In these circumstances it appears to me that we have presented to us a simple case of a workman deliberately committing a breach of a rule of the pit, well known to him, a breach of which was undoubtedly an act of serious misconduct, and, unexplained as it is here, is undoubtedly wilful misconduct.

With regard to the evidence which has been before us in consequence of the order we pronounced for the transmission of the process all I say is this, that I think we are entitled to look at it for the purpose of ascertaining whether there is any evidence in support of the findings in the case, but for no other purpose. And here I desire to express my entire concurrence with the views expressed by Lord Dunedin in the case of *Lendrum*, 1914 S.C. (H.L.) 91, at p. 102, 51 S.L.R. 733, at p. 739. His Lordship there states, I think with perfect precision, the scope of the duty of an Appeal Court in considering a process the transmission of which they have ordered in a case under the Workmen's Compensation Act.

On the ground, then, that there was evidence adequate in law to support the conclusion at which the arbitrator arrived, I propose to your Lordships that we should answer the question put to us in the affirmative.

LORD MACKENZIE—I am of the same opinion and on the same grounds.

LORD SKERRINGTON concurred.

LORD JOHNSTON was absent.

The Court answered the question of law in the affirmative.

Counsel for the Appellant — Anderson, K.C.—Patrick. Agent—Thomas J. Connolly, Solicitor.

Counsel for the Respondents — Horne, K.C. — Carmont. Agents — W. & J. Burness, W.S.

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*Thursday, April 22.*

## BILL CHAMBER.

[Lord Hunter.

## MACDONALD *v.* BOARD OF AGRICULTURE FOR SCOTLAND.

*Landlord and Tenant—Small Landholders (Scotland) Act* 1911 (1 *and* 2 *Geo. V, cap.* 49)—*Compensation—Interest on Sum Received by Landlord for Buildings Taken over Set off against Claim for Compensation for Damage to Letting Value owing to Constitution of Small Holding.*

*Held* (*per* Lord Hunter) that, in assessing the compensation due to a landlord in respect of damage to the letting value of a farm due to part of it having been appropriated to a small holding, the arbiter was entitled to set off against the reduction in rental interest at 4 per cent. on the capital sum paid to the landlord as the value of the farm buildings taken over from him.

A Special Case was stated by an arbiter acting in an arbitration under the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) between Mr Macdonald of Glenlonen, in the county of Argyll, *claimant*, and the Board of Agriculture for Scotland, *respondents*. The arbiter's duty was to assess the amount of compensation to which the claimant was entitled in respect of the formation of a small holding on the farm of Glenamacrie, proposed to be carried out by the respondents in terms of a scheme sanctioned by the Scottish Land Court conform to order dated 30th November 1914. The claimant made, *inter alia*, the following claims in the arbitration:—Head III—"For damage or injury to the letting value of the land to be occupied by the new holder, £400." Head IV—"For damage or injury to farm of which such lands (*i.e.*, the lands taken for the new holding) form part, £1000."

After proof had been led the arbiter disallowed the claim made under head III, and under head IV he allowed £200 as compensation to the claimant under deduction of £125, being the capitalised appreciation in the return upon capital to the claimant which he held fell to be credited to the respondents.

In his note the arbiter stated the grounds of his decision thus—"As regards the claim of £1000, being damage to the farm of which the holding forms part, this is an item which requires detailed consideration. . . .

"A large amount of evidence was adduced to show that the southern portion of the farm could not be worked along with either of the adjoining sheep farms belonging to and in the personal occupation of the claimant. After considering the evidence and giving effect to my own practical knowledge I have come to the conclusion that the southern portion, carrying a comparatively small stock, could without much inconvenience be worked along with either of the adjoining farms of Torinturk or Clachadhu. I recognise, however, that there will be additional expense in so working this portion of the farm, and I propose to allow as compensation under this item the sum of £200, subject to the deduction aftermentioned.

"It will be observed that from my proposed allowance for damage to the farm of which the lands taken form part (head IV of claim) I have deducted a sum of £125, being the capitalised appreciation in the return upon capital through the constitution of the new holding. Upon the assumption that the southern portion was worth £30 per annum, and after crediting 4 per cent. interest on the value as estimated of the buildings and fences, the respondents made out an increased return to the claimant of £19 per annum, which capitalised at twenty-five years showed a capital appreciation in the value of the farm of £475, which they properly claimed as a credit item. This figure, of course, varies with the valuation of the buildings and fences, and with the rent allowed for the southern portion of the farm, which they stated at £30, whilst claimant's witnesses made it out to be prac-

tically *nil.* I think a fair annual value of the southern portion is £18, and on this basis, and after crediting interest on the allowance for buildings and fences, and making one or two alterations upon the other figures in the estimate, I reckon an annual increment of about £5, which capitalised at twenty-five years makes the £125 for which I have given the respondents credit.

"I explain that the parties left to me to fix the value of the houses, buildings, and fences belonging to the claimant taken by the scheme, and that I proposed to find the value of these to be a *cumulo* sum of £951, 3s. 3d. After disallowing the claim for said southern fence, the half of which if I had held the claim competent I would have valued at £36, I arrived at the conclusion that the claimant got a pecuniary benefit of £5 a-year on the new holding on the footing that he would be able to invest the price proposed to be fixed for said buildings and fences at 4 per cent. per annum. The said buildings and fences were wholly situated on the new holding."

The *questions of law* for the opinion of the Court were—"2. In awarding compensation under head IV of the claim was I entitled to set off against the depreciation upon the said southern portion of the farm the capitalised appreciation of the claimant's income so arrived at from the northern portion taken from the holding? 3. In determining the amount of the damage or injury done to the letting value of the land to be occupied by the new holder and of the farm of which said land forms part, was I entitled to take into consideration the fact that by investing the price obtained for the buildings and fences at 4 per cent. the claimant might get a pecuniary benefit?"

LORD HUNTER—[*After a narrative, and after dealing with matters not reported*]—The second question argued to me was as to whether or not the arbiter had proceeded on a proper principle in assessing damages. The claimant claimed damages in respect of injury to the letting value of the land to be occupied by the new holder, and also to the letting value of the farm of which the lands taken for the new holding form part. The arbiter found that no injury under the first of these two heads was proved, but that injury to the extent of £200 under the second head was proved. From this sum of £200 he proposes to deduct £125, which he describes as the capitalised appreciation in the return upon capital through the constitution of the new holding. What the arbiter has done is this. In comparing present with past rental of the farm, so as to ascertain whether there has been injury to its letting value, he has taken into account interest upon the amount received by the claimant from the respondents in respect of the buildings taken over. I think that he was clearly entitled and bound to do so. The former rent was paid in respect of the land and buildings upon it. The Land Court, however, have fixed a fair rent for the holding unequipped with buildings. Unless some allowance is made for the buildings, for the value of which the proprietor has been paid, there can be no proper comparison between the past and present rental, so as to determine the question of injury to the letting value of the farm. I propose to answer the third question in the affirmative, to find it unnecessary to answer the second question, and to find the respondents entitled to expenses in connection with the Special Case.

Counsel for the Claimant—Chree, K.C.—Paton. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for the Respondents—T. Graham Robertson. Agent—Sir Henry Cook, W.S.

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*Tuesday, May* 25.

## OUTER HOUSE.

[Lord Hunter.

## SMITH *v.* ROSENBLOOM.

*Jurisdiction — Foreign — Delict — Citation —Action against Foreigner for Damages for Slander Published in Scotland without Personal Service on the Defender within Scotland.*

In an action of damages for slander, raised in the Court of Session against a person resident in England, it was alleged that the slander complained of was contained in a letter written and sent by the defender while in Scotland, but it was not averred that the summons had been served on the defender personally within Scotland.

*Held* that in the absence of personal service on the defender in Scotland the Court had no jurisdiction over the English defender.

*Jurisdiction—Arrestment ad fundandam jurisdictionem—Arrestable Interest—Depending Claim by Defender against Third Party not Admitted by Third Party.*

In an action of damages against a foreign defender, the pursuer sought to establish jurisdiction by arresting a depending claim by the defender against a third party, which was not admitted by the latter.

*Held* that, in the absence of admission of liability to account on the part of the third party, it was necessary for the pursuer in order to found jurisdiction against the defender to prove that property belonging to the defender had been attached by the arrestment; and proof before answer *allowed.*

Lily Smith, residing at Gifford, *pursuer*, brought an action of damages for slander against Lily Rosenbloom, residing at 7 Harper Street, Liverpool, *defender.*

It was averred by the pursuer that on or about 4th June 1914, at which date the defender was residing in Scotland, she wrote a letter addressed to the pursuer containing the slanderous statements complained of. The defender averred that she was a domiciled Englishwoman, that she had resided at Gifford from March 1909