Thursday, May 28.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

M'CAFFER *v.* ALLAN.

Sheriff—Process—Interlocutor—Findings in Fact—"For the Reasons in Note Assoilzies"—Finding in Fact in Note but not in Interlocutor.

Observed by Lord Young that an interlocutor in the Sheriff Court deciding an ordinary action after proof should contain in itself all the findings in fact on which the Sheriff's judgment is based. It is irregular for him to make findings in fact in his note which are not included in his interlocutor; and such findings are not properly imported into the interlocutor by the use of the expression "For the reasons in note."

This was an action brought in the Sheriff Court of Lanarkshire, at Glasgow, for repetition of the price of a horse, which was alleged to have been disconform to warranty in respect of unsoundness. The Sheriff-Substitute (SPENS) after a proof assoilzied the defender. The interlocutor after sundry findings in fact proceeded as follows:—"For the reasons in note, sustains the defences, and assoilzies the defender, and decerns." There was no finding in fact as to whether the horse was unsound or not when sold, but in his note the Sheriff-Substitute said:—"I am of opinion upon the veterinary evidence that unsoundness is not established," and "The pursuer has failed to satisfy me that the horse was unsound at the date of sale." The pursuer appealed to the Second Division of the Court of Session. The Court dismissed the appeal. On the merits the question was one purely of fact.

In giving judgment, LORD YOUNG, after delivering an opinion to the effect that the Sheriff-Substitute's judgment should be affirmed, said:—

"The interlocutor of the Sheriff-Substitute is not altogether satisfactory, and is another illustration of a practice which has been growing up, especially in the west. The interlocutor is—"Finds it not proved that any warranty was granted," and then it goes on, "for the reasons in note sustains the defences and assoilzies the defender." That is quite irregular. A note can never be made part of an interlocutor. In his note the Sheriff-Substitute states—"I am of opinion upon the veterinary evidence that unsoundness is not established." That ought to have been a finding in the interlocutor, and we shall have to find, both that it was not proved that any warranty was granted, and also that it was not proved that the animal was unsound."

The Court pronounced the following interlocutor:—

"Dismiss the appeal: Find in fact in terms of the findings in fact in the interlocutor appealed against: Further find that it is not proved that the brown mare in question was unsound when sold: Therefore of new sustain the defences and assoilzie the defender from the conclusions of the action, and decern."

Counsel for the Pursuer and Appellant—Macaulay Smith. Agents—Robertson & Wallace, S.S.C.

Counsel for the Defender and Respondent—Lees—A. S. D. Thomson. Agent—J. Stewart Gellatly, S.S.C.

Tuesday, June 16.

FIRST DIVISION.

[Lord Low, Ordinary.

WALDIE *v.* MUNGALL.

Lease—Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 7—*Compensation for Improvements—Notice—Determination of Tenancy.*

Section 7 of the Agricultural Holdings (Scotland) Act 1883 provides that "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 to make a claim for compensation under this Act."

Held that in the case of a lease where there was only one term of entry for all the subjects let, viz., Martinmas, the common law right of the outgoing tenant to consume the turnips on the ground after that date was not a right to possession of the holding as tenant, to the effect of rendering a notice of claim for compensation for improvements timeous if not given four months prior to Martinmas.

Black v. *Clay*, June 22, 1894, 21 R. (H. of L.) p. 73, *distinguished.*

Observations (*per* Lord M'Laren) on *in re Paul*, 1889, L.R., 24 Q.B.D. 247.

Mr John Waldie was tenant of the farm of Gattonside Mains, Roxburgh, belonging to Mr Henry Mungall of Gattonside, in terms of an offer by the tenant and acceptance thereof dated respectively 24th October and 2nd November 1885.

The offer was for a lease of nineteen years and was stated to be "subject to all the conditions and provisions contained in the foregoing articles."

The conditions of lease thus referred to contained, *inter alia*, the following provisions:—"*First*—The lease of the farm to be for such number of years as may be agreed upon, with entry at Martinmas 1885 . . . *Sixth.*—The rent which may be agreed on shall be paid in money to the proprietor and his heirs, half-yearly by equal portions at Whitsunday and Martinmas in each year. . . . *Tenth*—Further, no hay, straw, fodder, or turnips growing on the farm shall be sold, but the whole thereof shall be