

peared at the first diet and stated no objection to his citation, such objection cannot now be insisted in, and accordingly repels the same: Having considered the proof, finds that the requirements of the Bankruptcy Act 1913 as to jurisdiction and residence are satisfied: Allows the debtor to lodge answers to the petition stating any further objections he may have to the award of sequestration in terms of the statutes within eight days, if so advised, and the petitioner, if so advised, to lodge any reply he may desire to make to said answers within eight days thereafter."

Answers having thereafter been lodged for the debtor, and replies thereto by the petitioner, the case was put out for hearing on 8th March 1918, but the debtor wrote a letter repudiating his agent's mandate and the instructions to counsel, and no further interlocutor was pronounced.

Counsel for the Petitioner—Constable, K.C.—Hart. Agents—Fyfe, Ireland, & Company, W.S.

Counsel for the Respondent—Macphail, K.C.—R. C. Henderson. Agent—James Scott, S.S.C.

Wednesday, July 10.

BILL CHAMBER.

[Lord Sands, Ordinary
on the Bills.]

BOARD OF AGRICULTURE FOR SCOTLAND v. CAMPBELL ORDE.

Landlord and Tenant—Small Holdings—Compensation for Depreciation in Value—“In Consequence of and Directly Attributable to” Constitution of New Holdings—Prospective Increase of Rates—Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 46), sec. 7 (11).

Held, per Lord Sands, Ordinary on the Bills, that a prospective increase in rates owing to the necessity for the erection of a new school did not form a good ground of claim for compensation by a landlord, part of whose land was being taken by the Board of Agriculture under a scheme for the constitution of small holdings, any depreciation in value to his estate which might be caused by such increase not being “in consequence of and directly attributable to” the constitution of the new holdings.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 46), section 7, *Powers to facilitate constitution of new holdings*, enacts—“ . . . (11) The Land Court shall thereafter determine, with due regard to the provisions of the Landholders Acts, and by order or orders declare—(a) In respect of what land, if any, specified in the scheme, one or more holdings for new holders may respectively be constituted, and up to what date the power to constitute them otherwise than by agreement may be exercised;

(b) What is the fair rent for each new holding; (c) What land, if any, specified in the scheme is to be excluded therefrom; and (d) Whatever use may be necessary for the purpose of making the scheme effective and of adjusting the rights of all parties interested in or affected by the proceedings: Provided that where the Land Court are of opinion that damage or injury will be done . . . to any landlord . . . in respect of any depreciation in the value of the estate of which the land forms part in consequence of and directly attributable to the constitution of the new holding or holdings as proposed, they shall require the Board, in the event of the scheme being proceeded with, to pay compensation. . . .”

The Board of Agriculture for Scotland and Sir Arthur John Campbell Orde, Bart., presented to the Lord Ordinary on the Bills a Stated Case for his opinion, stated at the request of the Board in an arbitration between the parties under the Small Landholders (Scotland) Act 1911 (*sup.*).

The Case stated—“1. This is an arbitration under section 7, sub-section 11, of the Small Landholders (Scotland) Act 1911 between the said Sir Arthur John Campbell Orde and the Board of Agriculture for Scotland for the purpose of determining whether damage or injury entitling the claimant to compensation will be done by the constitution of thirty-two small holdings and enlargements of fourteen existing holdings on the farm of Cheesebay and the adjacent islands of Keallasay More, Keallasay Beg, Clisay More, and Clisay Beg, part of the estate of North Uist belonging to the claimant, together with the amount of such compensation. . . . 2. The claimant duly lodged in the arbitration proceedings a claim under which he claims, in respect of damage or injury in consequence of the constitution of said small holdings and enlargements, various sums as compensation from the respondents amounting in all to £16,851, 17s. 3d. Included in said claim is the following item:—“III. (f) A new school will be rendered necessary by the present scheme, which will entail an increased annual burden upon the proprietor. In respect of this he claims the sum of £383, 18s.” Answers were duly lodged by the respondents to the said claim, in which with reference to this item the respondents state—“Not admitted that any sum is due under this head of the claim.” Thereafter the subjects referred to in the claim were inspected and the record closed, following upon which the arbiter heard proof for the parties and counsel for the parties thereon. 3. At said hearing it was conceded by both parties that the constitution of the said small holdings under the scheme as approved of by the Land Court, being in a part of the island of North Uist where no school at present exists, would necessitate the building of a new school in order to educate the children of the smallholders, and that thereby the school rates presently payable by proprietors in the island and, *inter alia*, the claimant, would be materially increased, and the arbiter is prepared to find on the evidence that this is so.”

The *question of law* was—"Is the claim made by the claimant under Head III (f) of his claim quoted in the Special Case a competent claim against the respondents under section 7, sub-section (11), of the Small Landholders (Scotland) Act 1911?"

At advising—

LORD SANDS—This is a case stated by an arbiter for the opinion of the Lord Ordinary upon the Bills under section 7 (11) of the Small Landholders (Scotland) Act 1911, incorporating as amended the Second Schedule of the Agricultural Holdings (Scotland) Act 1908. It appears that the Board of Agriculture are proceeding compulsorily to create a number of small holdings upon a part of the estate of Sir Arthur Campbell Orde, Bart., in North Uist under the powers contained in the Act. The proprietor claims compensation, and this arbitration has been set on foot to determine the amount of such compensation. One of the items of claim is in respect of the depreciation in the value of Sir Arthur Campbell Orde's estate, of which the land to be devoted to the new small holdings forms a part, by reason of the prospective increase of the education rate of the parish in which the estate is situated. The sequence of events contemplated, and which as the case is stated I must regard as inevitable, is this—The formation of the small holdings will lead to the provision of a number of new dwelling-houses where there were few or none before. The new holders, who are to occupy these dwelling-houses, will in accordance with ordinary human experience bring children with them, or at all events procreate children there. As there is no provision in the neighbourhood for the education of this juvenile population the Department administering the Education Acts will require the School Board to provide a new school. The cost of the provision and maintenance of this school will not be fully met by Government grants, and the balance will have to be provided from the rates. This will lead to an increase of the rates of the parish. Part of this increased burden will fall upon the estate here in question. As the prospective amount of rates is an element affecting the value of an estate, the prospective increase will cause a depreciation in the value of this estate.

I am asked by the arbiter for an opinion upon the question whether within the meaning of the statute the last item in this long consequential sequence—"the depreciation in the value of the estate"—is "in consequence of and directly attributable to" the first, viz., "the constitution of the new holdings."

I shall assume for a moment that the words "and directly attributable to" had not found a place in the statute, and that it had read simply "in consequence of the constitution of the new holding or holdings." In that case there would not have been much difficulty in this aspect of the matter. But there is a presumption against tautology in a statute, and therefore some distinct meaning must, if possible, be given to the words "and directly attributable to." There is a

presumption against its being enough to show merely that the depreciation was in consequence of the creation of the new holdings. The key, if there is a key, must be found in the word "directly" in its relation to the other words.

In determining whether any, and if so what, meaning can be given to the words "and directly attributable to," regard must be had, not to considerations of abstract logic, of metaphysics, or of etymology, but to the ordinary use and understanding of language. The answer is not to be found in Whateley or Hume or Skeat, but in the speech of common life in relation to the facts set forth. In my opinion, in accordance with the ordinary use and understanding of the English language, whilst the depreciation by increase of the school rate is both "in consequence of" and "attributable to" the creation of the small holdings, it is not "directly attributable" thereto. I attempt no positive definition of what is "directly attributable" according to our use of language. "Directly due to" is perhaps a more common phrase, but the intention is much the same. I recognise that it does not in every case include only the proximate cause. The proximate cause of death may be loss of blood, but according to our use of language the death is "directly attributable" to a stab. There must, however, in my view be an element of immediacy, or if not of immediacy, of congruity among the links of the chain, which is here absent. According to my recollection of the Origin of Species, as humble bees fertilise red clover, and mice prey upon bees, and cats prey upon mice, the multiplication of cats is favourable to the spread of red clover. The spread of red clover, which is said to be observable near new villages, may therefore quite properly be said to be in consequence of or to be attributable to the increase in the number of cats, but I do not think that in accordance with the ordinary use of language it would be said to be "directly attributable" thereto. On the contrary, I think anyone who was calling attention to the matter would say that the spread of the clover was "indirectly due" to the multiplication of cats. A long sequence is not perhaps by itself necessarily negative of the use of the phrase "directly attributable" or "directly due to," particularly in mechanical matters. There is a long sequence between the pull of the trigger and the fall of the stag, yet perhaps the last might be said to be directly attributable to the first. But when as in the present case not only is there a long sequence, but the links are in totally different categories, "directly attributable" does not describe the causal relation in accordance with the ordinary understanding of language.

I was invited by the Board of Agriculture to consider another argument which it was contended leads to the same result. The damage suffered by the landlord in respect of the increase of rates is not, it is said, peculiar damage suffered by him as proprietor of these particular lands, but damage suffered by him and equally by all the other heritors as owners of rateable lands in the

parish. He is entitled only to damage peculiar to these particular lands. As regards statutory intentment I think this contention sound. We have been familiar for eighty years with claims for compensation for lands taken or injuriously affected. Every conceivable form of claim has been propounded. But I have never heard of its being suggested that a proprietor part of whose lands are taken may obtain compensation because the public works proposed will increase the population and thereby lead to an increase of rates. No distinction can, I think, be drawn between education rates and other rates, such as the poor rate, which will in accordance with experience be eventually augmented by an increase of population. I do not think that it was the intention of the Legislature to introduce for the first time such a novel ground of compensation in the present statute. In view, however, of the literal words of the statute, to give effect to this argument would involve a breadth and boldness of construction for which some tribunal more authoritative than a single arbiter with the opinion of a single judge would be appropriate. I prefer to rest my own opinion upon the first ground.

I must now, however, notice the opinion returned by Lord Dundas in a similar case (*Gordon Cathcart v. Board of Agriculture*, 1914, 2 S.L.T. 379—the report of 1915 S.C. 166, 52 S.L.R. 108, where a reclaiming note in this case is held to be incompetent, does not contain his Lordship's note), in which he came to an opposite result to the one which I have reached. That case differs from the present only in so far as it is stated that Lady Gordon Cathcart was "practically" the only heritor in the parish. But although that gives a colour to the case which is here absent, it does not affect the grounds of my opinion. No reasons are attached to the opinion of Lord Dundas, which, as his Lordship explains, required to be pronounced at once in view of the imminent expiry of the arbitration. Otherwise he states he would have returned a considered opinion. This case occasions me much difficulty, both on account of my respect for his Lordship's opinion and my sense of the inconvenience of conflicting judicial pronouncements in a matter in which there is no appeal. The opinion is not binding upon me, but if I had been in doubt I should have followed it even though I had felt that without this precedent I would have come to a different conclusion. But as I have formed a clear opinion upon the matter I feel bound to give expression to it.

I answer the question stated by the arbiter in the negative.

His Lordship answered the question in the negative.

Counsel for the Board of Agriculture—Constable, K.C.—W. T. Watson. Agent—Sir Henry Cook, W.S.

Counsel for Sir Arthur Campbell Orde—J. A. Christie. Agents—E. A. & F. Hunter & Company, W.S.

Wednesday, October 16.

FIRST DIVISION.

[Lord Dewar, Ordinary.]

DAVIS & PRIMROSE, LIMITED v.
THE CLYDE SHIPBUILDING AND
ENGINEERING COMPANY, LIMITED,
AND OTHERS.

Contract—War—Sale—Goods to be Manufactured—Suspension or Dissolution of Contract through Buyers Becoming Alien Enemies.

Contract—Sale—Price Payable by Instalments—Contract Becoming Illegal before Completion of Goods—Arrestment of Instalments of Price Paid to Manufacturers.

A contract between a British firm and an Austrian firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to causes beyond the control of the sellers. The price was payable by instalments, of which £4620 was paid to account of the whole when war broke out and it became illegal to implement the contract. None of the goods had at that time been delivered. Thereafter the goods were completed and sold in Great Britain at an enhanced price. Third parties having obtained a decree against the purchasers of the goods arrested money in the hands of the sellers of the goods. Following *Ferguson v. Brown & Tarwe*, 1918, 55 S.L.R. 437, the First Division of consent *sisted* the cause upon the arrestees finding caution.

Held, per Lord Dewar, Ordinary, (1) that the contract was dissolved, not merely suspended, by the outbreak of war; (2) that the sum paid to account of the price of the goods belonged to the buyers and was validly arrested in the hands of the sellers.

Davis & Primrose, Limited, Etna Iron Works, Leith, *pursuers*, brought an action of furthcoming against the Clyde Shipbuilding and Engineering Company, Limited, Port Glasgow, *arrestees*, and Stablimento Tecnico Triestino, Linz and Trieste, Austria, *principal debtors*, concluding for decree for payment by the arrestees of the sum of £300 or such other sum or sums as might be owing by them to the principal debtors and arrested in their hands upon 4th August 1916, and also upon 15th November 1916, at the instance of the pursuers, at least of such part thereof as should satisfy and pay the pursuers the principal sum of £266, 10s., with interest thereof from 7th August 1916 until payment, and £8, 17s. 6d., with 18s. as the dues of extract, all contained in a decree against the principal debtors dated 27th October 1916.

The *contract* between the arrestees and the principal debtors, dated 4th May 1914, which was for the supply by the former to the latter of two sets of triple expansion