

I am quite sensible of the criticism that in the absence of an actual lease the criterion of valuation is based on annual lettable value. But the statute enjoins that the matter shall be regarded from the point of view of considering what the subjects may be supposed to be capable of yielding *one year with another*. This appears to me to mean that special and transitory or accidental conditions adverse to actual letting are not necessarily to rule the valuation of a particular year. If it were otherwise the proprietor of a house or any other heritage which he had regularly let one year after another, but which in a particular year he had failed to let—notwithstanding the continued adoption of his usual measures for attracting tenants—would have a good ground for escaping valuation. The liability for rates and taxes in such a case is, I need hardly point out, a matter with which we have nothing to do under the Valuation Acts.

If the conditions which have militated against the appellant obtaining a let of the subjects during this year could be viewed as of permanent application the appellant's case would be different. I am unable, however, to assume that there is any such permanency involved in the existing conditions arising out of the war.

I am of opinion that the assessor has done no injustice to the appellant in entering at the figure of £475 the deer forest in question, which was formerly entered at £950. I accordingly think that the appeal should be refused.

The Court were of opinion that the determination of the Valuation Committee was right.

Counsel for the Appellant—Macmillan, K.C.—Wilson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondent—W. T. Watson. Agents—Mackenzie, Innes, & Logan, W.S.

COURT OF SESSION.

Tuesday, February 5, 1918.

FIRST DIVISION.

[Lord Anderson, Ordinary.]

VISCOUNTESS COWDRAY v. FERRIES.

Landlord and Tenant—Outgoing—Compensation—Unreasonable Disturbance—Notice of Claim—Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), secs. 10 and 18.

The lease of a farm for nineteen years provided that "notice in writing to quit shall be given on either side two years before the expiry of the lease." The lease expired at Whitsunday 1917. On 13th May 1915 the landlord gave written notice to quit to the tenant, who acknowledged that notice and on 30th July intimated in writing that he intended

to claim compensation for unreasonable disturbance. Thereafter the parties entered into negotiations as to leasing part of the farm to the tenant, who on 17th April 1916 made an offer, and on 12th May 1916 intimated that if that offer was not accepted he would claim compensation for unreasonable disturbance. After further correspondence the landlord on 10th October 1916 wrote intimating that as the parties had failed to agree the negotiations were at an end. The tenant having tried to reopen the negotiations, on 29th December 1916 the landlord referred the tenant to the letter of 10th October 1916. On 22nd January 1917 the tenant wrote claiming compensation for unreasonable disturbance and thereafter secured the services of an arbiter to assess compensation. *Held*, in a suspension and interdict at the instance of the landlord to suspend the proceedings for the appointment of the arbiter and to interdict him and the tenant from proceeding with the arbitration, that the tenant was not entitled to claim compensation for unreasonable disturbance, as the letter of 10th October was a refusal to renew his tenancy, and he had not, as required by the Agricultural Holdings Act 1908, section 10, given, within two months of that date, written notice of his intention to claim such compensation.

Question whether the notice of 13th May 1915 was a notice sufficient to prevent tacit relocation, looking to the Agricultural Holdings Act 1908, section 18.

Opinion per Lord Johnston that "renewal of tenancy" in the Agricultural Holdings Act 1908, section 10, meant renewal of the personal relationship of landlord and tenant in connection with the subject of an expiring lease which must remain substantially the same.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) enacts—Section 10—*"Where (a) the landlord of a holding without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit, or having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so . . . the tenant upon quitting the holding shall . . . be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, or his implements of husbandry, produce, or farm stock, on or used in connection with the holding, provided that no compensation under this section shall be payable . . . (b) unless the tenant has, within two months after he has received notice to quit or a refusal to grant a renewal of his tenancy, as the case may be, given to the landlord notice in writing of his intention to claim compensation under this section."* Section 18 (1)—*"Notwithstanding the expiration of the stipulated endurance of any lease the tenancy shall not come to an end*

unless written notice has been given by either party to the other of his intention to bring the tenancy to an end—(a) in the case of leases for three years and upwards not less than one year nor more than two years before the termination of the lease.”

Viscountess Cowdray, heritable proprietrix of the estates of Dunecht and Forest of Birse in the county of Aberdeen, with consent and concurrence of her husband Viscount Cowdray as her curator and administrator-in-law, *complainer*, brought a note of suspension and interdict against Nathaniel Fraser Ferries, sometime tenant of the farm of Knockquharn, Dunecht, *respondent*, and another, craving the Court to suspend certain proceedings whereby respondent obtained the appointment of an arbiter under the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) to assess compensation for unreasonable disturbance claimed by respondent from the complainer, and to interdict the respondent and the arbiter from proceeding with the arbitration.

The lease of the farm of Knockquharn, under which the respondent was sometime tenant, was for nineteen years, expiring at Whitsunday 1917, and provided, *inter alia*—“That notice in writing to quit shall be given on either side two years before the expiry of the lease, and that should no such notice be given the lease shall be extended for one year at the same rent and on the same conditions; that after notice to quit has been given the tenant shall not be entitled to apply to the farm impoverishing or exhausting manures, or to deteriorate the farm in any way, and shall be bound to pay for any deterioration which the proprietor may prove to have taken place after such intimation to terminate.”

The facts of the case were—The respondent was tenant of the farm of Knockquharn on the estate of Dunecht, which during the currency of the lease was acquired by the complainer. On 13th May 1915, in terms of the clause above quoted, the complainer's agents gave the respondent notice to quit, receipt of which notice was acknowledged by the respondent. The complainer's agents, in a letter of the same date as the notice, stated that there was to be a rearrangement of the farm, and negotiations followed as to a lease to the respondent of the farm upon a rearranged basis. In the course of the negotiations the respondent wrote to the complainer's agents as follows:—“17th April 1916.—I am favoured with your letter of 25th March 1916. I hereby make the offer of £150 per annum for the farm of Knockquharn. I make this offer on the understanding that I get the rough pasture on the south side of the walk to the bridge. I would require 2½ acres of Scattie drained, also a few other wet patches. I would also require a washing-house, and either the old stable repaired for calves or a covered-in court. The cottar houses done up. I would be quite pleased to go over the fences with Mr Machray, the forester, and see what is needing to be done; also I took over the peat shed and tool sheds at valuation when I entered the farm, and am bound to be paid for same at

my waygo. The engine and engine-house is there on your own approval, and the mill would be no use with [sic] it. I would be very willing to let some of the improvements lie over until this big war is over as labour is very scarce meantime.—I am, yours respectfully, NATH. F. FERRIES.”
“12th May 1916.—Dear Sirs.—With reference to the negotiations passing between us for a renewal of my tenancy of Knockquharn, I think it right to let you know, in case of any misunderstanding, that should our negotiations fall through and it will be necessary for me to quit the tenancy, I am to claim compensation for unexhausted improvements, and also for unreasonable disturbance under the provisions of the Agricultural Holdings Act. Please acknowledge receipt.—I am, yours faithfully, NATHANIEL FERRIES.”

Eventually the complainer's agents wrote to the respondent as follows—“10th October 1916.—Dunecht.—Dear Sir—We duly received your letter of the 23rd ulto., but can only refer you to what was said in our letter of 21st ulto. When Mr Ramsay was at Dunecht he communicated to Lady Cowdray, with whom also was Lord Cowdray, the views expressed by you at your meeting with him as regards a renewal of your tenancy, and in particular your emphatic statement that the farm was no use to you whatever without the rough pasture. This pasture we had repeatedly said her Ladyship wanted for her own purposes. That being the position of affairs, we were then and there instructed to make, and are making, arrangements to take the farm in hand on Lady Cowdray's behalf at Whitsunday first. In the above circumstances it is useless to go back to our clients with any further proposal, especially one asking that the rough ground in question be let to you from year to year with the farm. In short, our clients now regard negotiations with you as at an end.—Yours faithfully, JOHN C. BRODIE & SONS.”

The respondent thereafter attempted to reopen the negotiations, and the complainer's agents wrote to him on 29th December 1916 in the following terms:—“29th December 1916.—Dear Sir—We communicated to Lady Cowdray a copy of our correspondence with you since Mr Ramsay saw you in September last, and this morning we have received a letter from Viscount Cowdray, dated 27th inst., in the following terms:—‘Knockquharn.—Her ladyship has carefully considered yours of 23rd inst., with its enclosures, and has decided that you ought to advise Mr Ferries that as he did not accept your offer on September 21st, and as you definitely advised him on October 10th that you then regarded the negotiations as at an end, she is not prepared to reopen the question. It would be well to once more point out to Mr Ferries that he has had every chance to take the farm, and that it is entirely his own fault that he has allowed the opportunity of taking it to pass by.’—Yours faithfully, JOHN C. BRODIE & SONS.”

On 22nd January 1917 the respondent wrote as follows:—“Dear Sirs— I beg to acknowledge the receipt of your letter of

20th December last, enclosing a copy of Lord Cowdray's letter to you, dated 27th December, stating that Lady Cowdray had carefully considered my proposal for a renewal of the lease of my farm at Knockquharn, and finally refusing to grant a renewal of the tenancy. I fancy I shall have to take this as the last word on the subject. In the circumstances, therefore, I hereby give you notice (which probably may be repeating myself) that I claim the usual privileges of a waygoing tenant, as set forth in my agreement and lease, including a claim for compensation for unreasonable disturbance, and this without prejudice to the notice already sent you, but simply in order to avoid all questions. All other claims will likely be made for unexhausted improvements, taking over crops and buildings and the like in accordance with the obligations of the proprietor, of which details will be sent you in good time. Please acknowledge receipt.—Yours faithfully, NATHANIEL FERRIES."

The complainer *pleaded, inter alia*—"1. The whole proceedings of the respondent Nathaniel Fraser Ferries condescended on in relation to the claim for unreasonable disturbance put forward by him are illegal, inept, and invalid, in the respects alleged, and to the prejudice of the complainer, and they should be suspended as craved. 2. The respondents being about to proceed, in pursuance of the said appointment of the respondent James Ebenezer Esslemont as arbiter foresaid, with the steps of a pretended arbitration, to evaluate a claim which has no legal existence, interim interdict ought to be pronounced. 4. The defences being irrelevant, the respondent's pleas should be repelled."

The respondent *pleaded, inter alia*—"4. The proceedings complained of having been in all respects regular and proper, the note should be refused. 5. The statutory requirements in relation to the claim in question having been duly complied with, the note should be refused."

On 6th December 1917 the Lord Ordinary (ANDERSON) sustained the fourth and fifth pleas-in-law for the respondent, and refused the prayer of the note of suspension and interdict.

Opinion.—"In this note of suspension and interdict the complainer seeks to interdict the respondent and an arbiter appointed by the Board of Agriculture from proceeding with an arbitration to assess compensation for unreasonable disturbance claimed by the respondent from the complainer.

"The complainer acquired the estate of Dunecht, Aberdeenshire, in the year 1910. The respondent was then tenant of the farm of Knockquharn on said estate under a lease for nineteen years from and after the term of Whitsunday 1898 at a rental of £160 per annum. The said lease provides that a notice in writing to quit shall be given on either side two years before the expiry of the lease.

"In the year 1915, two years before the ish under said lease, the complainer resolved to take into her own possession when the lease came to an end two portions of the farm

occupied by the respondent, viz., (1) a large tract of rough pasture between the steading and the Loch of Skene, and (2) a field situated within the policies of the mansion-house known as Kennel Park. In order that she might be in a position to effect this purpose the complainer on 13th May 1915 caused to be served on the respondent a formal notice to quit the said farm at the term of Whitsunday 1917. Of even date with the notice to quit the complainer's agents wrote to the respondent a letter in which they state that after the farm boundaries had been rearranged, and the terms on which the farm was to be let had been considered, 'we are authorised to give you the first opportunity of offering for it as it may be rearranged, if you wish to have the opportunity of doing so.' This letter was regarded by the respondent as suggesting the probability of his tenancy being renewed. I think he was right in taking this view as to the said letter. I am unable to conceive any other method of bringing about a renewal of the tenancy than by allowing the sitting tenant to make an offer before the farm is advertised for let to the public.

"As the respondent heard nothing further on the matter for two months he wrote the complainer's agents on 30th July 1915 giving notice of his intention to claim compensation for unreasonable disturbance, in terms of section 10 of the Agricultural Holdings (Scotland) Act 1908. On 2nd August 1915 the complainer's agents replied to this notice to the effect that it was not timeous in accordance with proviso (b) of section 10 of the Act.

"Thereafter negotiations were entered upon for a renewal of the tenancy, and continued during the years 1915 and 1916. Ultimately, in December 1916, the complainer finally refused to renew the respondent's tenancy, and he thereupon again notified the complainer of his intention to claim the foresaid compensation.

"On 4th August 1917 the Board of Agriculture appointed the other respondent as arbiter to dispose of said claim, whereupon the complainer brought the present proceedings.

"The sole legal ground on which suspension is craved is that referred to in the said letter of 2nd August 1915 from the complainer's agents, to wit, that the respondent's notice of claim was not timeously made. It is maintained that timeous notice is a condition-*precedent* to any right to arbitrate arising.

"The provisions of section 10 of the Act of 1908 are set forth in stat. 4. From these it will be seen that no compensation for unreasonable disturbance will be payable unless the tenant has within two months after he has received notice to quit given to the landlord written notice of his intention to claim compensation under the section. As I have pointed out, the notice to quit was served on 13th May, and the tenant's notice was dated 30th July. If the notice to quit was valid the tenant was thus seventeen days too late with his notice. If considerations of prejudice entered into this question I should unhesitatingly hold that the complainer suffered no prejudice. She had nearly

two years' notice of the respondent's intention to claim compensation under the 10th section of the Act. It seems to me, however, that the complainer is right in her contention that timeous notice is a condition- precedent of the prosecution of the claim, and that therefore the question of prejudice or no prejudice does not arise.

"In defence of the action the respondent maintained three contentions—(1) That the notice to quit was invalid; (2) that the respondent had given sufficient notice under the second part of proviso (b), section 10; and (3) that the determination of these two points was for the arbiter and not the Court.

"Logically this last point falls to be considered and determined first, because if I reach the conclusion that the first two contentions are for the arbiter it is unnecessary for me to express an opinion upon them.

"The decision of this point turns on a consideration of the concluding words of section 10—'In the event of any difference arising as to any matter under this section the difference shall, in default of agreement, be settled by arbitration.'

"I am against the respondent on this point. The words I have quoted seem to me to assume that there is an arbiter duly appointed to whom the matter of difference may be deferred. But the complainer maintains that no arbiter legally exists. It seems to me that where the allegation is that the arbiter's appointment is *funditus* null the determination of that question is for the Court. There seems to be incongruity, to put it no higher, in allowing an arbiter to determine whether or not he is legally existent.

"Again, the two questions to be decided are purely legal questions, and therefore the Court and not the arbiter seems the appropriate tribunal for their determination. The 'matter' alluded to in the section is, in my judgment, a matter of fact. The arbiter is really appointed to adjudicate as to facts, not law. A question of law may be involved in the arbiter's elucidation of the facts, which he may obtain legal aid under section 11 (3) in solving, but his primary duty is to determine facts.

"Finally the difference does not arise under section 10 alone but also under other sections, and in particular under section 18. For these reasons I am of opinion that the respondent's second plea-in-law is not well founded.

"With reference to the question of the validity of the complainer's notice to quit, the respondent founds on the terms of the 18th section of the Act, which is quoted in answer 3. That section provides that if tacit relocation is to be avoided written notice of termination of the tenancy must be given within the last year but one of the lease. If this section applies to the notice given by the complainer it was given two days too soon. This section seems to set forth a new condition of let, which must be read into every conventional lease. The complainer argued that the notice to quit referred to in section 10 need not conform to the provisions of section 18. The notice given, it was said, was designed to serve a different pur-

pose than that under section 18, and hence it was sufficient to give the notice stipulated for. I do not think this contention is sound. The declared object of the notice to quit under section 10 is to terminate the tenancy, and section 18 provides that the tenancy will not be terminated save after the notice referred to in that section. There must be determination of tenancy before the claim for compensation under section 10 emerges, and this determination of tenancy can only be brought about by virtue of the statutory notice under section 18.

"Again, it is obviously not enough to give the conventional notice. The parties might have agreed for removal without notice. In such a case it is manifest that the statutory notice would have to be given to obviate tacit relocation.

"What the complainer should have done was to have given two notices—one before and one after 15th May 1915.

"If the respondent is right on this matter, as I think he is, then he has received no notice to quit, and thus it cannot be maintained that his notice of 30th July 1915 was not timeous.

"The complainant argued that the respondent was barred from maintaining this point on the three grounds specified in the record. ['The respondent is barred from pleading want of valid notice by reason of (1) his own stipulation for a notice of greater length in the lease, (2) his accepting of and acting upon said notice and his quitting the tenancy pursuant thereto, and (3) his giving notice of claims competent only on removal and insisting upon the same.'] But the respondent successfully meets these points by maintaining (1) that his stipulation was supplanted by the provisions of a public Act of Parliament, (2) that he did not remove because of the notice to quit but because of the refusal to renew his tenancy, and (3) that his notice of claim was competent not only on removal under notice but on removal because renewal of tenancy was refused.

"Whether the above views as to the validity of the complainer's notice are sound or not, I am satisfied that on the other point raised by the respondent he is entirely right, and is thus entitled to get rid of this process of suspension.

"The complainer's counsel maintained that where a notice to quit had been given there was only one point of time open to the respondent from which to date his notice of claim even although there was subsequently a refusal of renewal of tenancy. The respondent maintained that where a notice to quit was followed by negotiations resulting in a refusal of renewal of tenancy the respondent had a second point of time from which to date his notice of claim. It seems to me that if proviso (b) of the 10th section is to have any meaning the complainer is necessarily wrong and the respondent necessarily right. The complainer founded on the words 'as the case may be,' but these words seem to me to destroy her contention. If a notice to quit is given and nothing more is done, that is one case. But if negotiations follow a notice to quit and terminate in a refusal to renew, that is another case.

The latter case can never emerge save in succession to the former case. If there is no notice to quit, the question of renewal of the tenancy can never arise; it is renewed automatically under section 18 by tacit relocation. If a tenant is refused renewal and there has been no preceding notice to quit, he may ignore the refusal and continue his tenancy under tacit relocation. Thus there must necessarily be available to the tenant the second point of time from which he may date his notice of claim.

"It therefore only remains to be considered (1) whether there was a refusal to renew the tenancy, and (2) whether, if so, the respondent has fulfilled the statutory requisites as to notice of claim following on a refusal to renew the tenancy.

"The former of these points depends on a consideration of the correspondence which is admitted. The complainer maintained that the negotiations had reference to a new lease of a new subject, and not to a renewal of the old tenancy. As I understood the argument, it was maintained that there could not be renewal of the old tenancy unless the subject, the rent, and the conditions of the lease all remained unchanged. This contention is plainly untenable. There will generally be a change on the rent, and there may also be change as to the conditions of let and as to the subject, without making it improper to describe the result as a renewal of the old tenancy. What was proposed in the present case was to re-let the old subjects, less a park and some rough pasture. It was still the farm of Knockquharn, with dwelling-house, steading, and arable land, all as the respondent had possessed it, which was to be re-let. The respondent offered £150 instead of the former rent of £160 for the new lease. There was thus but slight change either as to subject or rent.

"The correspondence shows that the parties regarded the negotiations as being conducted with the object of effecting a renewal of the tenancy. On 30th July 1915 the respondent refers to 'the renewal of my tenancy.' The last sentence of Messrs Brodie's letter of 10th November 1915 has the same significance. On 24th January 1916 the complainer's agents write 'if you are to renew your lease.' On 12th May 1916 the respondent, in giving another notice of claim under section 10, again refers to 'a renewal of my tenancy.' On 21st September 1916 the complainer's agents refer to 'the continuance of your tenancy,' and the 'offer to continue to you the lease of that part of the farm.' Again on 10th October 1916 they write as to 'a renewal of your tenancy,' and on 15th December 1916 that 'you are now prepared to retake your farm,' and refer to the 'continuance of your tenancy.' It is plain, therefore, that negotiations took place as to a renewal of the respondent's tenancy, and renewal was ultimately refused.

"Finally the statutory conditions which the tenant must comply with in order to have a claim for compensation under section 10 following on a refusal to renew the tenancy are these—(1) under section 10 (a)

he must have requested the landlord in writing, at least one year before the expiration of the tenancy, to grant a renewal of the lease. This condition has been complied with by the respondent by, *inter alia*, his letter of 17th April 1916; (2) under section 10, proviso (b), the tenant must give the landlord notice of claim within two months of a refusal to renew the tenancy. This condition has also been fulfilled by the tenant. He rightly regarded the letter of 29th December 1916 as a final refusal to renew, and within two months thereof, to wit, on 22nd January 1917, he gave written notice of his intention to claim.

"I shall therefore refuse the note."

The complainer reclaimed, and argued—The effect of section 18 of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) was to provide a statutory period within which notice of the intention to terminate the tenancy must be given, but such statutory notice was only required to exclude tacit relocation from year to year. That section did not render invalid for other purposes a notice given before the statutory period, and if the tenant, having received a notice before this statutory period began to run, left the farm, he had no *locus standi* to found upon section 18. It was a prerequisite of a valid claim for compensation for unreasonable disturbance that such claim should be made within two months of the notice to quit or the refusal to renew the tenancy—section 10 (b). The words in that sub-section "as the case may be" indicated that the two alternatives were mutually exclusive. If so, then there was no notice of claim given within two months of the notice to terminate the tenancy, but if the notice to terminate the tenancy was to be disregarded, then there had been no refusal to renew the tenancy, for the negotiations for the respondent remaining on as a tenant had not had reference to the same subjects, but to subjects materially different from those held by the tenant under his lease. If, however, there had been a request for renewal and a refusal thereof, the refusal was contained in the letter of 10th October 1916; the later letter of 29th December 1916 was merely a repetition of the former letter. If so, the notice of claim of 22nd January 1917 had not been timeously given. A suspension and interdict was a competent remedy in the circumstances—*Hamilton Ogilvy v. Elliot*, 1905, 7 F. 1115, 42 S.L.R. 41. Such provisions as to notice as were contained in the Act of 1908 fell to be strictly construed and must be followed with exactitude to secure the benefits conferred—*Newby v. Eckersley*, [1899] 1 Q.B. 465, *per* A. L. Smith, L.J., at p. 467. The Lord Ordinary's interlocutor should be recalled.

Argued for the respondent—The notice to terminate the lease was useless for the purposes of the Act of 1908 because it was earlier than the two years—section 18. But assuming it was effective and the respondent had not given written notice of the intention to claim compensation within two months of the receipt of that notice, he could still make a claim if there was a refusal

to renew his tenancy and he intimated his intention within two months from the date of such refusal. "Tenancy" and "lease" were carefully contrasted in section 10 of the 1908 Act. Tenancy referred to the relation of landlord and tenant, and if so, there had been a refusal to renew that relation, for renewal of tenancy did not mean that the lease was to be continued with slight and immaterial alterations. But if the respondent was wrong on that point, there had been a refusal to renew the lease in its main particulars. If so, then a notice of claim had been given under the statute, for the two letters of 17th April 1916 and 12th May 1916 set forth the respondent's offer of renewal, and intimated that in the event of non-acceptance compensation would be claimed for unreasonable disturbance, and the complainer had those letters when the negotiations broke down and for two months thereafter. The Lord Ordinary was right.

At advising—

LORD PRESIDENT—These arbitration proceedings cannot I think be allowed to go on, because the requisite statutory notice of claim was not given by the tenant. The complainer is proprietrix of the estate of Dunecht, and the respondent is tenant of a farm on the estate, the lease of which expired at Whitsunday 1917. By the express terms of the contract of lease it is provided that notice in writing to quit shall be given on either side two years before the expiry of the lease, and that should no such notice be given the lease shall be extended for one year at the same rent and on the same conditions.

On the 13th May 1915, two days beyond two years, the complainer gave the respondent notice to quit. That notice the respondent acknowledged receipt of on 24th May 1915, and he actually quitted the farm at Whitsunday 1917. Whether that notice to quit was valid or invalid it is immaterial to determine. So far as I can see it was a valid notice in terms of the lease but would have been an invalid notice in terms of the statute. But the respondent was minded to continue his tenancy, and accordingly he offered on 17th April 1916 to remain on as tenant of the farm, subject to certain conditions which are set out at length in the letter which on that date he addressed to the complainer's agents. Negotiations followed. The parties however failed to come to terms, and finally on 10th October 1916 the complainer definitely refused to renew the tenancy to the respondent, and intimated that the negotiations were now at an end. On the 23rd December the respondent endeavoured ineffectually to re-open the negotiations, for on the 29th December the complainer point blank refused to reconsider her refusal to renew the tenancy. Accordingly 10th October 1916 remains the date at which the complainer definitely refused a renewal of his tenancy to the respondent. If that be so, there is of course an end of this case, because confessedly it was not until the 22nd January 1917 that the respondent gave notice of this claim.

It came too late. It ought to have come within two months from the 10th October 1916, the date at which the complainer intimated that the tenancy was not to continue. That was the date of the refusal in writing to renew the tenancy.

The terms of the 10th section of the statute are quite explicit, and are not open to interpretation, for it is provided that the tenant will receive no compensation under that section unless he has within two months after he has received the refusal to grant a renewal of the tenancy given his landlord notice in writing to claim compensation under the section. That clause seems to me to be perfectly clear, and if so, obviously this notice came too late. Due observance of this condition is essential to the validity of the tenant's claim. I gather from his opinion that the Lord Ordinary would have reached the same conclusion as I do if his attention had been directed to the fact that the refusal to renew the tenancy was intimated on the 10th October 1916 and not, as he assumes, on the 29th December 1916. On the latter date the complainer simply intimated her intention not to reconsider the definite refusal of tenancy given on the former date.

I am for recalling the interlocutor of the Lord Ordinary and granting interdict as craved.

LORD JOHNSTON — The respondent was tenant under the complainer of the farm of Knockquharn under written lease for nineteen years, which expired at Whitsunday 1917, and he removed at that term. The question in the present case is whether the respondent has placed himself in a position to claim compensation under the Agricultural Holdings Act 1908 for "unreasonable disturbance," a right for the first time conferred under that Act.

An arbiter has been appointed under section 10 of the Act, but the Lord Ordinary has held that he has no power to determine this question, which would virtually be to determine the question of his own jurisdiction, and has repelled the second plea for the respondents accordingly. I do not understand that this is reclaimed against. In any view I think that the Lord Ordinary is so far right. But the respondent's lease contains a condition that notice to quit shall be given on either side two years before the expiry of the lease, failing which the lease shall be extended for one year.

Notice to quit was given on 13th May 1915, that is, two days before the commencement of the said two years, and was therefore a good notice under the lease. But section 18 (1) of the Act of 1908 provides that, notwithstanding the expiry of the stipulated endurance of the lease, the tenancy shall not come to an end unless written notice has been given by either party to the other, in the case of a lease for more than three years, "not less than one year nor more than two years before the termination of the lease," that is to say, within the second last year of the lease. If that provision rules and supersedes the provision of the lease, the notice to quit was ineffective.

The statutory result is, section 18 (2), that failing such notice the lease shall be held to be renewed by tacit relocation for another year and thereafter from year to year. The first question that arises then is, does this statutory provision override the conventional provision? It is somewhat remarkable that the Act, if it meant to supersede every conventional provision as to notice of removal contained in leases current and future, should not have distinctly said so. And a reference in section 18 (3) to the Sheriff Court Act 1907, section 34, would lead to the inference that it did not intend to do so. For that section provides that nothing therein contained should be construed to prevent proceedings for removal under any lease in common form. Moreover, section 10 of the Act of 1908, as will be afterwards seen, does not say "has received notice under this Act," but simply "has received notice," an expression which is equally satisfied by notice under the lease and notice under the statute. But while I am disposed to think that the statutory provision is only intended to supply the want in any lease of a conventional provision as to notice, I do not find it necessary to come to a definite conclusion on the matter in the present case.

In one aspect this question is immaterial, as whether the notice given was a good notice or not the tenant has in point of fact removed. But it has another bearing. The Act of 1908, section 10, gives the right of compensation for unreasonable disturbance where (a) the landlord without good and sufficient cause, and for reasons inconsistent with good estate management, "terminates the tenancy by notice to quit," but at the same time makes it a condition of such claim that "the tenant has within two months after he has received notice to quit" given written notice of claim. The complainer here gave, as I have said, her notice to quit on 13th May 1915. The respondent gave notice of claim on 30th July thereafter. If then the notice to quit was good, this notice of claim was too late, and it would follow therefore that this condition- precedent to a good claim is wanting. If on the other hand the notice to quit was bad, then there were no *termini habiles* for a notice of claim. I think therefore that in any view this notice of claim was ineffectual to found a claim to compensation for unreasonable disturbance.

But then the respondent had another string to his bow. Under the Act of 1908, section 10, the right to claim for unreasonable disturbance is given not only on the termination of the tenancy by notice to quit, but also alternatively where the landlord "having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so." In that case, however, notice of claim must be given within two months after the tenant has received a refusal to grant a renewal of his tenancy, and we are not at liberty to construe these words except according to their natural meaning and the context in applying a modern statute. It was on

this alternative provision that the respondent mainly founded his defence.

There was much discussion as to what was imported by "renewal" of a tenancy. I think that "tenancy" means more than the personal relation of landlord and tenant, but means that relation in connection with the subject of the expiring lease. Rent may be altered. Minor conditions may, and indeed must, to some extent be altered. But I think that the subject must remain substantially the same; and by substantially I mean the same, subject only to such minor variation as the Court will not regard, on the principle *de minimis non curat prætor*. The farm here consisted of 202 acres of arable and 157 of rough pasture. The complainer's purpose in terminating the lease was to resume for estate purposes a park known as the Kennel Park, extending to 19 acres arable, and the whole of the block of 157 acres of rough pasture. From July 1915 to October 1916 there was a good deal of correspondence between the parties about the lease of the farm, and many suggestions were made by the respondent as to terms of lease which would have met his views. Whether such terms would have imported a renewal of the lease I do not require to consider, for the complainer adhered to her purpose, and would hear of nothing but what would have been a new lease of a quite different subject. And finally on 10th October 1916 the respondent was told emphatically that he could not have the rough pasture which he insisted on as a necessity, and that that being the position of affairs the complainer was making her arrangements to take the farm in hand; and accordingly that she now regarded "negotiations at an end." This letter was in my opinion a definite refusal to renew the tenancy, and imposed on the respondent the necessity of giving written notice of his claim for unreasonable disturbance, if he wished to make it, within two months after 10th October 1916. He did not do so until 22nd January 1917, which was too late. He now attempts to validate his notice by founding on a letter of 26th December 1916 as the complainer's final refusal. But the letter was not a refusal to renew the lease, but a refusal to reopen negotiations.

I am therefore of opinion that the respondent is not entitled to an arbitration on his claim, as the condition- precedent has not been fulfilled. The Lord Ordinary's interlocutor would therefore fall to be recalled.

LORD SKERRINGTON concurred.

LORD MACKENZIE was absent.

The Court recalled the interlocutor of the Lord Ordinary, and interdicted, prohibited, and discharged the respondent as craved in the prayer of the note.

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