

Joint Stock Companies before the issue of such shares, and decern."

Counsel for the Petitioners—Wark, K.C.
—Macdonald. Agents—J. & J. Galletly,
S.S.C.

Tuesday, January 22.

SECOND DIVISION.

[Sheriff Court at Paisley.]

M'HARG v. SPEIRS.

Landlord and Tenant—Outgoing—Compensation for Disturbance—Amount—Arbitration—Damage Proved Less than One Year's Rent—Whether Tenant Entitled to One Year's Rent in Substitution for Damage Proved—“Avoidance of Disputes”—Agriculture Act 1920 (10 and 11 Geo. V, cap. 76), sec. 10 (1) and (6).

The Agriculture Act 1920 enacts—Section 10 (1)—“Where the tenancy of a holding terminates after the commencement of this Act by reason of a notice to quit given after the twentieth day of May Nineteen hundred and twenty, by the landlord, and in consequence of such notice the tenant quits the holding, then . . . compensation for the disturbance shall be payable by the landlord to the tenant in accordance with the provisions of this section. . . . (6) The compensation payable under this section shall be a sum representing such loss or expense directly attributable to the quitting of the holding as the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce, or farm stock on or used in connection with the holding, and shall include any expenses reasonably incurred by him in the preparation of his claim for compensation (not being costs of an arbitration to determine the amount of the compensation), but for the avoidance of disputes such sum shall for the purposes of this Act be computed at an amount equal to one year's rent of the holding, unless it is proved that the loss and expenses so incurred exceed an amount equal to one year's rent of the holding, in which case the sum recoverable shall be such as represents the whole loss and expenses so incurred up to a maximum amount equal to two years' rent of the holding.”

A tenant who had claimed from his landlord under section 10 (1) and (6) of the Agriculture Act 1920 compensation for disturbance to an extent greater than one year's rent, entered into an arbitration with him, in the course of which the arbiter held that damage had been proved to the extent of less than one year's rent. In a special case stated by the arbiter the Court affirmed the finding of the Sheriff. Substitute that the tenant was entitled to an award of one year's rent in substitution for the smaller amount of damage which the

arbiter had held to be proved, *holding* that the tenant was not debarred by reason of his having elected to go to proof from obtaining one year's rent as compensation.

John M'Harg, Nethermagask, St Andrews, Fife, and Archibald Speirs, house factor, Glasgow, entered into an arbitration under the Agricultural Holdings (Scotland) Acts 1908 to 1921, in the course of which the arbiter stated a Special Case for the opinion of the Sheriff on certain questions of law.

The Case stated, *inter alia*—“This is an arbitration under the Agricultural Holdings (Scotland) Acts 1908 to 1921 between the said John M'Harg, formerly tenant of the holding of Plymuir in the parish of Neilston, Renfrewshire, and the said Archibald Speirs, formerly proprietor of the said holding, in respect of claims by each of the parties against the other on the determination of the tenancy of the said John M'Harg at the term of Whitsunday 1921 as to the arable land and the term of Whitsunday 1922 as to the houses, yards, and pasture land. The arbiter was appointed by minute of reference between the parties, dated 26th and 28th October 1922, and immediately entered on the reference. . . . The tenant is claiming in this arbitration, *inter alia*, compensation for disturbance under section 10 (1) of the Agriculture Act 1920. . . . The proprietor counterclaims for compensation in respect of dilapidation of buildings and the cost of putting ditches and sheep drains in a tenatable state of repair, and the cost of repairing fences and putting them in a tenatable state of repair as required by the lease. . . . The claim for the tenant commences with an item representing two years' rent of the farm for compensation for disturbance. The tenant claims, further, the estimated cost of the removal from the farm to the new holding leased by the tenant. At the hearing before the arbiter the agent for the landlord contended that the claim by the tenant was irrelevant, and he founded on section 10 (6) of the Agriculture Act 1920, which is as follows:— . . . [quoted in rubric] . . . The landlord contended that on a sound construction of the said sub-section it is open to the tenant under this head without proof to claim one year's rent, but should he elect to prove his damage he may recover only the loss proved to have been sustained by him, but not exceeding an amount equal to two years' rent. The tenant contended that he was entitled to claim a maximum amount of two years' rent of the holding together with the loss which he could actually prove. He further contended that, however the proof resulted, the tenant under the section is bound to be awarded a minimum of one year's rent. The arbiter is prepared to uphold the contention of the landlord, and on the facts is satisfied that the amount of damage proved here amounts to £45, 12s. 10d. The arbiter further rejects the contention of the tenant, and proposes to hold that having set out to prove his damage he must abide by the result, and is not entitled under the Act to claim as an award a minimum of one year's rent.”

The first question of law was—"On a just construction of section 10 (1) of the Agriculture Act 1920, is the tenant, having elected to proceed to arbitration on his claim for damages for compensation, entitled to receive an award of one year's rent in addition to or in substitution for the damages the arbiter holds to have been proved?"

On 22nd November 1923 the Sheriff-Substitute (HAMILTON) pronounced an interlocutor in which he found, *inter alia*, in answer to the first question—" (1) That on a sound construction of the Agriculture Act 1920, sec. 10 (1), the tenant is entitled to an award of one year's rent in substitution for the amount of damages which the arbiter has held to be proved. . . ."

Note.—" (1) The landlord's contention on the first question was that the provision of section 10 (1) of the Agriculture Act 1920 that 'for the avoidance of dispute' compensation shall 'be computed at an amount equal to one year's rent of the holding' is applicable only when the tenant avoids a dispute by limiting his claim to that amount, but that if more is claimed less may be awarded. It appears that there is no authority on the construction of this section. My opinion of its meaning is contrary to the above contention, which seems to require me to construe the section as if it had run—'unless it is claimed that,' &c. I think that the section provides unconditionally that compensation shall be computed at the amount of a year's rent except when a greater loss is proved. When a greater loss is proved, that is the amount of the compensation up to the limit of two years' rent. When as here a greater loss is not proved, the year's rent is the amount of the compensation." . . .

Archibald Speirs appealed to the Second Division of the Court of Session, and argued—The Legislature had provided the alternative of liquidate compensation "for the avoidance of disputes," and a tenant's right to claim such liquidate compensation was conditional on his avoiding disputes. In the present case the tenant had failed to avoid a dispute and had elected to go to arbitration on the question of the amount of compensation to which he was entitled. By so doing he had forfeited the right to claim liquidate compensation, and was only entitled to compensation equal in amount to the damage which he had actually proved. The detailed directions given to the arbiter in sub-sec. (6) as to the items of damage with regard to which he might award compensation, indicated that the Legislature contemplated that there might be circumstances in which the arbiter could make awards of less amount than one year's rent.

Argued for the respondent—The tenant did not now insist in his contention that he was entitled to a maximum amount of two years' rent, together with the loss which he could actually prove, but he did insist in his claim for one year's rent. The words "for the avoidance of disputes" were merely of the nature of a preamble, and the tenant's right to one year's rent as compensation

was not conditional on his avoiding a dispute. The right was indefeasible whatever might be the amount of the damage actually proved. The tenant did not forfeit the right by going to arbitration. The right was one which could not be contracted out of. *A fortiori* the right could not be lost by mere mistake, and the act of the tenant in going to arbitration amounted to no more than the making of a mistake.

LORD JUSTICE-CLERK (ALNESS)—The questions in this case arise out of an arbitration between the outgoing tenant of a holding in Renfrewshire and his landlord. The rent of the holding—so we were told—is £90. Such arbitrations as this are regulated by section 10 (1) of the Agriculture Act of 1920. The landlord and his tenant made certain claims *hinc inde* against one another in the course of that arbitration. The amount of the tenant's claim—so we were informed—was £404. The arbiter has awarded to the tenant in respect of his claim the sum of £45, 12s. 10d., and he has further held that the landlord is not barred from insisting in his claim against his tenant in respect of fences and other matters by reason of his (the landlord's) failure to drain three out of the twenty-five acres which he had undertaken to do. And the arbiter has awarded the landlord the sum of £40.

Two questions are put by the arbiter. The first is whether the tenant is entitled to receive an award of a year's rent in addition to or in substitution for the damages which the arbiter holds to have been proved? And the second, whether on the facts stated the landlord is barred from any claim for compensation? The learned Sheriff-Substitute before whom the case was heard finds, in answer to the first question, that on a sound construction of the Act the tenant is entitled to an award of one year's rent in substitution for the damages which the arbiter has held to be proved. He has further held that the landlord is not disentitled from receiving the compensation awarded him by the arbiter. We have to consider whether the findings of the learned Sheriff-Substitute are sound or not. The answer to that question must depend—and depend solely—upon the construction put by the Court upon section 10 (1) of the Agriculture Act 1920 which has been read to your Lordships and referred to more than once in the course of the debate.

The landlord on his construction of that section contends that if the tenant elects to go to proof he can recover only the loss proved to have been sustained by him up to the limit of two years' rent, and that he may be awarded less than one year's rent or may even I suppose get nothing. That contention involves that if the tenant sets out to prove that he has sustained loss which exceeds a year's rent and fails to establish his case he may not even get a year's rent. In other words he is penalised by the Legislature for going to proof. When he signs the minute of reference the statutory right which, *ex hypothesi* of the argument, is conferred upon him flies off, and the whole

thing is thrown loose by his election to go to proof. In short, it is suggested that Parliament must have been so keen to discourage controversy between an outgoing tenant and his landlord that any tenant who indulges in that controversy must be held to have forfeited the right which he otherwise would have enjoyed—in other words, that Parliament smiled upon a statutory gamble. That is the contention, as I understood it, for the landlord. The tenant's contention on the other hand is, in the first place, that he is entitled to claim a maximum amount of two years' rent of the holding together with the loss which he could actually prove. That contention, however, was given up at the bar by counsel who represented the tenant.

In my judgment neither of these contentions is sound. The meaning of the section in my opinion is this—it provides that the outgoing tenant is entitled to a sum which represents the loss and damage directly attributable to his quitting the holding, provided that that loss is unavoidably incurred in connection with the sale and removal. That is the governing provision of the section. Then the clause goes on to deal with the assessment of that loss for which the Legislature has conferred compensation upon the tenant. To avoid disputes that "sum . . . shall be computed"—so the statute enjoins—"at an amount equal to one year's rent of the holding." But if it is proved that the loss and expense are greater than one year's rent of the holding, then the tenant can get any sum which represents his whole loss and expenses up to the maximum of two years' rent of his holding. Such is the construction which I suggest to your Lordships should be attached to this section. It differs not only from the landlord's construction but also from that of the tenant, and involves that in any claim of this kind one year's rent is the minimum to which any tenant is entitled, and two years' rent is the maximum to which any landlord is liable.

In these circumstances I suggest to your Lordships that the answer to the first question should be in accordance with the Sheriff-Substitute's finding. [*His Lordship then discussed the second question.*]

LORD ANDERSON—In this case I agree entirely with the Sheriff-Substitute. The first question of law raises for consideration the meaning of the 6th sub-section of section 10 of the Agriculture Act of 1920—a sub-section which is repeated in section 12 (6) of the 1923 Act. It is to be noted that in the 1920 Act section 10 is rubricked "Compensation for Disturbance," and that in the Act of 1923 the same heading is put at the beginning of a fasciculus of clauses 12 to 14 of the Act. Now it appears to me that the object of these statutory provisions was just this, to endeavour to secure fixity of tenure. And the circumstances in which these provisions become operative are these—that there is a landlord who is terminating the tenancy, and that there is a tenant who is willing to continue the tenancy. In those circumstances the Act of Parliament pro-

vides that the tenant whose tenure has been disturbed by the landlord's action is entitled to compensation for that disturbance, and in the absence of agreement the compensation falls to be determined by arbitration according to the provisions of the Agricultural Holdings (Scotland) Act of 1908, with an appeal to the Sheriff on questions of law under section 11, and if so advised, an appeal from him to this Court.

Two views were suggested in the course of the debate as to the meaning of section 10 of the Act of 1920. One view advanced by the tenant's counsel was to this effect, that section 10 enacts what I might call a statutory liquidation or computation of damages where not more than a year's rent has been claimed by the tenant, or damages to the extent of more than a year's rent has not been proved on the tenant's claim; and it was maintained for the tenant that this right was indefeasible, and that it could not be contracted out of or lost by the tenant whatever claim he might make to compensation.

The other view, viz., that advanced by the landlord's counsel, was that the right which is in certain circumstances conferred upon the tenant to have compensation to the extent of a year's rent awarded to him is lost if a claim has been unsuccessfully made for damages in excess of a year's rent. That is the case here. As I understand the argument advanced by the landlord's counsel, two reasons were suggested in favour of this construction. One was that if the other construction was the true one, you would not expect to find in the sub-section anxious provisions as to the items of damage with regard to which the arbiter might award compensation, such as loss in connection with removal of household goods, implements of husbandry, fixtures, farm produce, and so on; and it was argued that this part of the section would surely not have been there if the intention of the Legislature was that in all circumstances the tenant was to get not less than a year's rent by way of compensation. But I think the answer to that contention is to this effect, that all that specification of items with reference to which damages might be assessed is necessary if a claim in excess of a year's rent is made, and that it is in reference to that possible claim that instructions are inserted for the guidance of the arbiter as to the items of damage which he has to take into account in estimating his award.

The second reason suggested by the landlord's counsel for the construction advocated by them—and it was their main argument—was that the section contained these words "for the avoidance of disputes." The argument was that if the tenant chose to have a dispute when he could have avoided it, he was limited at the end of the day to the actual loss which the arbiter determined had been proved. I am unable to agree with this suggestion, and it seems to me that these words have just been inserted in the sub-section by the Legislature by way of assigning a reason for the computation or liquidation of damages to the extent of a year's rent.

Accordingly I agree with the contention advanced by the tenant's counsel on this part of the case, and I think that this compensation is due indefeasibly except in one case only, and that is where damages in excess of a year's rent are found to have been proved. In that case the tenant is not limited to a year's rent but gets the damages proved.

I therefore think that the first question of law should be answered as your Lordship suggested. [*His Lordship then discussed the second question.*]

LORD MORISON—I also agree. As regards the first question in the Stated Case, the whole argument for the appellant seemed to me to turn upon the construction of the words "for the avoidance of disputes" contained in section 10 (6) of the statute. I think the argument submitted proceeded upon a misconception of the effect of these words. In my opinion they afford no justification for the view that in cases where the tenant proceeds to arbitration his compensation shall be limited in amount to that which he can prove. It appears to me that these words are only explanatory of the reason for introducing a fixed scale of compensation. The right to compensation conferred upon a disturbed tenant is an absolute right. Its amount is computed at a sum equivalent to a year's rent, plus the amount of any additional loss or expense which he can prove, but in no event shall the amount of compensation for disturbance exceed the amount of two years' rent. [*His Lordship then discussed the second question.*]

LORD ORMIDALE and **LORD HUNTER** were absent.

The Court affirmed the Sheriff-Substitute's finding in answer to the first question of law.

Counsel for the Appellant—Aitchison, K.C.—Scott. Agents—Scott & Glover, W.S.

Counsel for the Respondent—Morton, K.C.—Taylor. Agents—W. G. Leechman & Company, Solicitors.

Friday, November 30, 1923.

FIRST DIVISION.

LIQUIDATOR OF CLYDE MARINE INSURANCE COMPANY v. HERBERT RENWICK & COMPANY, AND LA SOCIÉTÉ ANONYME DE PERIANDROS.

Contract—Marine Insurance—Validity—Slip—Closing Slip—Liquidation—Whether Liquidator Bound to Issue Policy in respect of Slip—Stamp Act 1891 (54 and 55 Vict. cap. 39), secs. 91, 93 (1) and (3)—Marine Insurance Act 1906 (6 Edw. VII, cap. 41), secs. 21, 22, and 23.

Company—Voluntary Liquidation—Duties of Liquidator—Marine Insurance—Obligations Binding in Honour—Risk Accep-

ted by Slip before Liquidation—Jurisdiction of Court to Direct Liquidator to Implement.

A marine insurance company which had gone into voluntary liquidation had, before the date of the liquidation, initialled a slip presented to it by an insurance broker containing particulars of a required insurance, thereby showing that the company's underwriter elected to take the risk. After the commencement of the liquidation the broker presented the "closing slip" containing the particulars of the interest to be covered, the effect of its presentation being that the company was bound in honour but not in law to issue a policy in accordance therewith. A question having arisen as to whether the liquidator, who was not carrying on the business of the company to any extent, was bound to issue a policy in accordance with the closing slip, an application was presented to the Court for its determination. At the date of the application it was not known whether there had been any loss in respect of the risk to which the slip applied. *Held* (1) that the company was not under any legal obligation in respect of the slip to issue a policy; (2) that as the liquidator was not carrying on the business of the company he was not entitled to issue a policy and claim payment of the premium even although he considered it in the interest of the creditors and shareholders to do so; and (3) that the Court had no jurisdiction to authorise the liquidator to implement an obligation which was not legally enforceable on the company at the date of liquidation although binding in honour upon it.

Opinion per Lord Sands that where the risk in the slip had run off before liquidation, and the liquidator was satisfied that it would be for the benefit of the company in liquidation to issue the policy and collect the premium, he was entitled to issue it and claim payment of the premium.

Insurance—Marine Insurance—Company—Voluntary Liquidation—Powers and Duties of Liquidator—Risks Accepted by Slip Prior to Liquidation—Policies Executed and Issued by Liquidator Subsequent thereto.

The liquidator of a marine insurance company which had gone into voluntary liquidation, assuming that in accordance with maritime practice and the procedure at Lloyd's he ought to sign and issue policies to all persons holding slips initialled by way of acceptance at the commencement of the liquidation, prepared and executed certain policies, some of which he issued to insurance brokers, debiting them with the premium, and the remainder of which he retained in his own possession, no premium being debited or paid thereon. The liquidator was not carrying on the business of the company. *Held* (1) that it was *ultra vires* of the liquidator to