

Wednesday, February 29.

SECOND DIVISION.

[Sheriff of Argyllshire.

M'NAB V. CAMPBELL AND ANOTHER.

Lease—Landlord and Tenant—Crofter—Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. c. 29), secs. 1, 19, and 34—Removing.

The Crofters Holdings (Scotland) Act, 1886, provides by section 1 that a crofter shall not be removed from his holding except for a breach of certain specified conditions. Section 19 provides that the Crofters Commission after due inquiry shall ascertain what parishes within certain counties are crofting parishes, and shall determine that the Act shall apply to such; after the determination has been confirmed by the Secretary for Scotland it is provided that the Act shall apply to the parishes included in the determination; "within the parishes to which the Act is determined to apply as aforesaid the Act shall apply to every crofter who is the tenant of a holding at the passing of this Act, and to his heirs and legatees, in the same manner as if the tenancy were a lease." By section 34 it is provided that—"Crofter" means any person who at the passing of this Act is tenant of a holding from year to year, who resides on his holding, the annual rent of which does not exceed £30 in money, and which is situated in a crofting parish, and the successors of such person in the holding, being his heirs or legatees."

A person who at the date of the passing of the Act was a crofter within the meaning of the Act, died before the Commissioners' determination, finding that the parish in which his holding was situated, was a crofting parish, had been confirmed by the Secretary for Scotland in terms of the first part of section 19. In an action by the landlord to remove his heir, who was "in possession and occupation" of the holding—held that the defender was a "crofter" in the sense of the latter part of section 19, and of section 34, and could only be removed for a breach of one of the conditions enumerated in section 1, which the landlord did not allege.

The Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29), which was passed on 25th June 1886, provides by section 1 that "A crofter shall not be removed from the holding of which he is tenant except in consequence of the breach of one or more of the conditions following (in this Act referred to as statutory conditions)." The section then proceeds to specify eight conditions which it is unnecessary for the purposes of this case to enumerate. Section 19 enacts—"The Crofters Commission after due inquiry shall ascertain what parishes or islands or districts forming aggregates of parishes within the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland, are crofting parishes, or aggregates of crofting parishes, and shall determine that this Act shall apply to such parishes. Such determination shall be

reported to the Secretary for Scotland in one or more reports, and may be confirmed by him with or without modification. From and after the date of such confirmation this Act shall apply to the parishes included in the determination. . . . Within the parishes to which this Act is determined to apply as aforesaid, this Act shall apply to every crofter who is the tenant of a holding at the passing of this Act, and to his heirs and legatees, in the same manner as if the tenancy were a lease."

Section 34—"In this Act 'crofter' means any person who at the passing of this Act is tenant of a holding from year to year, who resides on his holding, the annual rent of which does not exceed £30 in money, and which is situated in a crofting parish, and the successors of such person in the holding, being his heirs or legatees. 'Crofting parish' means a parish in which there are at the commencement of this Act or have been within eighty years prior thereto, holdings consisting of arable land held with a right of pasturage in common with others, and in which there still are tenants of holdings from year to year, who reside on their holdings, the annual rent of which respectively does not exceed £30 in money at the commencement of this Act."

Hugh Campbell, who was tenant and occupant of a house and croft at Penmore, in the united parish of Kilninian and Kilmore, Mull, for the year from Whitsunday 1886 to Whitsunday 1887, died on the 14th of September 1886. This action was raised in November 1886 by his landlord to remove his deceased brother's widow and her eldest son Colin Campbell, who was the nearest and lawful heir of his deceased uncle, from the house and croft which they had possessed since his death. The ground of removing was that their right, if any, to occupy the house and croft either in their own right, or as representatives of the deceased, expired at Whitsunday 1887. Decree in absence was pronounced on 1st December 1886. On 6th May 1887 the defenders were reopened. The parties lodged reclaiming petitions, in which were contained their respective contentions.

The pursuer's contention was that at the death of the defenders' ancestor Hugh Campbell on 14th September 1886, the parish of Kilninian and Kilmore had not been declared a crofting parish under the Act. Intimation that it had, dated 22nd October 1886, did not reach the Sheriff-Clerk at Tobermory till 24th October 1886. That Hugh Campbell having died before the determination of the Commissioners, confirmed by the Scottish Secretary, that the parish in which the croft in question was situated was a crofting parish, the right of any of the defenders to succeed was not open to him at his ancestor's death under the clause of the Act relied on; and that the tenancy was a yearly tenancy, and the right to occupy expired at Whitsunday 1887, at which date the right of the heir also expired, the heir having no higher or better right than his ancestor.

The defenders maintained that the Crofters Holdings Act of 1886 was passed, and became law on 25th June 1886, and at that date the deceased Hugh Campbell was tenant of his holding. The parishes of Kilninian and Kilmore (within which area lay his holding) were determined by the Commissioners to be crofting parishes.

Hugh Campbell having been tenant of the holding in question at the passing of the Crofters Act, therefore the defender Colin Campbell was entitled to succeed him as tenant and in the occupancy of the holding as in a lease in terms of the Crofters Holdings (Scotland) Act, sections 1, 19, and 34, though the determination of the Crofters Commission was not confirmed by the Secretary for Scotland till the 18th of October 1886. He could not be removed except for one or more of the causes enumerated in sec. 1, which did not include the one stated as the ground of the present action of removing.

The Sheriff-Substitute (MACLACHLAN) on 19th May 1887 pronounced this interlocutor—"Finds that the defender Colin Campbell is heir to the deceased Hugh Campbell, who died in the month of September last, and as such is entitled to succeed to him in the dwelling-house and croft on the pursuer's estate of Penmore, of which the said Hugh Campbell was tenant: Finds that the said Colin Campbell cannot be removed on the grounds stated in the petition, therefore dismisses the action," &c.

On appeal the Sheriff (FORBES IRVINE) on 13th July 1887 recalled this interlocutor, and decreed in terms of the conclusions of the summons.

The defenders appealed, and argued—Three months before Hugh Campbell's death the Crofters Holdings Act of 1886 passed into law, and became applicable to the parish in which his croft was. He was therefore at the passing of the Act a crofter in the sense of section 34 of the Act, being a tenant of a holding from year to year at a rent of £30 in a crofting parish. Section 19 made the Act apply to him and his heirs in the same manner as if the tenancy were a lease. It was admitted that the present defender Colin Campbell was his heir. Colin was therefore tenant of a croft, and could not be removed except for one of the eight causes enumerated in section 1. The cause of removal here was not one of these. It was absurd to argue that the application of the Act was conditional on the confirmation of the Commissioners' determination by the Secretary of State. All that the Commissioners did was to determine whether the parish fulfilled the conditions of the Act or not. Their ultimate decision, as well as the confirmation of the Secretary of State, drew back to the date of the passing of the Act. Indeed the language of the 34th section showed that this was the true interpretation, for it defined "crofting parish" as a parish in which there were holdings of arable land, held with a right of pasturage in common with others from year to year at an annual rent of £30 at the commencement of this Act. [LORD RUTHERFURD CLARK—I think that possibly the clause as to the confirmation may be an executorial one merely.]

The pursuer replied—It was clear that under section 19 the Act was only to apply to the parishes included in the determination of the Commissioners from and after the date of confirmation by the Secretary of State. It was admitted that this confirmation was not obtained till a month after Hugh Campbell's death. He therefore had no right whatever under the Act, and so could transmit none to Colin Campbell. The confirmation could not operate *retro*. Colin's tenancy, then, was the same as Hugh's. It was

a yearly one, and expired at Whitsunday 1887.

At advising—

The opinion of the Court was delivered by

LORD CRAIGHILL—This is an action of removing at the instance of the proprietor of Penmore, in the Island of Mull, and it is directed against Mrs Campbell and her son Colin Campbell, who claim to be crofters on the estate of Penmore. The facts are not in controversy, and appear to be these—[*His Lordship here stated the facts*].

Now, Colin Campbell was the heir-at-law of his deceased uncle, and had things remained as it was expected for some time before the death of Campbell that they would, there is no doubt that Mrs Campbell and her son, who came in place of the uncle, would have been removed at the expiry of the term, which according to the contract was the period of endurance of the lease; but before Martinmas 1886, when the summons of removing was served, the Crofters Act of 1886 was passed. Now the question is whether that Act alters the rights of the parties to this contract, and if so, what is the change thereby effected? There can be no doubt that but for the Act the landlord is entitled to remove his tenants after proper warning at the expiry of the lease. But the defenders contend that the Act makes a change in the rights of crofters in occupation of their holdings, and that Colin Campbell being the heir-at-law of his uncle when the Crofters Act became operative, the parish in which his holding was situated having been declared a crofting parish, he could not be removed. The Sheriff-Substitute held the view that the Act applied to the case. His opinion was that the late Hugh Campbell having been alive when the Act passed, and Colin having been his heir-at-law and in occupation when the Act became operative, in consequence of the parish of Kilninian having been declared a crofting parish, he could not be removed, because the cause of removal was not within the exceptions contained in sec. 1 of the Act. The Sheriff took the opposite view. His opinion was that Hugh Campbell had died before the Act was fulfilled in regard to one of its terms, having died before the determination of the Commissioners declaring Kilninian a crofting parish had been confirmed by the Secretary of State. The result in his view was that his heir who succeeded him was not entitled to the benefit of the Act, because he was not in occupation when the Act was passed into law. In fact the Sheriff-Substitute thought that it was enough if Hugh Campbell was alive when the Act passed, while the Sheriff thought that he must survive till his holding had actually become part of a crofter parish.

Now, this resolves itself into a question of the interpretation of the Act of Parliament. I think this is one of the cases in which a liberal interpretation ought to be given, and all the more is it necessary that such an interpretation should be given to prevent any misunderstanding as to what was obviously intended, and to prevent especially any defeat of what may be assumed to be the spirit and intendment of the Act.

Now, the first clause enacts that a crofter shall not be removed from the holding of which he is tenant except in consequence of the breach of one or more of certain conditions which the clause proceeds to specify. The first question therefore

is, was Hugh Campbell, who was in occupation at Whitsunday 1886, in June, when the Act passed, but who died before the confirmation of the Commissioners' determination by the Secretary of State, a crofter in the sense of the Act of Parliament? All the essentials as regards occupation were fulfilled, but we must refer for light upon the question to the definition of the word "crofter" in sec. 34, which says—"In this Act 'crofter' means any person who at the passing of the Act is tenant of a holding from year to year, who resides on his holding, the annual rent of which does not exceed thirty pounds in money, and which is situated in a crofting parish, and the successors of such person in the holding, being his heirs or legatees."

It is quite plain that the first part of that definition applied to Hugh Campbell. He was a crofter at the time, he was a tenant of his holding from year to year, he resided on his holding, the annual rent of which did not exceed £30, and the holding is now situated in what has been designated the crofting area, and neither he nor his successors can be removed therefrom. It does not appear that there is anything wanting in the case of Campbell to comply with this definition in the Act. It does not say that a crofter at the beginning of the Act will not be enough. Nothing of the kind. The expression used is a very remarkable one—"Any person who at the passing of this Act is tenant of a holding from year to year." It is not "was" but "is." There may be a little difficulty as regards the time at which the parish becomes a crofting parish, but anything wanting in that respect is made up for by the direction that "crofter" shall include the heirs and successors of the man in possession at the passing of the Act. Thus Hugh Campbell remained in his croft until his death in September, and when he died the other part of the definition comes in—"successors of such person in the holding, being his heirs or legatees." There was thus all that was necessary in the way of occupation, and that was followed by the designation of the parish by the Commission, and the approval of that designation by the Secretary for Scotland.

The only other difficulty experienced by the Sheriff regarded the 19th section, which enacts that the Crofters Commission after due inquiry shall ascertain what parishes within certain counties are crofting parishes, and shall determine that this Act shall apply to them. Such determination is to be reported to the Secretary for Scotland in one or more reports and may be confirmed by him with or without modification, and from and after the date of such confirmation it shall apply to the parish included in the determination. The provisions of the Act, no doubt, can only be carried out after that, but because that is so, there is nothing in that which, according to my view of the matter, detracts from the character stamped upon "crofter" and "heirs or legatees" at the time of the passing of the Act. The subsection which follows is of some moment for it says—"Within the parishes to which the Act is determined to apply as aforesaid, this Act shall apply to every crofter who is the tenant of a holding at the passing of the Act, and to his heirs and legatees, in the same manner as if the tenancy were a lease." It is to apply to the man in

occupation at the passing of the Act, and if he is deceased at the time when the Commissioners designate the parish and the Secretary for Scotland approves, the other portion of the definition comes to receive effect, and indeed, if that were not so, the Act in many cases, as in this, would become of no avail. But in this case I do not think there is room for doubt. I do not see how you can get the better of that reading. I quite see how a plausible complexion may be given to a reading the other way, but I do not think the difficulty is a great one, and I therefore take the same view as the Sheriff-Substitute. I am obliged to dissent from the other view which was adopted by the Sheriff. It would seriously encroach on the provisions of the statute, and the rights intended to be conferred.

LORD YOUNG was absent from illness.

The Court sustained the appeal, recalled the interlocutor appealed against, and assolized the defender.

Counsel for the Appellants—M'Kechnie—Shaw. Agents—Curren, Cowper, & Curren, W.S.

Counsel for the Respondent—Lorimer. Agent—F. J. Martin, W.S.

Wednesday, February 29.

FIRST DIVISION.

[Sheriff-Substitute, Edinburgh.]

MENZIES v. WHYTE.

Reparation—Damage Caused to Tenant by Operations on Adjoining Premises—Duty of Tenant to Call on Landlord to Protect—Relevancy.

In an action of damages at the instance of the tenant of a shop against his landlord, in respect of operations by a third party upon the adjoining premises, which the tenant averred had compelled him to leave the shop, held that it was the duty of the tenant, before leaving, to have called on the landlord to protect him in the beneficial occupation of the subjects let, and, as there was no averment that he had done so, action dismissed as irrelevant.

This was an action of damages at the instance of Robert Menzies, fishmonger, against William Thomas Whyte, chartered accountant, Edinburgh. The defender had let to the pursuer the shop and premises No. 173 Morrison Street, Edinburgh, to be occupied by him as a fishmonger, at an annual rent of £15, for three years, with entry at Whitsunday 1887.

The pursuer's averments were these:—"The pursuer entered into possession on 1st July 1887. On the 4th of that month, being three days after pursuer's entry, operations were commenced to take down the old buildings immediately to the west of pursuer's said premises, and a new tenement is in course of erection on the site. In these operations there has been erected on the west side of pursuer's front shop a hoarding of about six feet high, which extends from the front wall of said shop and into