the framers of the Act commenced without regarding the question whether or not land to be taken for an enlargement was to be taken exclusively from the estate on which the croft was situated, or was to be taken wherever it could conveniently be found; that they wakened up to the necessity, if the scheme was to be reasonable in its working, of restricting the competent extension to land being part of the estate on which the croft was situated; and that they introduced a provision to that effect without sufficiently attempting to harmonise the original conception and its alteration. I say so for this reason, section 11 empowers any five or more crofters resident on any neighbouring holdings in a crofting parish, where any landlord or landlords after application made to him or them have refused to let to such crofters available land for enlarging their holdings, to apply to the Crofters Commission. I pause here to note that the crofters are regarded as a community whether technically a "township" or not, and that the land contemplated for the enlargement may be the land of any landlord or landlords—it is not said respective landlord or

landlords, and therefore not necessarily the land of the crofter's own landlord or respective landlords. This is made more clear by the statement that the applicants must set forth that in their own parish or in an adjacent crofting parish there is land available for the enlargement of their holdings, which they are willing to take on lease, and which the landlord or landlords refuse to let on reasonable terms. Then (section 12) intimation is to be made to the landlord or landlords (not necessarily their own landlord or landlords) alleged to have refused to let available land for enlargement, and opportunity is to be afforded for such landlord or landlords and such crofters applying to be heard on the application, and the Crofters Commission are directed to ascertain how far the small size of the latter's holdings has been due to the action of the landlord or of the crofters. Now so far there is clearly a confusion of ideas, for it is impossible to conceive what bearing it can have on the question whether land is to be taken from landlords B, C, and D or any of them for enlargement of crofts on the lands of A that the smallness of these crofts has or has not been due to the action of A or of A's crofters. Nevertheless it is enacted that if the Crofters Commission are satisfied (1) that there is land in the parish or adjacent parish available for enlargement, but that the landlord or landlords refuse to let the same for that purpose on reasonable terms; and (2)—and this I think is important in the sequel—that the applicants are willing and able to pay a fair rent therefor and properly to cultivate and stock the same, the Crofters Commission may make an Order for a lease of the said land to the applicants at a fair rent and upon such terms and conditions as they may think just. By this time I think it is clear that the Legislature awoke to the confusion which would have resulted from their first conception so clearly conveyed in the provisions in sections 11 and 12 to which I have adverted, viz., that it would not matter on whose land the ground ear-marked for enlargement was situated, provided it was conveniently contiguous. For after a tag-end to section 12, in which they confine the power conferred upon the Crofters Commission to regulate the use by crofters of sea-weed, peats, and heather for thatching to the use of such by crofters on the same estate, they proceed by section 13 to introduce the limitation that land shall not be deemed to be available land for the purpose of enlargement unless it belongs to the same landlord or landlords as the land occupied by the said crofters. The sub-section commences "land shall not be deemed available land for the purposes of this Act unless it lies contiguous or near to land already in the occupancy of the crofters making the application," and I cannot avoid the conclusion that the words following "and belongs to the same landlord or landlords as the land occupied by the said crofters" have been added as an afterthought, to correct the confusion which would have been created by the previous two sections and the anomalies and inconveniences which would have resulted from their literal application, instead of adopting the wiser course of rewriting them. But the result is that whatever may be done under the Act of 1886 in the way of enlargement of crofters' holdings, land could not be taken for that purpose except from the same estate as that on which the croft or crofts were situated. As I have noted, this Act, which is of very limited application, contemplated that the additional land was to be held on lease by the crofters at a fair rent, and upon conditions adjusted by the Crofters Commission, and it was (section 15) provided that it should be deemed to be part of the existing holding. This was perfectly reasonable and consistent where the added portion was part of the same estate as the existing croft. Moreover, as the crofting tenure implied that all improvements were made by the crofter, the compensation clauses (section 8 *et seq.*) created no more difficulty in the case of the enlarged croft than they would have done in the case of the existing croft. It might have been otherwise had the addition been made from another estate.

The Small Landholders Act 1911, which now regulates the matter, is an Act of a very different scope. Its application is extended to the whole of Scotland. It is not restricted to the crofting area and the crofting tenure. It covers existing crofters, existing yearly tenants, qualified leaseholders, and new holders, provided the rent does not exceed £50, except in the case where though the rent exceeds £50 the area is under 50 acres. It provides not merely for the extension of holdings, but for the creation of new holdings. It creates a Board of Agriculture and makes that Board the intermediary in all creations of new holdings and the extensions of old ones. But what is most important in relation to the present case, it places the Board of Agriculture in funds, and with these funds the Board is to make its operations effective by carrying out all works necessary for adapting the land taken to its purpose, not merely of facilitating the constitution of new holdings, but of the enlargement of holdings. The assistance required may, section 7 (7), be given by way of loan or by way of gift, except in the case of assistance required for building or enlarging houses, which latter must (see also section 9) be given by way of loan only. And the objects contemplated are thus described, viz.—the dividing, fencing, or otherwise preparing or adapting the land, making occupation roads, or executing other works, such as drainage or water supply, as well as the erection of houses. All this is applicable to the extension of holdings, as well as the creation of new holdings, and it is impossible that their effect can be restricted to the land to be added as if it was a separate holding and not be deemed to cover the combined old and new areas, which is assumed thereafter to be one holding.

The method in which the Act proceeds is first to provide a code (section 7) for the constitution of new holdings, and then (section 16) to apply that code with the necessary

modifications to the enlargement of existing holdings, and by it to supersede the provisions of the Act of 1886, with the overriding condition that the applicant is no longer to be the individual but the Board of Agriculture. When these provisions for the constitution of new holdings are connected to apply to the extension of a holding, it is, I think, apparent that the contemplation of the whole scheme compels to the restriction of extension to the case where the enlargement and the original holding are part of the same estate. This restriction is express (section 26 (2)) in the case of a new holding. The necessity is, I think, *a fortiori*, and the restriction to be implied, in the case of the enlargement.

The enlargement and the original holding become not separate holdings but one holding and are so treated. It is inconceivable to me that a "holding" should be held in severalty from two landlords. The provisions regarding rent—regarding vacating, renouncing, and resuming holdings—the rights *hinc inde* to compensation —the powers to relet, and the restrictions on those powers—the rights and securities of the Board of Agriculture to recover their advances and many more *indicia*—render it impossible to conclude that the Legislature really contemplated anything beyond the enlargement of an existing holding by the addition of land to be held from the same landlord. I do not propose to examine these *indicia* in detail, as it would unduly occupy your Lordships' time, but I point to section 8 regulating loans to landholders as a specially pregnant example.

Against this clear indication of the scope of the legislation there is no express provision one way or the other, and where I experience my difficulty lies in this, that I hesitate to make the provision of the Act, as I think, unworkable by reason only of two indirect and negative provisions. These are, *first*, that in the repeal (section 16 (2)) of section 13 of the Act of 1886 is included without re-enactment the repeal of the provision that land to be available for extension must belong to the same landlord as the original holding, and *second*, the declaration (also in section 16 (2)) that land shall not be deemed available land for enlargement of a holding unless it is land in respect of which a person would be admissible for registration as a new holder. That is but a negative declaration, and is susceptible of interpretation and application without necessarily converting it into a positive provision. I cannot readily accept such conversion in the light of the general purview of the statute and of the provisions in section 26 (2).

For these reasons I hesitate to accept the conclusion to which your Lordships have come, and which your Lordship in the chair has now expressed.

LORD MACKENZIE—I agree in the result reached by the Land Court and by your Lordship in the chair. In reaching that conclusion I am far from being insensible of the difficulties that may arise in administration and of the possible injustice that may be done, which may be inadequately met by the compensation clauses. But I am unable to hold that those difficulties, which are a matter for the Legislature, entitle this Court to refuse to give effect to the enactment of the statute.

LORD SKERRINGTON—I agree with your Lordships because I think the judgment of the Land Court was right.

The Court answered the question of law in the affirmative.

Counsel for Appellants—Johnston, K.C. —A. R. Brown. Agent—Alex. Ross, S.S.C.

Counsel for Respondents—The Solicitor-General (Morison, K.C.)—W. T. Watson. Agent—Sir Henry Cook, W.S.

Saturday, May 23.

OUTER HOUSE.

[Lord Anderson, Ordinary.

MATHIESON *v.* MATHIESON.

Husband and Wife—Divorce—Adultery—Proof—Evidence of Successful Action by Co-Defender against Defender for Aliment of Illegitimate Child without Oral Evidence, as to Adultery, where no Appearance for Defender or Co-Defender.

In an action of divorce by a wife against her husband, on the ground of adultery with a woman named in the summons, no defence was entered by the defender or co-defender, and neither of them appeared at the proof. The pursuer led no oral evidence of the adultery alleged, but proved that there had been personal service of the summons on the defender, and intimation to the co-defender, who had also been cited as a witness in the cause. There was produced in evidence an extract sheriff court decree against the defender in an action of affiliation and aliment at the instance of the co-defender.

Decree of divorce was *granted.*

Mrs Bridgett M'Arcy or Mathieson raised an action of divorce against John Mathieson on the ground of adultery with Joanna M'Cormack.

After proof had been led, counsel for the pursuer referred to *Duncan* v. *Duncan*, February 18, 1893, 30 S.L.R. 435.

The facts of the case sufficiently appear from the opinion of the Lord Ordinary, *infra.*

LORD ANDERSON—I think I am in a position to grant the decree sought on the evidence which has been led to-day.

The action is an action of divorce at the instance of the wife on the ground of the adultery of her husband with a woman who is named in the summons. The wife herself is now resident abroad in Canada, and her evidence was taken on commission on interrogatories, and I have read it, and the