the Lands Clauses Act the company is entitled to demand particulars of the interest of those whose land is to be taken. That is all they are entitled to ask when their notice saying they were about to take certain lands is issued. If these particulars are not furnished within 21 days, then by the 19th section "the amount of compensation to be paid shall be settled in the manner hereinafter provided." This 19th section applies to all parties interested whether proprietors or tenants. The Forfar and Brechin Railway Company issued such a notice in terms of the Act, but then they added "if you claim compensation in respect of any unexpired term or interest under any lease, you will produce such lease at least within 21 days after this notice, and failing you do so, you will in terms of the 115th section be considered as a tenant holding only from year to year."

The question before us is, whether under the Lands Clauses Act they were entitled to give any such notice coupled with such a sanction. Section 115 contemplates that a claim has been made in terms of section 17. Can the railway company prejudice the right of the respondent here? The 115th section only applies if a claim has been made, and if a tenant claims to be more than a tenant from year to year. In that case the railway company is authorised to see the evidence of his claim. It is obvious that they are entitled to know his position, and if they are not satisfied as to his tenancy to ask for production of his lease, and upon failure to produce it, to regard him as a yearly tenant. But it is clear the railway company have no right to add the penalty upon failure to lodge the lease within 21 days of the first notice as they have sought to do. I agree with your Lordship in thinking the Lord Ordinary's interlocutor should be affirmed.

LORD M'LAREN—I concur, and only wish to add that where the number of persons with whom a railway company has to settle is large, it is natural that the two notices should be combined, at least to this extent, that the company should ask evidence of the right to claim along with the claim. People are generally willing to abridge forms. But the railway company here claim that by combining the two notices they have abridged the time the tenant has for lodging his evidence. That is clearly inadmissible, for the tenant must have the same right as if he had claimed and had then been asked to produce his lease. He may therefore now produce evidence of the lease upon which he bases his claim.

LORD KINNEAR was absent.

The Court adhered.

Counsel for Complainers and Reclaimers—Guthrie. Agents—Reid & Guild, W.S.

Counsel for Respondents—H. Johnston—Gillespie. Agents—Mackenzie & Kermack, W.S.

*Tuesday, May 17.*

## FIRST DIVISION.

[Lord Kyllachy, Ordinary.

## SINCLAIR *v.* BROWN.

*Agricultural Holdings (Scotland) Act* 1883 (46 *and* 47 *Vict. c.* 62), *sec.* 7, *and Heads* (16) *and* (17) *of Schedule—Compensation for Unexhausted Improvements—Notice of Claim—Particulars to be Stated therein "as far as reasonably may be"—Bar.*

A landlord in his pleadings in the Sheriff Court expressed his readiness to proceed to arbitration with regard to the first two of three heads of a claim made by a tenant for compensation for unexhausted improvements, but took exception to the last head on the ground of insufficiency of specification in the notice. The last head of the claim having been withdrawn, he afterwards brought an action of suspension and interdict in the Court of Session to prevent arbitration proceedings going on with regard to the first two heads of the claim, on the ground that the particulars furnished in the notice as to them were also insufficient.

*Held* that although the notice might probably have been regarded as insufficient the landlord was barred by his former pleadings from now challenging its insufficiency.

*Opinions expressed* that the particulars of a claim by a tenant for compensation for unexhausted improvements should be given in the notice with such detail as might reasonably be expected to enable the landlord to settle without resorting to arbitration, that being the course contemplated by the statute.

*Agricultural Holdings (Scotland) Act* 1889 (52 *and* 53 *Vict. c.* 20), *sec.* 2, *sub-sec.* (3)—*Appointment of Referee by Sheriff within Fourteen Days of Application—Competency of Appointment upon Second Application where First Refused.*

*Held* that a Sheriff who had refused to appoint a referee on the ground that more than fourteen days had been allowed to elapse since the application, was not barred from making such an appointment upon a new application duly proceeded with.

The Agricultural Holdings (Scotland) Act 1883 (46 and 47 Vict. c. 62) provides for a tenant obtaining from his landlord at the determination of his tenancy compensation for unexhausted improvements under certain conditions. Part 1 of the schedule appended to the Act sets forth ten improvements to which the consent of the landlord is required. Part 2 gives the improvement in respect of which notice to the landlord is required. Part 3 enumerates six improvements to which consent of the landlord is not required. Item (16) of the schedule is as follows—"Application to land of purchased, artificial, or other purchased

manure." Item (17) is—"Consumption on the holdings by cattle, sheep, or pigs of cake or other feeding-stuff not produced on the holding."

Section 7 provides that notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act. Where a tenant gives such a notice, the landlord may before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim for compensation under this Act. Every such notice and counter notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.

The Agricultural Holdings (Scotland) Act 1889 (52 and 53 Vict. c. 20), which is to be read as part of the Agricultural Holdings (Scotland) Act 1883, enacts, sec. 2, that "Where there is a reference under this Act, unless the parties otherwise agree as hereinafter provided, a single referee shall be appointed as follows:—(1) A single referee shall, if the parties concur, be appointed by them jointly, and in any other case by the Sheriff as hereinafter provided; (3) If at the determination of the tenancy, the parties shall not have appointed a referee, then on the application of either party, the Sheriff shall, within fourteen days, appoint a competent and impartial person to be referee."

Upon 13th January 1891 Robert Brown, farmer, Dunbeath, Caithness-shire, a tenant of Sir Robert Charles Sinclair of Murkle and Stevenson, Bart., Achvarasdal Lodge, Caithness-shire, sent the following claim to his landlord's factor—"Dear Sir,—I hereby give notice, in terms of Agricultural Holdings (Scotland) Act 1883, that I propose making the following claim; *First.* The sum of £237, 12s. 1d. for unexhausted value of manure, artificial, as applied to holding. *Secondly.* The sum of £217, 17s. 6d. for unexhausted value residue of cake, corn, and other feeding stuffs consumed on the holding by cattle, sheep, and pigs. *Thirdly.* For general improvements of the farm during the currency of the tenancy, the sum of £500."

Upon 27th July 1891 Brown presented a petition in the Sheriff Court at Wick to have a referee appointed by the Sheriff.

In his answers to this petition Sir Robert Sinclair averred—"So far as the third head of the pursuer's alleged notice of claim is concerned, viz., for general improvements of the farm, it is inept, and does not comply with the requirements of the statute, in respect that there is nothing in said alleged notice to show whether the claim is made under part 1, part 2, or part 3 of said schedule, what the alleged improvements consist of, or when they were executed. General improvements do not fall within the scope of the said Act, and there is no sufficient specification of the claim as required by said Act. The third item in said claim cannot therefore be submitted to a reference, and the first two items only of pursuer's claim should be submitted to a referee to be dealt with."

This petition was not moved in until 18th August, when the Sheriff (THOMS) dismissed the petition on the ground that no appointment could then be made within fourteen days of the application as required by the Agricultural Holdings Act 1889. About 14th September 1891 the third item of claims was withdrawn by Brown, who upon 31st October presented another petition to have a referee appointed.

Upon 10th November the Sheriff-Substitute (MACKENZIE) granted the prayer of this petition and appointed a referee.

"*Note.*—The position of this application is peculiar, and raises a somewhat difficult question.

"It is brought under section 2, sub-section 3, of the Agricultural Holdings (Scotland) Act 1889, for the purpose of having a referee appointed by the Sheriff. The objections to the application on the part of the respondent are twofold—first, that the application is incompetent, and secondly, that the notice of claim is not conform to the statute.

"The first objection is contained in the pleas of incompetency, *res judicata*, and *ultra vires*. These are founded on the circumstance that on 27th July last a similar application to the present was presented to the Court by the same petitioner. The petition was not served on the respondent till the 6th of August on an *induciæ* of four days, so that when answers were lodged, and the Sheriff came to consider the case, it was found that the fourteen days provided by the statute, within which the appointment had to be made, had expired, consequently the Sheriff dismissed the petition in respect that no appointment of a single referee can in the present proceedings be made within fourteen days of the presentation of the application. It is now contended that the petitioner has lost all right under the statute of applying to the Sheriff for an appointment.

"I cannot, however, adopt this view. The language of the statute is certainly peremptory with regard to the space of fourteen days, but in my view that is a direction in point of procedure and not a condition of the right to apply. It is necessary for any good appointment that it should be made by the Sheriff within fourteen days of the application to him, but I find nothing which precludes the possibility of such an application being abandoned and brought anew, or anything which would necessarily imply that a failure in procedure—it may be apart from the applicant's conduct—necessarily takes away the applicant's right, or that an abortive application should be held as precluding a new one in a proper form, and with proper fulfilment of the statutory requirements.

"The pleas of incompetency and *ultra vires* are thus disposed of. The plea of *res judicata* really does not apply, for the question disposed of by the Sheriff is that in 'the present proceedings'—that is, the

former proceedings—no application could be made. Although, therefore, the matter is not free from difficulty, and there seems no reason for allowing the petitioner his expenses in the process, I am of opinion that the application is competent.

"As regards the notice of claim, I have had difficulty also, as it is not so clear or so detailed as is proper in such cases. I have considered the case of *Sinclair* v. *Clyne's Trustee*, December 17, 1887, 15 R. 185, but taking the words of the 7th section of the statute, as far as reasonably may be, along with the general reference of the claim to the provisions of the Act, I think there is sufficient specification in the two heads of claim to preclude any real difficulty in dealing with it on the part of the referee."

Upon 19th November Sir Robert Sinclair presented a note of suspension and interdict to the Court of Session against Robert Brown, and the referee named, to prevent the reference being proceeded with.

Interim interdict was granted, and a record was made up in which the complainer averred that "the said alleged notice of claim is inept and does not comply with the requirements of the statute in many respects, and in particular in respect that there is in said notice no sufficient specification of the alleged claim to show whether the alleged improvements are of the nature contemplated by said Act, or whether they were executed within the period for which the said Act allows compensation."

He pleaded—"Suspension and interdict should be granted as craved, in respect—(1) The petition by the respondent Brown was incompetent. (2) It was illegal, incompetent, and *ultra vires* for the Sheriff-Substitute to appoint a referee. (3) The respondent's alleged notice of claim was incompetent — *et separatim*, was irrelevant."

The respondent Brown pleaded, *inter alia*—"(3) The note of suspension and interdict should be refused with expenses, in respect—(1) That the respondent's notice of claim is regular and sufficient so far as relates to the first two items thereof, which alone are now insisted in; (2) that the complainer has judicially admitted in the process on which he founds as excluding the process under suspension, that he is bound to acquiesce in the appointment of a referee to deal with the said two items; and (3) that the respondent's application to the Sheriff to appoint the referee, who is now sought to be interdicted from acting, was competent and legal, and in accordance with the terms of statutes."

Upon 26th March 1892 the Lord Ordinary (KYLLACHY) recalled the interim interdict, refused the prayer of the note, and found the respondent entitled to expenses.

"*Note*.—The Lord Ordinary has carefully considered the various objections to the procedure which were urged by the complainer at the debate, but he has come to the conclusion that none of these objections are well founded. The respondent's notice of claim might no doubt have been expressed with greater precision, but the Lord Ordinary sees no reason to apprehend that the arbiter will not strictly confine himself to claims competent under the statute; and indeed he does not consider that, fairly read, the claim, as made, embraces anything which is outwith the statute. It would of course have been better if in the second head of the claim the words 'not produced on the holding' had been inserted, but the reference to the statute seems to make it sufficiently plain that these words must be held implied.

"As to the question of the fourteen days, the Lord Ordinary can only say that he sees no reason for differing from the conclusion of the Sheriff-Substitute."

The complainer reclaimed, and argued—(1) The claim was irrelevant. The schedule only allowed compensation for purchased manure. There was no indication in the claim that the manure was purchased, or that the feeding-stuffs were "not produced on the holding"—*cf. Sinclair* v. *Oliver* (*Clyne's Trustee*), December 17, 1887, 15 R. 185, Lord Adam, p. 191. Even if not irrelevant, the claim did not comply with the statutory provision that the notice should state particulars of the claim "as far as reasonably may be." The Act contemplated the landlord and tenant coming to an amicable arrangement if possible without a reference. To make that possible the tenant ought to give details in the notice—there was no provision for details being furnished later—as to the kind of manure, the amount, the time when it was bought, and when it was applied to the land, and also similar details with regard to the feeding-stuffs. Such details the tenant could furnish without trouble to himself, and it was absolutely essential that the landlord should know them. (2) The appointment of a referee by the Sheriff-Substitute was bad. The statute expressly limited the time for application to fourteen days. It was the respondent's own fault that the first petition was not moved in timeously. A second petition without any change of circumstances was incompetent.

Argued for the respondent—(1) The notice was relevant and sufficient. The Act prescribed no form of notice. The notice, by its reference to the Act, and by giving the sum to be demanded, made it quite clear that the claim was to be made under and relevant to the Act of Parliament, and set forth the grounds upon which it was to be made. It also gave all the particulars that could be reasonably expected to be furnished four months before the determination of the tenancy. The objections fell under the category of "frivolous objections," which the Lord President (Inglis) in *Sinclair's* case said might be made to such claims. (2) The complainer was barred by his pleadings in the Sheriff Court, where he averred that the third item of claims, and that item alone, was insufficient, from objecting to the items now insisted in. (3) It was competent for the Sheriff upon a new application to appoint a referee. Dismissal of a petition as incompetent was no bar to subsequent competent procedure—

*Duke of Sutherland* v. *Reed*, December 18, 1890, 18 R. 252.

At advising—

LORD PRESIDENT — The reclaimer has maintained two objections to the proceedings in this case, and I shall first clear away the objection last argued, namely, the incompetency of the Sheriff making any appointment of a referee after the first application had proved abortive. When the Sheriff was asked to appoint a referee under the first application the time was already outside the fourteen days prescribed by statute, and the Sheriff could not have acted otherwise than he did, because under the statute he could only make an appointment within fourteen days. But it does not follow that it was incompetent to make a second application. In the one place, where the Act refers to the matter it is not so expressed as to limit the capacity or power of obtaining an appointment to a single application. It would be construing the statute with an unwarranted degree of strictness to read it as providing for an application being made once—and once only—and as excluding the possibility of any second application. On the contrary, I think the Sheriff-Substitute was right in acting as he did.

The other objection is a much more important one. The reclaimer argued that the notice in question was insufficient in its specification of the claim made. That objection applies now only to the first and second heads of the claim, for the third head has been abandoned, and was abandoned at a comparatively early stage in the proceedings. I am bound to say I think the objection formidable.

The Act of Parliament enacts that a tenant shall not be entitled to compensation unless he gives notice in writing to the landlord of his intended claim, and it requires that "every such notice . . . shall state, as far as reasonably may be the particulars and amount of the intended claim." The question here is, has the tenant stated the particulars as fully as he could reasonably be expected to do? Claims are necessarily founded upon the enacting parts of the statute including the schedule, but it would not do for the tenant to say, "I claim under the Agricultural Holdings Act," nor would it be sufficient to add, "and under the 16th and 17th heads of the schedule." All are agreed that something more than that is necessary by way of specification. Specification of the amount to be claimed is exacted by the seventh section. The tenant must say how much money he claims—or at least approximately how much—because it was agreed by both parties at the bar that he might have a claim for something done during the four months still to run after he had sent in the notice. He cannot predict what that may be, and therefore cannot specify exactly the amount to be claimed. At the same time, in that case, good sense and fairness require—and I think the statute requires—that there shall be some communication of the reason and source of the uncertainty in the amount. The amount, then, must be stated in the notice, and certain particulars. With reference to the "particulars" required to be stated we get a good deal of light as to the words, "as far as reasonably may be" from the schedule. Take the sixteenth head of the schedule—"Application to land of purchased, artificial, or other purchased manure. What would be reasonable in a notice from a tenant claiming under that head? In the first place, he must know what amount of manure he had applied and was claiming for, and what kind *it* was. It must be "artificial," and by so defining it he ascended from the general to the particular, but I further confess to thinking the time at which it was applied to the ground a very material element which it would be reasonable to state. The amount unexhausted depends upon the time at which it was used. It might also be only fair for the tenant to state the fields upon which it had been laid the year it was purchased, and possibly some particulars about the source of the supply. In these ways the tenant would furnish his landlord with reasonable information as to his claim.

But I pause here to consider another criterion of reasonableness furnished by the procedure contemplated by the statute. The particulars I have already considered are such as the tenant could furnish without any trouble to himself whatever. But if the Act was intended to do anything, it was to conduce to the fair and amicable settlement of the rights of outgoing tenants, and it provides with remarkable emphasis that it shall be in the power of parties to settle these claims by conference after the notices of claims and counter claims have been interchanged. It is only after failure to settle by conference that the matter is to go to arbitration. It looks as if the duty of the tenant is frankly to possess his landlord of such facts as will enable him by conference to say whether the claim is right or not, and if sufficient facts are not presented, then the landlord will be obliged to say, "Particulars having been withheld from me, I have no option but to resort to arbitration." To avoid this result, if possible, the statute requires a somewhat full communication of particulars. Parliament surely cannot be blamed for undue strictness, since all that is aimed at is a frank communication of particulars, the ascertainment of which is no trouble to the tenant, and the production of which will in all probability save litigation. In the endeavour to secure an amicable settlement, I think we have a key to the true working of these sections.

For example, I am struck with the want of any provision for the production of vouchers unless called for by the referee. That looks as if the Act contemplated that the notice would contain sufficient information to enable the parties to arrive at an amicable settlement. The parties are to sit down to consider the same documents, which, if they rise without coming to a settlement, will be laid before the referee, who may, however, in addition require exhibition of vouchers.

Turning, now, to the particular case. I find no statement of the year when the manure was applied, no specification of the kind of manure, and no indication as to what part of the holding it was applied to, The whole information furnished by the tenant is that he claims £237 for the unexhausted value of the manure applied. That information is in fact more meagre than if he had said—"I claim under head 16 of the schedule, and the amount is £237," because he does not even say in his claim that the manure was "artificial." I am bound to say that were it not for a peculiarity in this case I should have considerable difficulty in holding that sufficient notice was given. That remark applies equally to the claim based upon the 17th head of the schedule, because there also there is no specification of the year when the feeding stuffs were got. If therefore there were no other ground of judgment, I should have great difficulty in adhering to the judgment of the Lord Ordinary. But in this case there is a peculiarity which enables us to decide it without deciding the question, the *pros* and *cons* of which I have stated. I have said that this claim may be held not to have stated particulars as far as reasonably might be expected; but then the landlord has judicially asserted that he considered the notice sufficient, for he concentrated the fire of his defence upon the third item of the claim, and by way of enforcing the insufficiency of its specification he contrasted it with the first two items which are now the subject of his vehement attack. He all along expressed himself willing to concur in the appointment of a referee to deal with these first two items. Therefore, in the Court below he has said that this notice was sufficient to enable them to go, and to go quickly, to an arbiter. In these circumstances we are not bound to hold that that notice was insufficient which this gentleman expressed himself as satisfied with. I think, therefore, our judgment should be rested upon this fact, that whether the notice was good or bad, the landlord having treated it as good, cannot now have it set aside. But I have thought it right to consider the points the landlord is now barred from pleading, for I think it would be unfortunate if landlords and tenants were led to do otherwise than frankly to interchange information lying readily at their hands at the first stage of their negotiations, and thus avoid litigation and expense to both parties.

LORD ADAM—The true question here is, whether or not under reference to the provisions of the statute this notice does sufficiently state the particulars and the amount of the intended claim. The Act says the particulars are to be such as may reasonably be expected to be stated. That does not mean such as the tenant or as the landlord may consider reasonable, but such as the Court may think reasonable in the circumstances. I am very much disposed to come to the view indicated by your Lordship, and to hold that the particulars given are not reasonably sufficient. It was said that what the tenant has to do is, four months before the termination of his tenancy to give notice of his intention to make a claim; that that is the meaning of an "intended claim," because the claim is future, and emerges only at the end of the tenancy. But the Act requires him to give particulars of his "intended claim." That, I take it, means to give particulars of the claim which he intends to lay before the arbiter if he cannot arrange matters with his landlord. The Act contemplates that the landlord and tenant will amicably endeavour to arrange matters. The object of the statute is to avoid litigation. If they cannot agree, then the matter must go to a referee. What will go to the referee? The claim which the landlord and tenant have been endeavouring to settle. It is not a new claim which is to be put before the arbiter. Now, if that be so, the question is, are the particulars here sufficient? I find no particulars at all. It is not unreasonable but the most reasonable thing in the world to expect that a tenant, who has all the materials for giving information in his possession, who knows the date when he purchased manure and feeding-stuffs, and so on, should lay these particulars before his landlord and so enable him to settle. Is it not reasonable that that information should be furnished which he will ultimately have to furnish if the matter goes to an arbiter? There are no details here at all. I should therefore be for sustaining the complainer's contention that the notice was not sufficient. But it is difficult for us now to lay down that the notice was not sufficient when we have a statement almost under the hand of the landlord saying that he held it sufficient. If he had thought heads one and two insufficient, he had the same opportunity of objecting to them as he had for objecting as he did to the third head of the claim. But he did nothing of the sort. He tells us that in the Court below he was prepared to go to arbitration with the first two items, and only objected to the third. In these circumstances I cannot say that we must hold the notice insufficient.

As to the appointment by the Sheriff upon a second application I agree with your Lordship.

LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for Complainer and Reclaimer—C. S. Dickson—Cullen. Agents—J. & J. H. Balfour, W.S.

Counsel for Respondent — Jameson — M'Lennan. Agents—Philip, Laing, & Company, S.S.C.