provided his claim exceeds £40; and we cannot deprive him of that right unless it appears from his own statement that his true claim is for less than £40. I can recall a case where the pursuer's counsel summing up the items of his claim to the jury brought out a sum considerably less than £40 as the full amount of his demand, and made it clear enough that he had never expected to get more. That appeared to me to be an abuse of process, because it showed that the pursuer was making a claim which he knew he could not sustain in order to obtain a benefit which the statute would not have given him if he had made an honest statement. In the present case there is nothing to show that there is not a perfectly genuine claim for £40, and therefore the pursuer is entitled to exercise his right to appeal for jury trial.

The Court refused the defender's motion and approved the issue.

Counsel for the Pursuer and Appellant—J. B. Young. Agents—M'Nab & M'Hardy, S.S.C.

Counsel for the Defender and Respondent—Orr. Agents—Inglis, Orr, & Bruce, W.S.

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*Thursday, November* 3.

## SECOND DIVISION.

[Lord Kincairney, Ordinary.

## HAMILTON OGILVY *v.* ELLIOT.

*Lease—Agricultural Lease—Improvements—Compensation—Arbitration—Statutory Arbitration by Two Arbiters—Competency of Tribunal—Consent in Writing—Statutory Excluded by Conventional Arbitration—Agricultural Holdings Act* 1900 (63 *and* 64 *Vict. c.* 50), *sec.* 2, *subsecs.* 1, 3, 5, *Second Schedule, Part II, secs.* 1, 4.

The Agricultural Holdings Act 1900, section 2, provides that where differences arise between landlord and tenant as to compensation for certain enumerated improvements claimed by a tenant, such differences are to be settled in default of agreement by arbitration under the statute, and (sub-section 5) "an arbitration shall, unless the parties otherwise agree, be before a single arbitrator." The Second Schedule, Part II, enacts (1)—"If the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator. . . . (4) If for fourteen days after notice by one party to the other to appoint an arbitrator . . . the other party fails to do so, then, on the application of the party giving notice, the Board of Agriculture shall appoint a person to be an arbitrator."

It was provided in the lease of a farm that with regard to certain specified improvements the tenant should receive, in lieu of the compensation provided by statute, compensation according to a schedule annexed to the lease, the amount, failing agreement, to be ascertained by two arbiters, one to be chosen by each party, or by an oversman to be named by the arbiters before entering on the reference, in case of their differing in opinion.

On the termination of the lease the tenant served on the landlord a notice of claim for compensation under the Agricultural Holdings Acts, setting forth five separate heads of improvements, all of these being improvements for which a tenant was entitled to receive compensation under the Act of 1900, while heads 1 to 3 belonged to the class of specified improvements for which compensation was to be given according to the schedule annexed to the lease. The tenant having named an arbitrator, and the landlord having refused to name another, the Board of Agriculture, upon an application from the tenant, nominated a second to act on behalf of the landlord.

In an action of suspension and interdict brought by the landlord against the tenant and arbitrators, *held* (1) (*aff.* judgment of Lord Kincairney) that with respect to improvements under heads 1 to 3 statutory arbitration was incompetent, having been excluded by the agreement in the lease; (2) (*rev.* judgment of Lord Kincairney) that with respect to improvements under heads 4 and 5 the statutory tribunal set up by the Board was an incompetent one, as there had been no agreement in writing that there should be more than one arbitrator, the provision for two arbiters in the lease only dealing with improvements under heads 1 to 3; and (3) that until the constitution of a competent statutory tribunal it was premature to consider questions raised by the landlord as to the relevancy or competency of the claims falling to be decided by statutory arbitration.

The Agricultural Holdings Act 1900 enacts—Section 2, sub-section 1—"If a tenant claims to be entitled to compensation, whether under the principal Act or this Act, or under custom, agreement, or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of such compensation, the difference shall be settled by arbitration in accordance with the provisions, if any, on that behalf in any agreement between landlord and tenant, and in default of and subject to any such provisions by arbitration under the Act in accordance with the provisions set out in the Second Schedule to this Act." Sub-section 3—"Where any claim by a tenant for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to arbitration, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any

waste wrongfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming such sum may, if he thinks fit, by written notice to the other party, given by registered letter or otherwise, not later than seven days after the appointment of the arbitrator or arbitrators, require that the arbitration shall extend to the determination of the further claim, and thereupon the provisions of this section with respect to arbitration shall apply accordingly, and any sum awarded to be paid by a landlord or tenant shall be recoverable in manner provided by the principal Act for the recovery of compensation." Sub-section 5—"An arbitration shall, unless the parties otherwise agree, be before a single arbitrator." Second Schedule, Part II, sec. 1.—"If the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator. 4. If for fourteen days after notice by one party to the other to appoint an arbitrator, or another arbitrator, the other party fails to do so, then, on the application of the party giving notice, the Board of Agriculture shall appoint a person to be an arbitrator."

Mrs Hamilton Ogilvy, of Belhaven and Dirleton, was the proprietrix of the farm of Pitcox, of which Walter Elliot was tenant under a lease which expired at Martinmas 1902. The lease provided, *inter alia*, as follows—"And with respect to such manure and feeding stuffs as are not produced on the lands and others hereby let, but purchased by the tenant and applied thereto and consumed thereon, the tenant shall, on leaving the farm at the termination of his tenancy, receive compensation for the same from the proprietor or incoming tenant, in terms of the schedule annexed and signed as relative hereto, the amount of such compensation, failing agreement, to be ascertained by arbitration in manner before mentioned: And it is stipulated and agreed, with reference to part 3 of the schedule annexed to the Agricultural Holdings (Scotland) Act 1883, that the compensation for unexhausted manures and feeding stuffs before mentioned and specified in the said schedule hereto annexed (which is agreed on as fair and reasonable compensation, having regard to existing circumstances) shall be and is accepted by the tenant as full compensation in lieu and place of the compensation that would but for these presents be claimable by them in respect of all or any of the improvements specified in part third of the schedule annexed to the said Agricultural Holdings Act, but without prejudice to the provisions of sections 6 and 7 of the said Act, which are hereby declared to be specially applicable hereto, and to any claim for compensation following upon these presents."

In the previous clause of the lease referred to, arbitration was to be by "two arbiters, one to be chosen by each party, or by an oversman to be named by the arbiters before entering on the reference in case of their differing in opinion."

In November 1902 Mrs Hamilton Ogilvy received from Mr Elliot the following notice of claim:—

"Pitcox, Dunbar,
"November 1902.

"Madam,—In terms of the Agricultural Holdings (Scotland) Acts 1883 to 1900, I hereby give you notice that it is my intention to claim on quitting my holding of Pitcox at Martinmas next the sum of £1317 or thereby as compensation for unexhausted improvements, viz.:—(1*st*) £240, being the one-third value of feeding stuffs not produced on the said holding consumed thereon by cattle, sheep, &c., during the last year of my tenancy; (2*nd*) £12 or thereby, being the amount which represents the value to an incoming tenant of the improvement made by me on the said holding by the application of lime; (3*rd*) £150, being the amount which represents the value to an incoming tenant of the improvement made by me on the said holding by the application of purchased artificial or other purchased manures; (4*th*) £315 or thereby, being the amount which represents the value to an incoming tenant of the improvement made by me on the said holding by laying down temporary pasture; and (5*th*) £600, being the amount which represents the value to an incoming tenant of improvements effected by me on the said holding during my lease, over and above the values claimed for above, by the extensive and continuous consumption of feeding stuffs and application of manures, by my having limed the greater part of said holding, by the erection by me of walls at the cattle courts and stackyard, by the cementing of floor in cart shed, and by expenditure in approved drainage, all during my lease, and by generally increasing the crop and stock bearing capacity of the holding.—I am, your obedient servant, WALTER ELLIOT."

The improvements set forth in the claim were all comprised in the first schedule of the Act of 1900, as improvements for which a tenant was in default of agreement to receive compensation under the Act, while those falling under heads 1, 2, and 3 were covered by the special schedule attached to the lease.

Mrs Hamilton Ogilvy and Mr Elliot having failed to come to an agreement upon the questions involved in the claim, the latter applied to the Board of Agriculture to appoint an arbitrator. The Board of Agriculture were of opinion that owing to the provision in the lease as to arbitration, the arbitration must be by two arbitrators.

Mr Elliot accordingly appointed John Wilson, Edinburgh, as his arbitrator, and called upon Mrs Ogilvy to appoint another. She refused to do so, and Elliot applied to the Board of Agriculture to appoint one on her behalf. The Board appointed James I. Davidson, Edinburgh.

Thereafter Mrs Hamilton Ogilvy brought a note of suspension and interdict against Mr Elliot, the two arbiters, and the Lord Advocate as representing the Board of Agriculture, in which she craved the Court to interdict and prohibit all proceedings in the pretended arbitration. Answers to the note were lodged by the respondent Elliot.

The complainer maintained—(1) That the

arbitration proceedings were *in toto* incompetent and illegal, inasmuch as under the Agricultural Holdings Act 1900 the tribunal should have consisted of one and not two arbitrators. (2) That even had the tribunal been a competent one the arbitration could not have extended to improvements comprised under heads 1 to 3, because (*a*) the lease expressly provided for arbitration on these matters; and (*b*) the notice required by section 2, sub-section 3, of the Act of 1900 had not been given; (3) that the claims for improvements under heads 4 and 5 were unfounded and irrelevant.

On 18th July 1903 the Lord Ordinary on the Bills (PEARSON) passed the note and granted interim interdict.

On 2nd March 1904 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds (1) that the first, second, and third heads of the notice of claim by the respondent are included in the clause of reference in the lease between the complainer and respondent and the schedule annexed thereto; (2) that claims for the improvements embraced in the said heads fall to be determined under the lease and clause of reference therein; (3) that heads four and five of the claim do not fall under the lease; (4) that head four and the claim for improvement by drainage embody competent claims under the statute: Finds it unnecessary to dispose otherwise of the other claims in head five of the notice of claim: *Quoad ultra* continues the cause."

*Opinion.*—"By this action Mrs Hamilton Ogilvy, proprietrix of Belhaven and Dirleton, seeks to interdict proceedings in an arbitration or alleged arbitration under the Agricultural Holdings Acts originating in a notice of claim bearing date November 1902 by the defender Walter Elliot, who was tenant of the farm of Pitcox belonging to the pursuer, for compensation due to him at the expiry of his lease at Martinmas 1902.

"The notice of claim which was addressed to the proprietrix, and bears to be given under the Agricultural Holdings Act, is for £1317 for unexhausted improvements. The claim is divided into five heads as follows, viz.—(1) for feeding stuffs not produced on the holding, consumed thereon by cattle, sheep, &c., £240; (2) for lime applied to the holding, £12; (3) for artificial or other purchased manures, £150; (4) for temporary pasture laid down on the holding, £315; (5) the fifth head of the claim, which is for £600, is of a very miscellaneous character, and embraces claims of a very heterogeneous description. It includes claims for feeding stuffs and manures, for lime, for raising walls at the cattle courts, for cementing the floor of the cart-shed, for drainage, and for general increase of the stock-bearing capacity of the holding.

"The statutory warrant for this claim is contained in section 1, and section 2, subsection 1, of the Agricultural Holdings Act 1900, which latter sub-section provides —[*His Lordship read the sub-section quoted above.*]

"I do not think it can be denied, and think it is not denied, that the improvements expressed in the claim are all of them comprised in the first schedule of the Act (1900), although it is said by the landlord that there is no ground for some of them in fact. The proprietrix refused to admit the tenant's claim, and the tenant, acting as provided by the Act, on 17th February 1902 applied to the Board of Agriculture and craved the appointment of an arbiter by the Board.

"After some correspondence and after considering the lease the Board intimated to the tenant's agents that they were not prepared to nominate a single arbiter, and after further correspondence, which it is not necessary to detail, the arbitration was instituted by the nomination of an arbiter by the Board to act along with an arbiter nominated by the tenant. These proceedings were not taken with the proprietrix's consent, but I think they were warranted by the Agricultural Holdings Act so far as regards the forms adopted. This is the arbitration which the proprietrix now opposes, and she has directed the prayer of the interdict against the two arbiters as well as against the tenant.

"On 18th July 1903 the Lord Ordinary passed the note and granted interim interdict.

"The prayer of the action is for interdict against the tenant from prosecuting each and all of the items of the claim, and against the arbiters nominated from entertaining the claim which the complainer maintains to be wholly unwarranted by the statute, and the question is whether interdict should be granted against the prosecution of all the claims or any of them.

"The complainer has stated a great number and variety of pleas, but I think they resolve mainly into these propositions—(1) That this arbitration is disconform to the Agricultural Holdings Act because two arbiters have been appointed and not one; (2) that the claim is barred or at least excluded as regards the first, second, and third heads of it by the lease and the clause of arbitration for determination of the amount of the tenant's compensation contained in the lease; (3) that the fourth and fifth heads of the claim are incompetent and unfounded; and (4) that the claim is invalid in respect it is not sufficiently specific. This contention I understand to apply chiefly to the fifth head.

"1. The objection that the reference is incompetent because two arbiters have been nominated by the Board of Agriculture rests on sub-section 5 of section 2, which provides, 'An arbitration shall, unless the parties otherwise agree, be before a single arbiter.' Article 1 of Part II of Schedule II provides that 'if the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator'; and article 4 provides that if after due notice one party fails to nominate an arbitrator, that shall be done by the Board of Agriculture.

"The question whether, in the circumstances stated, the Board had power to

appoint two arbiters is a question relating to the constitution of the tribunal for the determination of these differences between landlord and tenant. It depends on the construction of the statute, and it is clear that it must be determined by the Court now, and cannot be left to the decision of the arbiters nominated—*Sinclair* v. *Clyne's Trustees*, 7th December, 1887, 15 R. 185.

"In this case the Board of Agriculture seems to have taken the view that the provision in the lease for an arbitration before two arbiters was equivalent to the written agreement of the parties that there should not be a single arbitrator. I agree in that view, and I repel the complainer's plea against the competency of the arbitration on that ground; and I think there is no relevant objection to the constitution of the tribunal.

"2. The complainer's second and most important contention is based on the lease. The lease was for nineteen years from Martinmas 1892, but came to an end by mutual consent at Martinmas 1902. It is provided by the lease that the tenant on leaving the farm shall receive compensation in terms of the schedule annexed to the lease, and that the amount of such compensation, failing agreement, shall be ascertained by arbitration in the manner provided by the lease, that is, by two arbiters and an oversman appointed in the usual manner.

"The lease proceeds thus—'And it is stipulated and agreed with reference to Part III of the schedule annexed to the Agricultural Holdings Act 1883 that the compensation for unexhausted manures and feeding stuffs before mentioned and specified in the said schedule hereto annexed, which is agreed as fair and reasonable compensation having regard to existing circumstances, shall be and is accepted by the tenant as full compensation in lieu and place of the compensation that would but for these presents be claimable by them in respect of all or any of the improvements specified in Part III of the schedule annexed to the said Agricultural Holdings Act, but without prejudice to the provisions of sections 6 and 7 of the said Act, which are here declared to be specially applicable hereto, and to any claim for compensation following upon these presents.'

"I have not found it necessary for the purposes of this judgment to make special reference to these two sections of the Act of 1883.

"The schedule annexed to the lease here referred to is printed in the record (statement II) and need not be quoted at length. It includes compensation for (1) lime, (2) crushed bones and similar manure, (3) dissolved bones, bone phosphate and guano, (4) feeding stuffs; and it specifies the proportions of the values of each of these subjects to be allowed to the tenant. It is framed in a totally different manner from the claim.

"I think that parties were practically agreed that the first, second, and third heads of the tenant's claim are substantially covered by the items of compensation specially mentioned in the schedule attached to the lease; that the improvements claimed for in these heads of the claim are those embodied in the schedule annexed to the lease, although there is a material difference in the mode in which these improvements are valued; but that the claim for temporary pasture under head four is new and is not included in the schedule in the lease, and that the greater part of the miscellaneous claims in article five was not included in the schedule in the lease, and that these claims cannot to that extent be barred by the lease.

"Assuming these points as undisputed, the first question appears to be whether the statutory arbitration is excluded in whole or in part by the clause of reference in the lease. That is a general and important question, although not of much practical consequence in this case, but no authority was cited which gives much or any assistance in solving it. I think it depends on sub-section 1 of section 2 of the Act of 1900, already partially quoted. I think that the provision in the sub-section comes to this—that in the event of landlord and tenant failing to agree as to compensation at the end of the lease the differences between them shall be settled by arbitration in accordance with the clause of reference in the lease, if there be one, and if there be no clause of reference in the lease, then, and then only, by arbitration under the Act. I think that if the claim under the Act and the claim allowed by the lease were identical it would be difficult to hold that it was intended by the statute to provide for a case for which the parties had provided.

"But the tenant maintains that his claim is not confined to the first, second, and third heads, but that he has additional claims which are not covered by the lease, namely the fourth and fifth heads of his claim, and he points out that if he cannot establish these claims under the Act he must lose them altogether. The complainer maintains that these claims are wholly groundless and not warranted by the Act, and that they cannot be submitted to arbitration.

"Article four of the notice of claim is thus expressed:—[*His Lordship then examined claim* 4.]

"On the whole I have been unable to see that the respondent's claim under head 4 can be disallowed.

"This point is of great importance, because it involves the conclusion that there must be a statutory arbitration if the tenant insists on it; and if the questions under heads 1, 2, and 3 must be tried under the lease it might follow that two arbitrations were necessary unless the parties agree otherwise.

"The respondent contends that if there is to be a reference under the Act he is entitled under sub-section 3 to extend the scope of the reference to heads 1, 2, and 3 of

the claim, and that by that means the whole questions might be tried under one reference, namely, the statutory reference. This point is involved in very great difficulty, and it is not easy to reconcile the provision in the Act that questions must be tried under the lease when there is a clause of reference with this clause empowering either party to procure extension of the scope of the clause, and I have been unable to see how the clause can apply to a reference which the lease has excluded, nor is it easy to see how the section can be held to extend to clauses which are in the claim although they have been disallowed.

"The question remains, whether the tenant is entitled to insist that the claims under head 5 be remitted to the statutory arbitration. [*His Lordship examined this head and concluded that the claim for drainage was not excluded by the lease.*]

"The case therefore seems to stand thus:—Claims 1, 2, and 3 cannot be allowed except of consent, and to make good his claims on these heads the tenant must proceed under the arbitration clause in the lease. I think, though with hesitation, that head 4 and the claim for drainage are, as they stand, relevant claims and must be admitted. I am not prepared to disallow these claims. I think that as regards them the statutory reference must be allowed to proceed. Had I not come to the conclusion that a statutory arbitration could not be avoided I would have proceeded to consider whether the claims for buildings, manures, and feeding stuffs under head 5 could be admitted. But as there must according to my view be a statutory arbitration, including head 4 and head 5 of the agreement so far as it contains a claim for drainage, I think that consideration of the other parts of head 5 may be deferred and left to be dealt with in the arbitration. On this point I refer to *Glasgow, Yoker, and Clydebank Railway Company* v. *Lidgerwood*, November 27, 1895, 23 R. 195; *Caledonian Railway Company* v. *Morrison*, June 10, 1898, 25 R. 1101; and *Bennets* v. *Bennet*, January 31, 1903, 5 F. 376, where that course was adopted. It would follow, no doubt, from the views I have expressed, that the findings in my interlocutor should be followed by an interdict against prosecuting heads 1, 2, and 3 of the claim, but I have thought it as well to allow the case to lie over for a few days in order to see whether further proceedings might be avoided before pronouncing interdict."

On 27th May 1904 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Having heard counsel for the parties on the application of the findings contained in interlocutor of 2nd March last, interdicts, prohibits, and discharges the respondent Walter Elliot junior from insisting in or prosecuting and following further items and particulars 1, 2, and 3 of claim by said respondent set forth in the prayer of the note; and also interdicts, prohibits, and discharges the respondents John Wilson and James I. Davidson, as arbiters mentioned in said note, from entertaining or dealing with or awarding any sum in respect of said items 1, 2, and 3 of said claim; Refuses the prayer of the note so far as regards items 4 and 5 of said claim, and recals the interim interdict granted by interlocutor of 18th July 1903 with reference thereto."

The complainer reclaimed, and argued—The arbitration proceedings were altogether bad and incompetent. Assuming that there was matter to go before a statutory arbitration under the Agricultural Holdings Acts, the tribunal appointed was an incompetent one, inasmuch as it consisted of two arbitrators. Section 2, sub-section 5, of the Act of 1900 provided that unless the partners agreed otherwise the arbitration was to be before a single arbitrator, and the Second Schedule, Part II, sec. i, provided that such agreement was to be in writing. There was here no agreement in writing, that in the lease referring solely to the definite matters there specified, and having no reference to claims arising under the Agricultural Holdings Acts—*Sinclair* v. *Clyne's Trustee*, December 17, 1887, 15 R. 185. But there was no matter to go before a statutory tribunal. It could not deal with items 1 to 3, for the lease made express provision for arbitration as regarded them, and it was evident from section 2, sub-section 1, that it was only in default of an agreement for arbitration that a statutory arbitration was competent. On this point the Lord Ordinary was right. The respondents argued that by section 2, sub-section 3, the statutory arbitration was extended to these claims, but in any view of the meaning of the section they had omitted to give the written notice required. It could not deal with items 4 and 5, for only claims which were *prima facie* relevant could be submitted to arbitration, and these claims were on the face of them unfounded, incompetent, and irrelevant. The function of an arbiter was to fix the amount of compensation, not to decide whether claims were legally admissible—Second Schedule, Part I, 9; *Glasgow, Yoker, and Clydebank Railway Co.* v. *Lidgerwood*, November 27, 1895, 23 R. 195, 33 S.L.R. 146; *Caledonian Railway Co.* v. *Morrison*, June 10, 1898, 25 R. 1001, 35 S.L.R. 774; *Mull District Committee* v. *Local Government Board*, February 28, 1902, 9 S.L.T. 407.

Argued for the respondent Elliot—The tribunal of two arbitrators was a competent one and entitled to deal with all the items of the claim. Section 2, sub-section 3, entitled either the landlord or tenant to extend a statutory arbitration to all claims against the other in respect of the holding. The arbitration accordingly included claims 1, 2, 3, and the agreement in the lease that upon these items there should be two arbiters became applicable to the whole. The policy of the Legislature to have one arbitration to deal with statutory and conventional compensation was illustrated by section 16 of the Agricultural Holdings Act of 1883. Unless a claim was clearly irrelevant it must go before the arbitrators—*Glasgow, Yoker, and Clydebank Railway Company* v. *Lidgerwood, supra; Bennets* v. *Bennet*, January 31, 1903,

5 F. 376, 40 S.L.R. 341, but the claims in items 4 and 5 were relevant and competent under the Act.

LORD TRAYNER—The object of this note is to have the respondents interdicted from proceeding with an arbitration instituted for the purpose of determining the right of the respondent Walter Elliot to receive compensation from the complainer for various improvements made by him on a farm belonging to the complainer of which he was recently the tenant. The claim presented by the respondent is before us, and bears to be one under the Agricultural Holdings Acts 1883 to 1900. It consists of five separate heads. The Lord Ordinary has held that with regard to the first three there can be no procedure before the statutory tribunal, because the parties have under the lease provided already for arbitration upon the matters comprised under these heads. I am of opinion that the Lord Ordinary is right. The parties having agreed to leave the determination of their rights and liabilities under the lease to a particular tribunal, that tribunal must, in my opinion, be left to deal with them.

The more important question in the case, however, is whether the tribunal, consisting of two arbitrators nominated—one of them by the respondent Elliot and the other by the Board of Agriculture—for dealing with the points involved under heads four and five of the claim, is a competent one. On the one hand it is said that in the circumstances here disclosed the Board of Agriculture had no power to nominate any other than a single arbiter, on the other that in nominating one arbiter to act along with the arbiter nominated by the respondent the Board was acting within its powers.

Now, in determining this question regard must be had to the terms and provisions of the statute. The Act of 1900, section 2, provides that when differences arise between landlord and tenant as to compensation claimed by a tenant under the provisions of the Act (and the fourth and fifth heads of the respondent's claim are of that character) such differences are to be settled by arbitration, and "the arbitration shall, unless the parties otherwise agree, be before a single arbitrator." But the Second Schedule, Part II, sec. 1, provides that "if the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator." The statute then proceeds to provide (Second Schedule, Part II, 4) that if for fourteen days after notice by one party to the other to appoint an arbitrator the other party fails to do so, then, on the application of the party giving notice, the Board of Agriculture shall appoint a person to be arbitrator. The respondent having named an arbiter, and the complainer having refused or delayed to name another, the Board of Agriculture, on the view that there was a written agreement in the lease to refer to two arbiters, nominated (at the request of the respondent) another arbiter "to act on behalf of the landlord." The question here, therefore, resolves itself into whether there was an agreement in writing within the meaning of section 1, Part II, of the Second Schedule, that the respondent's claim should *not* be submitted to a single arbitrator. The Lord Ordinary (agreeing with the view acted upon by the Board of Agriculture) has held that there was. He is of opinion that the provision in the lease providing for arbitration before two arbiters and an oversman is a written agreement "that there be not a single arbitrator." In this opinion I am unable to concur. The provision for arbitration contained in the lease applies only to such claims as may arise under and by virtue of the lease, and has no reference to claims which may arise under the Agricultural Holdings Acts. Any claims which might arise under the statute were not provided for, and the mode for determining such claims must be found in the statute itself. That mode is, as I have pointed out, by a single arbitrator unless the parties otherwise agree. In reference to claims arising under the statute there was no such agreement either in the lease or elsewhere. The Board of Agriculture erroneously thought that there was and acted accordingly. In nominating an arbiter to act with the arbiter named by the tenant I think they went beyond their powers. They set up a tribunal of two arbiters in circumstances in which the statute required that there should be only one.

We have heard a long argument upon the relevancy and competency of claims 4 and 5. These are questions which at present it is unnecessary to say anything, because for the reasons I have stated I am of opinion that the interlocutor reclaimed against should be recalled and interdict granted as craved. When an arbitration tribunal has been competently constituted it will be time enough to consider the relevancy or competency of any claim presented to it by the respondent Elliot.

LORD YOUNG—I agree. The only matter we are determining now is that the Board of Agriculture fell into error in appointing a second arbiter. We decide nothing else.

LORD JUSTICE-CLERK—I concur.

LORD MONCREIFF was absent.

The Court recalled the judgment reclaimed against and granted interdict as craved.

Counsel for the Complainer and Reclaimer—C. N. Johnston, K.C.—Duncan Miller. Agents—Jack & Bryson, S.S.C.

Counsel for the Respondent Elliot—Rankine, K.C.—M'Lennan. Agents—Dalgleish & Dobbie, W.S.