I think the matter is concluded by authority, and that the Sheriff is right in his judgment. Unless Mr Bell in his Principles is wrong, nothing further is to be said. He thus enunciates the law—Sec. 1277—"It [the hypothec] will not bar the tenant from selling his goods in his shop or warehouse. But a buyer, though he has paid the price, if he have not got delivery, will not prevail against the landlord." The authority upon which Mr Bell founds his proposition is the old case of *Kinniel* v. *Menzies*, M. 4973, decided in 1790. That was not the case of a shop, but the sale of furniture in a house without delivery, and counsel for the minuter tried to draw a distinction between a sale of house plenishing and the case of goods sold in a shop. That makes no difference, and I think Mr Bell was right in his statement of the law. The only distinction between a shop and a dwelling-house is that in the latter case if the tenant began displenishing so as to leave bare walls, the landlord would have a right to stop him, but he cannot do so in the case of a shop, which is let for the very purpose of selling goods that from time to time have to be removed.

The position of the minuter here may be hard. It might have been cured by the Mercantile Law Amendment Act and the Sale of Goods Act, but the landlord's hypothec was expressly reserved in both Acts; so we are here under the old law which provided that the property in goods did not pass until delivery. I am of opinion that the interlocutor of the Sheriff should be affirmed.

LORD KINNEAR — I agree with your Lordship. I think that if the question is to be determined by the law prior to the Mercantile Law Amendment Act, it is settled by authority, which is binding on us, and the landlord's right of hypothec is not affected by either of the statutes to which your Lordship has referred.

LORD CULLEN—I concur.

LORD JOHNSTON, who was present at the advising, gave no opinion, not having heard the case.

LORD M'LAREN was absent.

The Court refused the appeal, affirmed the interlocutors of the Sheriff and Sheriff-Substitute, and remitted the cause to the Sheriff-Substitute to proceed as accords.

Counsel for Minuter (Appellant) — Morison, K.C.—W. T. Watson. Agents—Cameron & Orr, S.S.C.

Counsel for Pursuer (Respondent) — Christie—T. Graham Robertson. Agents—R. & R. Denholm & Kerr, Solicitors.

Thursday, December 23.

FIRST DIVISION.

[Sheriff Court at Kirkcudbright.

BROWN *v.* MITCHELL.

Lease — Outgoing — Compensation — Improvements—Agreement—Construction—Artificial Manures — Feeding Stuffs — "Value"—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, c.* 64), *secs.* 1 (1), 4, *and* 5, *and First Schedule.*

A lease dated in 1900 provided that with reference to the Agricultural Holdings (Scotland) Act 1883 the compensation payable to the tenant on the determination of his tenancy should not exceed the rates and proportions specified in a schedule annexed to the lease, and that the compensation therein provided should be held as substituted for that under part third of the statutory schedule. The schedule annexed to the lease was not challenged as unfair and unreasonable. It provided, on the basis of a fraction of the "cost" of the manure varying with the year of application, for certain specified artificial manures under three heads, and proceeded—"IV. Other artificial manures. Exhausted by first crop—no compensation. V. Feeding stuffs. For linseed, cotton, and rape cakes, or for other purchased substances of equal manurial value consumed on the farm by cattle and sheep and pigs during the last year of the lease, one-third of the value thereof. If consumed on permanent pasture, three-sixths of the value thereof if applied in last year, two-sixths if in second last year, and one-sixth if in third last year. Exhausted in four years." In a note appended to the schedule it was, *inter alia*, provided—"From the amount to be paid in compensation for the unexhausted manurial value of feeding stuffs the arbiters shall deduct any sum which in their opinion has been or shall be paid to the tenant on account of any increased award, by reason of the manurial value of the feeding stuffs consumed, put upon the dung left by the tenant."

Held (1) that the schedule falling to be read as a whole, head IV was not void under section 5 of the Agricultural Holdings (Scotland) Act 1908, but validly precluded the tenant from claiming compensation for artificial manures, other than those specified, which had grown a crop; (2) that "value" in head V meant, not actual cost price, nor present cash value, nor residual manurial value, but original manurial value—*i.e.*, the value of the manurial constituents of the feeding stuffs such as nitrogen, potash, &c., before the feeding stuffs were consumed; (3) that the tenant was validly precluded from claiming compensation for feeding stuffs of the character specified in head V

which were consumed on the holding (exclusive of the permanent pasture) prior to the last year of the lease; and (4) that the tenant was entitled to compensation in respect of the consumption on the holding of feeding stuffs the manurial residuum of which entered the farm-yard manure left unapplied to the land by the tenant at outgoing, but subject always to deduction of such sum as might be found deductible under the provisions of the note appended to the schedule.

Lease — Outgoing — Compensation — Disturbance—Onus—"Good and Sufficient Cause" — "Reasons Inconsistent with Good Estate Management"—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, c.* 64), *sec.* 10.

Observations (*per* the Lord President) on the *onus* on parties in a claim for compensation for disturbance, and on the different grounds for terminating a tenancy which an arbiter should consider "good and sufficient cause."

Lease — Outgoing — Compensation — Disturbance—Notice of Claim—Validity of Notice—Repeal of Act under which Notice Given—Agricultural Holdings (Scotland) Act 1906 (6 *Edw. VII, c.* 56), *sec.* 4—*Agricultural Holdings (Scotland) Act* 1908 (8 *Edw. VII, c.* 64), *secs.* 10 *and* 36—*Interpretation Act* 1889 (52 *and* 53 *Vict. c.* 63), *secs.* 36 *and* 37.

The Agricultural Holdings (Scotland) Act 1906, which was to come into operation on 1st January 1909, provided that a tenant who wished to claim compensation for disturbance must give notice of his intention to claim it within two months of receiving notice to quit. The Act was repealed before it had come into force by the Agricultural Holdings (Scotland) Act 1908, which contained a similar provision. By section 36 of the repealing Act, which received the royal assent on 21st December 1908, it was, *inter alia*, provided that "all orders, . . . notices, and consents given, and having effect under any enactment hereby repealed, shall have effect as if they had been made or given under this Act."

A tenant who had, on 1st May 1908, received notice to quit at Whitsunday 1909, gave notice, on 29th June 1908, of his intention to claim compensation for disturbance under the Act of 1906.

Held that notice had been validly given under the Act of 1908.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), which received the Royal Assent on 21st December 1908, and under section 37 came into operation on 1st January 1909, enacts:—Section 1—"(1) Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act, he shall, subject as in this Act mentioned, be entitled, at the determination of a tenancy, on quitting his holding, to obtain from the landlord, as compensation under this Act for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant. . . ."

Section 4—"Where any agreement in writing secures to the tenant of a holding, for any improvement comprised in Part III of the First Schedule hereto fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall, as respects that improvement, be substituted for compensation under this Act."

Section 5—"Subject to the foregoing provisions of this Act, any contract or agrement made by a tenant of a holding, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement comprised in the First Schedule hereto, shall be void so far as it deprives him of that right."

Part III of the First Schedule, *inter alia*, enumerates as improvements—"(23) Application to land of purchased artificial or other purchased manures. (24) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuffs not produced on the holding."

Section 10 enacts—"*Compensation for unreasonable disturbance.*—Where (*a*) the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit . . . the tenant upon quitting the holding shall . . . be entitled to compensation for the loss or expense directly attributable to his quitting the holding which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods, or his implements of husbandry, produce, or farm stock on or used in connection with the holding: Provided that no compensation under this section shall be payable, (*b*) unless the tenant has, within two months after he has received notice to quit, . . . given to the landlord notice in writing of his intention to claim compensation under this section. . . ."

Section 36—"The enactments specified in the Fourth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule: Provided that all orders, acts of sederunt, scales of expenses, and instruments issued, and notices and consents given, and having effect under any enactment hereby repealed, shall have effect as if they had been made or given under this Act."

The Fourth Schedule enumerates as repealed the Agricultural Holdings Act 1906 (6 Edw. VII, cap. 56), which Act, under section 9 thereof, was to have come into operation on January 1st 1909.

On 20th October 1909 William Barber of Tererran, Moniaive, Dumfriesshire, the arbiter in a reference under the Agricultural Holdings (Scotland) Act 1908 between William Brown of Netherlaw, Kirkcudbrightshire (the landlord), and Andrew Mitchell, sometime farmer, Barcheskie and Craigraploch, Kirkcudbrightshire (the tenant), stated a case for the opinion of

the Sheriff-Substitute at Kirkcudbright with reference to the parties' claims under the said Act on the determination of Mitchell's tenancy.

The case stated — "The arbiter was appointed by the Board of Agriculture and Fisheries conform to letter of appointment dated 1st September 1909, and by joint minute dated 13th September 1909 the parties submitted to the arbiter the tenant's claim of £2149, 5s. 7d., and the landlord's claim of £391, 6s. 8d. By order of the said Board of Agriculture and Fisheries, dated 29th September 1909, the time for making the award was extended to 29th November 1909.

"The arbiter heard parties' agents on various preliminary points arising under the respective claims, and has issued findings thereon, and he has now been asked to state a special case upon the following of these points:—

"1.—*Schedule of compensation annexed to the lease.*

"By lease entered into between the landlord and tenant, and dated 5th and 28th March 1900, it is provided that 'having regard to present circumstances, to the rent to be paid, and to the amount to be expended by the landlord on improvements and repairs, the compensation payable to the tenant at the determination of his tenancy shall not exceed the rates and proportions of unexhausted value specified in the schedule annexed and subscribed as relative hereto, which shall form the basis of and regulate the award to be issued in the arbitration, if any, which may follow in terms of the Act, and the compensation fixed on the basis of this schedule is hereby deemed fair and reasonable by the parties and is hereby held to be substituted for compensation under part third of' the statutory schedule. By heads I, II, and III of the schedule annexed to said lease provision is made for compensation for the artificial and other purchased manures therein mentioned, viz. — I. Lime. II. Crushed bones and bone meal. And III. Dissolved bones, bone phosphates, guano and police manure—the basis of compensation being stated to be certain proportions of the cost of the manures. Head IV is in the following terms:—'Other artificial manures exhausted by first crop—no compensation.' Head V is in the following terms:—'Feeding stuffs. For linseed, cotton, and rape cakes, or for other purchased substances of equal manurial value consumed on the farm by cattle and sheep and pigs during the last year of the lease, one-third of the value thereof. If consumed on permanent pasture three-sixths of the value thereof if applied in last year, two-sixths if in second last year, and one-sixth if in third last year. Exhausted in four years.' In the notes appended to the schedule the final clause provides that 'from the amount to be paid in compensation for the unexhausted manurial value of feeding stuffs the arbiters shall deduct any sum which in their opinion has been or shall be paid to the tenant on account of any increased award, by reason of the manurial value of the feeding stuffs consumed, put upon the dung left by the tenant.' Neither of the parties challenged the schedule annexed to the lease as unfair and unreasonable, and the arbiter was therefore not called upon to consider whether or not said schedule is (in his opinion) open to challenge on this ground.

"In his claim for compensation the tenant claims under the lease and relative schedule for those artificial and other purchased manures specified in heads I, II, and III of said schedule, and he further claims under the Act for artificial manures other than those specified in said heads I, II, and III. In said claim for compensation the tenant also claims under the lease and relative schedule for the feeding stuffs specified in head V of said schedule, and he further claims under the Act not only for feeding stuffs of less manurial value than those mentioned in said head V, but also for feeding stuffs specified in said head, which were consumed on the holding (exclusive of the permanent pasture thereon) prior to the last year of the tenancy. In calculating the compensation claimed under the lease for feeding stuffs specified in head V of the schedule the tenant has assumed that the basis of calculation should be the cost price of said feeding stuffs. In support of his claim he contended that head IV of said schedule was void under section 36 of the Agricultural Holdings (Scotland) Act 1883, and section 5 of the Agricultural Holdings (Scotland) Act 1908, in respect that it deprives him of compensation for certain artificial manures, and that he was accordingly entitled under the latter statute to claim and receive compensation in respect of the improvements in question. He further contended that on a sound construction of the contract between the parties the 'value' mentioned in head V of the schedule was the actual cost price paid for the same. The landlord, on the other hand, maintained that the schedule must be taken as a whole, that head IV constituted merely an agreed-on rate of exhaustion and was therefore not void, and that under head V the basis of calculation should be manurial value, by which he means residual manurial value, being the value of the feeding stuffs when converted into manure by consumption in contradistinction to cost, which is stated to be the basis of compensation for manures.

"The arbiter's findings on this point are to the effect that the schedule of compensation annexed to the lease is conclusive as to the compensation to be allowed by the arbiter for the improvements specified therein; that 'artificial manures' other than those specified in heads I, II, and III of said schedule, which have grown a crop, are agreed under head IV of the schedule to be held as exhausted by that crop, and that no compensation falls to be allowed therefor; that in the ascertainment of compensation for the feeding stuffs specified in head V of said schedule the basis of calculation is the original manurial value

of said feeding stuffs; that for feeding stuffs not specified in said schedule and for other improvements not specified therein compensation falls to be allowed under statute; but that no allowance falls to be made under this last finding for feeding stuffs of the character specified in head V of the schedule which were consumed on the holding (exclusive of the permanent pasture thereon) prior to the last year of the tenancy. By the 'original manurial value' of any particular feeding stuff the arbiter means the value of the manurial constituents thereof, such as nitrogen, potash, &c., before the feeding stuff was consumed.

"2.—*Manurial value of the feeding stuffs which entered the farmyard manure left by the tenant at outgoing.*

"In his claim the tenant claims compensation for all, or at least the major part of, the feeding stuffs consumed on the holding during the last year of his tenancy irrespective of whether these were consumed on the land or in the houses, and the landlord contends that compensation should not be allowed under this reference for the manurial value of the feeding stuffs which entered the farmyard manure left unapplied to the land by the tenant at his outgoing, in respect that this was not an improvement within the meaning of the Agricultural Holdings Act. By the lease the tenant is bound to 'leave to the proprietor or incoming tenant at valuation all the dung made on the lands during the last year of the lease after the tenant has put in his last green crop.' The arbiter understands that the farmyard manure left by the tenant at outgoing was taken over at valuation by the incoming tenant, but the terms of the submission in that reference are not yet before him.

"The arbiter's finding upon this point is to the effect that the tenant is entitled to compensation for the feeding stuffs consumed on the holding, the residual manurial value of which entered the farmyard manure handed over at valuation by the tenant at his outgoing to the incoming tenant of the holding, but that said compensation is subject to deduction of such sum (if any) as in the opinion of the arbiter may have been paid to the tenant on account of any increased award (in the reference between him and the incoming tenant) by reason of the manurial value of feeding stuffs in said manure; and in his note on this finding the arbiter refers to the concluding clause above quoted of the notes appended to the schedule to the lease.

"3.—*Compensation for disturbance.*

"In his claim the tenant claims compensation for disturbance and the claim is founded on the alleged purification of the first condition-precedent specified in section 10 of the Agricultural Holdings (Scotland) Act 1908, viz.—'Where the landlord of a holding without good and sufficient cause and for reasons inconsistent with good estate management terminates the tenancy by notice to quit.' On the other hand it is contended by the landlord that the claim for disturbance is incompetent in respect (1) that notice to quit was given by the landlord prior to the passing of that Act, (2) that subsequent thereto no step has been taken by the landlord to terminate the tenancy, and (3) that the tenant has not given (and indeed could not possibly give) notice of his intention to claim such compensation in terms of the Act. Taking advantage of a break provided for in the lease the landlord on 1st May 1908 gave the tenant notice to quit at Whitsunday 1909 and separation of crop of that year; and notice of intention to claim compensation for disturbance under the Agricultural Holdings Act 1906 was given by the tenant on 29th June 1908.

"The arbiter's findings on this point are to the effect that the provisions as to compensation for disturbance contained in the Agricultural Holdings (Scotland) Act 1908 are applicable to the outgoing of the tenant from the holding, but subject always to the conditions specified in said Act; and that the notice of intention to claim such compensation given by the tenant to the landlord within two months of receipt of notice to quit is now referable to said Act.

"The arbiter was asked by the parties' agents to state at this stage his view on the meaning and purport of the expression 'without good and sufficient cause and for reasons inconsistent with good estate management.' Accordingly, in the notes appended to his findings, he expressed the view that to enable a landlord to escape from a claim for disturbance the inducing cause must be 'good and sufficient' in itself, and that the reasons thereby induced which led the landlord to resolve to terminate the tenancy must be 'consistent with good estate management.' He also indicated that to enable him to judge of this matter the cause of and reasons for the determination of the tenancy must be stated, and that before closing the record he would ordain the landlord to condescend upon the same."

The *questions of law* included the following:—"1. Do the terms of the lease and of head IV of the schedule annexed thereto validly preclude the tenant from claiming compensation in respect of artificial manures (other than those specified in heads I, II, and III of said schedule) which have grown a crop? 2. Does the 'value' which forms the basis of calculation under head V of said schedule fall to be interpreted as actual cost price, present cash value, original manurial value, or residual manurial value; or is the arbiter entitled to allow extrinsic evidence to be adduced as to the intent and meaning of the word 'value'? 3. Do the terms of the lease and of head V of said schedule validly preclude the tenant from claiming compensation for feeding stuffs of the character specified in said head, which were consumed on the holding (exclusive of the permanent pasture thereon) prior to the last year of the tenancy? 4. Is the tenant entitled to compensation in respect of the consumption on the holding of feeding stuffs, the manurial residuum whereof entered the farmyard manure which was left unapplied to the

land by the tenant at outgoing and was taken over by the incoming tenant at valuation? . . . 6. Is the tenant's claim for compensation for disturbance competent and relevant? 7. In order to escape from a claim for compensation for disturbance must the landlord have had not only an inducing cause, good and sufficient in itself, but also reasons consistent with good estate management? 8. Is the landlord bound to condescend upon the 'cause' and 'reasons' which led him to terminate the tenancy; and upon whom is the burden of proof?"

On 10th November 1909 the Sheriff-Substitute (NAPIER) answered the questions as follows:—"1. In respect (*a*) that the arbiter has found 'that artificial manures other than those specified in heads I, II, and III (of the schedule annexed to the lease) which have grown a crop are agreed under head IV of the schedule to be held as exhausted by that crop and that no compensation falls to be allowed therefor'; and (*b*) that the arbiter has not said that head IV fails to provide fair and reasonable compensation to the tenant for any improvement made on the farm by the use of such artificial manures having regard to the circumstances existing when the lease was signed —my answer is that the lease and head IV validly preclude the tenant from claiming compensation for the use of any artificial manures which have grown a crop except those specified in heads I, II, and III of the schedule. 2. 'Value' means actual cost price of the feeding stuffs. Extrinsic evidence on this question is inadmissible. 3. In respect (*a*) that the arbiter has found 'that no allowance falls to be made . . . for feeding stuffs of the character specified in head V of the schedule which were consumed on the holding (exclusive of the permanent pasture thereon) prior to the last year of the tenancy,' and (*b*) has not stated that head V will fail to secure to the tenant fair and reasonable compensation as explained in answer 1—my answer is that the lease and head V validly preclude the tenant from claiming any compensation except what is allowed under head V. 4. The tenant is not entitled in this reference to claim compensation for any increased value which the farmyard manure may have owing to the presence in it of manure derived from the consumption by cattle of feeding stuffs. . . . 6. The tenant can claim compensation for disturbance. 7. Before a landlord can escape from the obligation to pay compensation for disturbance he must be able to prove (1) that he had good and sufficient cause for terminating the tenancy by notice to quit, and (2) that he was not influenced in doing so by reasons inconsistent with good estate management. 8. The landlord must condescend upon the 'cause' and 'reasons.' If he declines to do so, the arbiter must assume that he has none. The burden of proof is upon the landlord."

Both parties appealed.

Argued for the landlord—(1) The tenant's claim for compensation for artificial manures was limited to those specified in the first three heads of the schedule. The schedule was clear in its terms and was not said to be unfair, and that being so it must receive effect. (2) The Sheriff was wrong in holding that "value" meant cost. The test was what proportion of the feeding stuffs went to the land, and so tested "value" meant residual manurial value. It could not mean original cost, for that would far exceed the worth of the manure. A large proportion of the feeding stuffs did not go towards manure at all but towards the growth of the animal. Original cost, therefore, was absurd. (3) The arbiter was right, for the schedule was clear in its terms and was not alleged to be unfair. (4) There could be no compensation for manure not applied to the land, for until applied there was no "improvement." To hold otherwise would be to give the tenant double compensation, for he was entitled to be paid by the incoming tenant for the manure in question. (6) The Sheriff was wrong in holding the claim for disturbance competent. The notice to quit was given before the Act of 1908 came into operation, and the *punctum temporis* was service of the notice to quit —Spencer's Agricultural Holdings Act 1908 (4th edn.) 39 (foot). *Esto* that the notice to quit was given under the Agricultural Holdings Act of 1906, that Act, which was not to come into operation till 1909, was repealed by the Act of 1908, sec. 36, before it had come into effect. That being so, sections 36 and 37 of the Interpretation Act 1889 (52 and 53 Vict. cap. 63) relied on by the tenant did not apply. An Act was presumed to be prospective not retrospective—*Gardner* v. *Lucas*, March 21, 1878, 5 R.(H.L.) 105, at pp. 113, 118, 15 S.L.R. 740; Hardcastle, 4th edn. (Craies) 323. (7 and 8) *Esto* that a claim for disturbance was competent, the Sheriff had wrongly laid the *onus* of proof on the landlord. The *onus* was on the tenant in the first instance, though he might transfer it to the landlord by condescending on reasons *prima facie* capricious. No such reasons were stated here.

Argued for the tenant—The tenant's claim for compensation for artificial manures was not limited to these specified in heads I, II, and III of the schedule, for under the Act he was entitled to claim for all artificial manures actually applied to the land, *e.g.*, kainit, which he had applied here—Agricultural Holdings Act 1908, secs. 1 (1), 4, and 5. So far as the schedule deprived the tenant of compensation under the Act it was void. (2) "Value" meant cost. In any event it could not mean residual manurial value, for if so the tenant would according to the schedule be limited to one-third thereof, which was absurd. The words of the schedule were "one-third of the value," not one-third of the residual manurial value. Had that been meant the schedule would have said so. (3) The Sheriff was wrong in holding that the tenant could not claim for feeding stuffs consumed prior to the last year of the lease, for head V of the schedule was not exhaustive in its terms. It was clearly

limited to the stuffs there mentioned. (4) The tenant was entitled to compensation for the farmyard manure though not applied to the land, for the test was consumption not application. (6) The Act applied, for the notice to quit did not terminate the tenancy. The termination was the quitting of the holding. The Act of 1908 (sec. 36) provided that notice issued under the Act of 1906 should receive effect as if given under the Act of 1908. Reference was also made to the Interpretation Act 1889 (*cit. sup.*), sec. 37; and to *Macdonald* v. *Finlayson*, December 6, 1884, 12 R. 228, at p. 232, 22 S.L.R. 167. (7 and 8) *Esto* that the burden of proof was in the first instance on the tenant, it was bound to shift from time to time according to the facts proved by either. That being so no hard and fast rule could be laid down.

At advising—

LORD PRESIDENT—This is an appeal from the determination of the Sheriff-Substitute at Kirkcudbright upon certain questions of law submitted to him by an arbiter appointed under the Agricultural Holdings Act of 1908.

The claimant in the arbitration is one Andrew Mitchell, who was tenant of William Brown, the respondent in the arbitration, in a farm upon Mr Brown's property, and who is now or has been the waygoing tenant. The lease, which is before your Lordships, goes very minutely into the arrangements between the parties. Speaking generally, it first of all provides for a five-shift rotation, then it makes certain stipulations that particular fields, which are delineated on a plan, are not to be broken up in terms of the rotation, but are to remain as permanent pasture, and it further contains the usual provision that the dung made on the lands after the putting in of the last green crop is to be left for the proprietor or the incoming tenant. It then goes on to say—"With reference to the Agricultural Holdings (Scotland) Act 1883, it is hereby expressly provided and declared that, having regard to present circumstances, to the rent to be paid, and to the amount to be expended by the landlord on improvements and repairs, the compensation payable to the tenant at the determination of his tenancy shall not exceed the rates and proportions of unexhausted value specified in the schedule annexed and subscribed as relative hereto, which shall form the basis of and regulate the award to be issued in the arbitration, if any, which may follow in terms of the Act; and the compensation fixed on the basis of this schedule is hereby deemed fair and reasonable by the parties, and is hereby held to be substituted for compensation under part third of the schedule to the said Act. . . ." And there is, accordingly, a schedule annexed, to which I shall have, in a little, to call more particular attention.

Now, the schedule provides that the compensation "shall not exceed the rates and proportions after mentioned," and it then is divided into several heads. The first is headed "Lime applied." It distinguishes between land in tillage and land in permanent pasture, and says with regard to lime applied, "seven-eighths of cost after first crop has been taken, six-eighths after second crop," and so on in reference to land in tillage. With regard to land in permanent pasture, it says "nine-tenths of cost if applied in last year of tenancy, eight-tenths if in second last year," and so on. Then in the second head it deals with "crushed bones and bone meal," and proceeds in an analogous way to that followed with regard to lime. Then it deals in the third head with "dissolved bones, bone phosphates, guano, and police manure," and says, "one fourth of cost after first crop. Exhausted in two years." And then in the fourth head it deals with "other artificial manures," and says, "exhausted by first crop—no compensation." The fifth head deals with "feeding stuffs," and that I shall not at the present moment read, but shall refer to it hereafter.

Now, the first question that was submitted by the arbiter to the Sheriff, and is now submitted to us, is, "Do the terms of the lease and of head IV of the schedule annexed thereto validly preclude the tenant from claiming compensation in respect of artificial manures (other than those specified in heads I, II, and III of said schedule) which have grown a crop?" Now the meaning, in the concrete, of that is this—The tenant says—"I applied a form of artificial manure which does not fall within any of the headings I, II, or III"—that is to say, it is not lime, it is not crushed bones and bone meal, it is not dissolved bones, bone phosphates, guano, and police manure. Therefore, of course, it is another artificial manure, and he says—"If you don't give me compensation for that, then I am not getting compensation in terms of the statute; because the statute (Agricultural Holdings, Scotland, Act 1908) says—section 5—that 'subject to the foregoing provisions of this Act any contract or agreement made by a tenant of a holding, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement comprised in the first schedule hereto, shall be void so far as it deprives him of that right.'" I ought to mention that the arbiter states in the case—and it must be taken as the fact—that the tenant did not here say that the schedule was not fair and reasonable—in other words, section 4 of the Act must be held to apply. Section 4 says—"Where any agreement in writing secures to the tenant of a holding, for any improvement comprised in Part III of the first schedule hereto, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall as respects that improvement be substituted for compensation under this Act." And, accordingly, the tenant not having quarrelled that, as the arbiter says, we must hold that this schedule is a schedule that secures "fair and reasonable compensation."

The first point therefore comes to be this—Is the effect of the schedule in this

intent cut out because it does not absolutely specify each particular manure? That seems to me a hopeless contention. According to that argument, if you had said, as in terms of section 4, "Artificial manure a, b, c, d, and so on to the end of the alphabet, exhausted by first crop—no compensation," all would have been well. But if, instead of that, you proceed by enumeration, namely, by specifying in the first three heads certain artificial manures and then go on to say, "With respect to other artificial manures exhausted by first crop—no compensation," to say that in such a case the same result would not follow, is, I think, a hopeless contention.

That being so, does the fact that this particular manure is not given any compensation in money bring this case within the scope of section 5. I am quite clear that it does not. What section 5 says is that subject to the foregoing provisions—one of which, of course, is that a schedule which is not unreasonable may be substituted for the compensation under the Act—subject to such provisions, if any agreement deprives the tenant of his right to claim compensation in respect of any improvement comprised in the first schedule hereto, it shall be void. Now when you come to the first schedule to the Act you find the improvements classified under certain heads, and the head with which we have to deal here is head 23—"Application to land of purchased artificial or other purchased manure." Now it is quite clear that the schedule before us does deal with the application to land of purchased artificial or other purchased manure, and that it gives compensation which, *ex hypothesi* of the argument, must be taken as reasonable compensation for those manures as a class. If that be so, surely it would be very unreasonable to hold that it is illegal to agree that a particular manure, either specified by name or by generality, never will constitute an improvement, because the effect of it is exhausted in the first year of its application. That it is so exhausted may be taken for granted seeing that a competent landlord and farmer have so agreed, and from the fact that the schedule which says so is not said to be an unreasonable schedule. Accordingly I think upon this matter that, first of all, the arbiter, and secondly, the Sheriff, have answered this question quite rightly, and that the answer which we should give to the first question ought to be in the affirmative.

The next question deals with head 5 of the schedule, which is in these terms—"Feeding stuffs. For linseed, cotton and rape cakes, or for other purchased substances of equal manurial value, consumed on the farm by cattle and sheep and pigs during the last year of the lease, one-third of the value thereof. If consumed on permanent pasture three-sixths of the value thereof if applied in the last year, two-sixths if applied in second last year, and one-sixth if in third last year. Exhausted in four years." Several questions arise upon this part of the schedule, and I take first Question 2. Question 2 is in this form—"Does the 'value' which forms the basis of calculation under head V of said schedule fall to be interpreted as actual cost price, present cash value, original manurial value, or residual manurial value, or is the arbiter entitled to allow extrinsic evidence to be adduced as to the intent and meaning of the word 'value'?" Nobody was found to argue as regards that last proposition that the arbiter was entitled to lead evidence upon the matter, and that may be given the go-by at once. But upon the other question the arbiter decided that the "value" there referred to was original manurial value which he explained to mean, in his view, the value of the manurial constituents thereof, that is, of the feeding stuffs, such as nitrogen, potash, &c., before the feeding stuff was consumed. But before us nobody took the arbiter's view, but we had the extreme view contended for on the one side and on the other. The tenant contended that "value" meant cost. The landlord contended that "value" meant residual manurial value, that is to say, the value of the stuff as it came to be applied to the ground, and the Sheriff decided in favour of the tenant's view that it meant cost.

Before I criticise the learned Sheriff's view let me just say a word or two which, I think, will make this matter a little more clear for our consideration. The bottom of the whole idea is, of course, that the landlord must pay for an improvement to the holding which the waygoing tenant has caused, and of which he (the waygoing tenant) has not himself reaped the benefit by taking it out either in the form of a crop or, what comes to the same thing, in the form of the value of a beast which he afterwards sells. Now, when you deal with artificial manures, the idea of giving the tenant compensation for that, of course, is that in buying the artificial manure at a larger price he is putting something of extra value into the ground, which by the lease he is not bound to do. Of course, it goes without saying that the ground gets the value of the whole artificial manure as put there. What that value is, when you come to measure it in terms of £ s. d., is a different thing, and upon that you may, if you choose, agree upon a scale. Moreover, how much of that value will really represent an improvement will obviously depend on the time at which that artificial manure is applied. Nobody would suppose that a certain amount of, say, crushed bones and bone meal put on in the first year of a nineteen years' lease would represent an improvement at the end of the nineteen years' lease, for although crushed bones and bone meal would be a valuable constituent to the ground which the tenant was not bound to put there, yet he himself would have had the full benefit of it, because long before the end of the nineteen years it would all have been worked out, either in the shape of a crop which he has reaped or in the form of nutriment of some beast which he has sold. And accordingly, why the operation of the

agreed-on scale deals with the two things —for it deals with the money value of the improvement, and also with the time at which it was applied—is in order to show what the parties consider to be the true position of the improvement when the tenant quits the holding.

But while that is the case with artificial manures, it is obviously not exactly the same thing in the case of the feeding stuffs. A feeding stuff is not put upon the ground as manure, and consequently the whole value of the feeding stuff does not go into the ground as is the case with manure. What happens about the feeding stuff is this, that the feeding stuff contains in it certain ingredients which are of manurial potency. All those ingredients, of course, do not pass into the ground, because the feeding stuff is consumed by the animal, and certain proportions of those ingredients go to form the flesh of the animal, others pass through it in the draught, and, in the form of dung, reach the ground. Accordingly it is quite clear that the class of formula which will do for the calculation of the value of a manure will not do for the calculation of the manurial value of a feeding stuff; and so when you come to this formula dealing with feeding stuffs you find the expression entirely changed. It is no longer so much of the cost after the first crop, and so on. On the contrary, it is "For linseed, cotton, and rape cakes, or other purchased substances of equal manurial value, consumed during the last year, one-third of the value thereof."

With that preliminary explanation, I go first of all to what the Sheriff has done. The Sheriff has held that value is equivalent to cost, but he has held it to be so upon an argument which really will not bear a moment's inspection. The Sheriff says this—"The lease provides, 'the compensation payable to the tenant at the determination of his tenancy shall not exceed the rates and proportions of unexhausted value specified in the schedule' annexed to it. In heads I, II, and III the word used is 'cost.' In head V the word used is 'value.'" And then, having put these two premises, he comes to this, I must say, somewhat extraordinary conclusion—"Unless, therefore, value means the same thing as cost, the clause I have quoted does not apply to heads I, II, and III." That is, with great deference to the learned Sheriff, an absolute *non sequitur*. The lease says you shall not get more than a proportion of the value specified. But when you come to find out what that value is, surely you may say that value may be held to be a certain proportion of the cost without saying that value is cost. In fact, the moment you say it is to be a certain proportion of the cost, it seems to me perfectly clear that you say that value is not cost. Consequently I do not think that the Sheriff's argument supports for one moment the determination at which he has arrived.

If the matter is looked at without regard to what was actually decided, I am bound to say that I think the real determination becomes excessively clear. You first of all have the fact—a fact which, so far from surprising me, seems to be exactly what one would expect—that you have the sudden change from the word "cost" to the word "value." That, in itself, would seem to me to show that it is not cost. But the thing which is conclusive against its being cost seems to me to be this—the scale is to be "one-third of the value thereof" for three things which are said to be of equal manurial value. They are linseed, cotton, and rape cakes. Well, now, anybody who knows anything about it at all knows that linseed, cotton, and rape cakes are not things of equal cost. On the contrary, they differ very much; and yet whereas they are said to be of equal manurial value—which I do not suppose is literally true, but which is not very far from the truth—you are to pay a proportion, according to the tenant's idea, which is to be regulated by the cost which is entirely different. The reason that it is different, I take it, is this—that in one case much more of the sum that is paid for the stuff goes into the animal as feeding and less finds its way as a manurial product into the dung.

If one looks at documents which, I think, one has a perfectly fair right to look at—I mean the tables which are used by agriculturists all over the country—I take a table which seems to be a very well-known one, Voelcker and Hall's Compensation Table, which was published in the Royal Agricultural Society's Journal of 1902—and when it is looked at, the thing becomes as clear as day. For instance, he starts with decorticated cotton cake and linseed cake, which correspond to two of the three heads I have read; and it is common knowledge —knowledge that anyone might get from his factor—that decorticated cotton cake and linseed cake differ in price to the extent of £2 or £3 a ton. Well, with regard to decorticated cotton cake, the compiler of this table sets out that it contains 6·90 per cent. of nitrogen. Then he takes the value of nitrogen and puts it into figures at 82s. 10d. That, I take it, was its value as at the date when the table was written, and then the table proceeds—"Half of the value to manure, 41s. 5d." What is the meaning of that? It means that if you have a cotton cake, you may take it that half of the nitrogen in that cake will go into the animal, and half will come out in the dung and be manure. The next ingredient dealt with is phosphoric acid, in which case three-fourths go into the manure; and the last case is potash, in which case, it seems, all of it goes into the manure; and when he sums up for the purpose of ascertaining the compensation value for each ton of the food consumed in the last year of the lease—in which case, of course, it will not inure to the outgoing tenant but will constitute an improvement on the farm—he arrives at the requisite figure simply by summing these three columns I have mentioned, namely, half the value of the nitrogen, three-fourths of the value of the phosphoric acid, and the

whole of the value of the potash. Accordingly I think it is perfectly clear that the true meaning of "value" is precisely what the arbiter has found, and I think that the arbiter's judgment in that matter was completely right, and that the Sheriff was wrong in altering it.

I must just dispose, before I leave the matter, of the extreme view that was urged by the landlord's counsel, which seems to me equally untenable, and for this very good reason. If you have already gone through this operation—that is to say, if you have found out the original value of the manurial constituents, and if you have also settled the partition of these manurial constituents between the body of the animal and the manure—what reason can there be for introducing a still further partition by means of another fraction? If you have found out that the manurial value of the constituents put upon the ground is x, why should you give the tenant only one-third of x when it is put on in the last year? Accordingly, I think the argument of the landlord's counsel was equally untenable, and that the arbiter upon this matter was completely right.

Well, now, the next question that arises upon the same head is this—"Do the terms of the lease and of head V of said schedule validly preclude the tenant from claiming compensation for feeding stuffs of the character specified in said head, which were consumed on the holding (exclusive of the permanent pasture thereon) prior to the last year of the tenancy?" That is a mere question of construction upon the article, and it is this. In the first limb of the article, which deals with feeding stuffs consumed on the farm, except on permanent pasture, it says—"Consumed during the last year—one-third of the value thereof." Now, of course, no actual mention is made of stuffs consumed in years other than the last year of the lease, but I think it is clearly excluded by implication, and that is obvious when one looks to what is said with regard to stuffs consumed on the permanent pasture. In the case of the permanent pasture the parties do provide for the other years, for they say—"If consumed on permanent pasture three-sixths of the value thereof if applied in last year, two-sixths if in second last year, and one-sixth if in third last year." If you take that fact combined with what is said as to the practical management of the farm—viz., the provision for a five-shift rotation—and consider what would be done in practice, I have come without any hesitation to the conclusion that here again the arbiter was perfectly right in holding that this only gave compensation for such stuffs consumed in the last year upon parts of the farm not permanent pasture, and gave no compensation for such stuffs consumed on parts of the farm not in permanent pasture in former years. The Sheriff and the arbiter here are at one, but the Sheriff's answer is rather unfortunately expressed, and might be held to cover the contention, which was really not urged on behalf of the landlord, namely, that this dealt with other feeding stuffs not of the character which are here specified. Now, the article only bears to deal with linseed, cotton, and rape cakes or other purchased substances of equal manurial value. Therefore if they were purchased substances of not equal manurial value—by which I do not mean any mathematical accuracy of equality, but fairly equal manurial value—then it is quite clear that this article does not cover them at all.

I now pass to the fourth question—"Is the tenant entitled to compensation in respect of the consumption on the holding of feeding stuffs, the manurial residuum whereof entered the farmyard manure which was left unapplied to the land by the tenant at outgoing and was taken over by the incoming tenant at valuation?" Now, in order to decide this question one must take with it the note appended to the schedule which I have not hitherto read. That note contains this provision—"From the amount to be paid in compensation for the unexhausted manurial value of feeding stuffs the arbiters shall deduct any sum which in their opinion has been or shall be paid to the tenant on account of any increased award, by reason of the manurial value of the feeding stuffs consumed, put upon the dung left by the tenant." The landlord argued, and at first sight the argument seems captivating, that, of course, nothing can be an improvement which is not put upon the land. "Therefore," said he, "why should there be a payment for any dung which was not put on the land? and dung left in the courts is not applied to the land." That sounds all right, but I think it fails to see the real difficulty of the question which has to be dealt with. If it had been an artificial manure, of course there would have been none, because in that case you can say—"Pay for what is applied; anything that is not applied don't pay for." But you are dealing with feeding stuffs consumed by the animals. Now, in the question of what will be the eventual improvement derived from the feeding stuffs consumed by the animals, you have not only got to deal with the difficulty I have already dealt with, namely, how much of the constituents are going into the body of the animal and how much are coming out in the dung, but you have also got to deal with where the dung is dropped. If a set of animals consume a ton of feeding stuffs, who can say how much of the dung will be dropped on the fields where the manurial residuum will get to the land, and how much will be dropped in the court? And therefore it seems to me that in order to get over that very practical difficulty the parties made the bargain which, I think, the schedule shows to be this—the landlord shall pay for the whole to begin with, but then he shall get a reduction in so far as a payment is made by the incoming tenant to the outgoing tenant for the dung which is left in the courts, because, of course, if that is not done the tenant would get paid twice.

Here, again, I think the answer is

quite clear and that the decision of the arbiter is entirely right. The Sheriff overruled it, but I am sorry to say I think the Sheriff fell into some confusion with regard to this matter. He says that the question seemed so simple that he did not see how it had arisen, but when he goes on to explain it he falls into a very obvious error. What the learned Sheriff says is this—"The arbiter who valued the farmyard manure ought to have valued it at its full value, and the incoming tenant ought to have paid the tenant the sum so fixed. If he has done so, no question can arise. If he has not done so, the incoming tenant has not paid the sum which he ought to have paid. But, of course, I assume that the manure arbiter valued all the manure at its full value. What follows in this reference is also quite simple. The landlord pays to the tenant according to schedule the value of the feeding stuffs consumed by the cattle." Now, that must be *prima facie* the value of the whole feeding stuffs. "But as the tenant has no right to be paid twice over the same thing, the 'Notes' provide that from the sum which he pays there falls to be deducted the sum which the manure arbiter considers will represent the amount of feeding stuffs which is in the farmyard manure. That is quite fair. In this reference the tenant will prove what feeding stuffs have been consumed by cattle. The landlord pays the whole of this, so far as he is bound to do so under the lease, if this manure has been applied to the land. But if it be found by the manure arbiter that the farmyard manure contains a manurial residuum derived from the consumption of the feeding stuffs, he states what price he put upon that residuum, and this sum is deducted from the sum which the landlord pays to the tenant. Under this arrangement the tenant receives the full compensation for the manure derived from the feeding stuffs consumed by his cattle, partly from the landlord and partly from the incoming tenant, and does not receive double payment for any part of it, which he would do if I answered this question differently."

The result is exactly the opposite of what he says. Upon the hypothesis that the Sheriff is right, the landlord does not pay the tenant for the whole manurial value of the feeding stuffs; he pays the tenant only for that part of it which is upon the land. Very well, then; if he only pays him for that, why should he have a deduction in respect of the other portion for which he has paid nothing and which is in the farmyard court? The deduction is only necessary and only becomes equitable if you first of all make him pay for the whole. And therefore, with great deference to the learned Sheriff, I think he is clearly wrong. Accordingly, on this matter, as I say, I think the arbiter again is right and the Sheriff is wrong. That finishes question 4.

Question 5 it has not been found necessary to put to us.

Question 6 is as follows:—"Is the tenant's claim for compensation for disturbance competent and relevant?" This is a peculiar case which probably will not happen again, because it really depends upon the dates. The clause having to do with compensation for disturbance is section 10 of the Act, and it enacts that "Where the landlord of a holding, without good and sufficient cause, and for reasons inconsistent with good estate management, terminates the tenancy by notice to quit, or, having been requested in writing, at least one year before the expiration of a tenancy, to grant a renewal thereof, refuses to do so," then the tenant is to be entitled to compensation for the loss or expense directly attributable to his quitting the holding. This tenant makes a claim of that sort. Now, the peculiarity of dates is this; there was an earlier Act—the Act of 1906—which first of all introduced this claim of compensation for disturbance, and the section was, I think, either absolutely or practically the same in its terms as section 10 of the present Act which I have read. That Act was only to come into operation on the 1st of January 1909, and before it came into operation the Act of 1908 was passed on the 21st December 1908, that is to say, exactly nine days before the other Act was to commence, and it repealed the other Act. Therefore the Act of 1906 had only really a sort of life of suspended animation in which it never entirely came to the birth. But the Act of 1908 provided by section 36, which was the section repealing the Act of 1906, "that all orders, Acts of Sederunt, scales of expenses, and instruments issued and notices and consents given and having effect under any enactment hereby repealed, shall have effect as if they had been made or given under this Act."

The tenant here gave notice that he proposed to claim compensation under the Act of 1906. I ought to have added that under section 10 there is a proviso that the tenant cannot claim unless within two months after he has received notice to quit he puts in a notice that he intends to claim compensation. The tenant here put in that notice. Well, now, it is said that inasmuch as that notice was before the new Act was passed, it could not be a notice under the Act, and therefore could not be a notice under section 10, and that therefore, having given no notice, he cannot claim in the present action. The arbiter and the Sheriff have both held that he could, and I think that they are right. I think that you arrive at that conclusion really in one of several ways, either by resting it upon that section at the end of the Act which I have quoted, or, for the matter of that, upon certain sections which were quoted to us from the Interpretation Act, for I am unable to distinguish the reasoning on this point from the reasoning of the Court in the case which was cited to us of *Lord Macdonald* v. *Finlayson*. I do not say more about this, because really it is a question which will never occur again, and therefore it is not worth while doing more than indicating what one's opinion is.

There remain two other questions, 7 and 8, and they are these:—"(7) In order to

escape from a claim for compensation for disturbance, must the landlord have had not only an inducing cause, good and sufficient in itself, but also reasons consistent with good estate management?" and "(8) Is the landlord bound to condescend upon the 'cause' and 'reasons' which led him to terminate the tenancy; and upon whom is the burden of proof?" These questions are put for the reason explained in the case stated. It is explained thus—"The arbiter was asked by the parties' agents to state at this stage his view on the meaning and purport of the expression 'without good and sufficient cause and for reasons inconsistent with good estate management,'" and then he really quotes the words that I have put in the questions in the affirmative form. The learned Sheriff has answered these questions in the same form. He says—"Before a landlord can escape from the obligation to pay compensation for disturbance he must be able to prove (1) that he had good and sufficient cause for terminating the tenancy by notice to quit, and (2) that he was not influenced in doing so by reasons inconsistent with good estate management;" and "Ans. 8—The landlord must condescend upon the 'cause' and 'reasons.' If he declines to do so, the arbiter must assume that he has none. The burden of proof is upon the landlord."

I do not personally believe that there is very much wrong in the views that are really at bottom held by the arbiter and the Sheriff upon this matter. I think they have got into trouble for the very simple reason that, instead of taking the words of the Act of Parliament, they have turned the words of the Act of Parliament round the other way. The Act of Parliament does not say anything about the landlord escaping an obligation to pay compensation. On the contrary, it says (section 10, *a*)—"Where the landlord of a holding, without good and sufficient cause and for reasons inconsistent with good estate management, terminates," then the tenant shall, under certain conditions, be allowed to claim. It is quite obvious that the person who has, so to speak, to bring the Act into effect must be the tenant, and that he must bring it into effect by an averment that the landlord has done what sub-section (*a*) of section 10 says he has to do in order to start the claim for compensation.

It is equally clear, I think, that it is quite inadvisable to lay down hard and fast rules about *onus*, because this is just one of the cases where *onus* may shift almost from moment to moment as certain facts are brought forward. Therefore I do not propose that we should answer these questions at all—in fact, I humbly refuse to answer the questions in the form in which they are put. But I will just say one or two words in order to give the arbiter, so far as I can, guidance upon this matter.

I think one thing is clear—first of all, that the tenant must, if I may so phrase it, open the ball by saying that the landlord has without good and sufficient cause terminated the tenancy. But if he says so, and if he says, "I know no reason whatever why I am being turned out, and therefore I presume that it is without good and sufficient cause and for reasons inconsistent with good estate management," it seems to me that he has done all that he could do. It was argued, in an extreme position, by the landlord's counsel that unless the tenant could find out for himself what the landlord's reasons were, and then prove that they were bad, he could not succeed. It seems to me that the moment the tenant has said what I have said that the next stroke rests with the landlord, and it is then for the landlord to show that there is some reason for which he has parted with the tenant. But there again I think the arbiter has taken a wrong view in respect that he seems to put a double burden upon the landlord. The double burden, if there is a double burden, is upon the tenant and not upon the landlord. As conceived by the Act of Parliament, I do not think that practically it comes to be a double burden, because I do not think that the words "for reasons inconsistent with good estate management" are much more than, in a certain way, expletive of the words that have gone before. They are not very easy to construe very logically, and for this reason, that Parliament in its wisdom of draughtmanship has tried to put as a criterion a negative sentence plus a positive sentence, and if you do that you always get into grammatical difficulties. But the underlying sense of it is, I think, clear enough. Expressed in common language, what this clause was meant to do was, not to give fixity of tenure (which would have been a perfectly different thing), but to give compensation for what may be characterised as capricious disturbance on the part of the landlord in capriciously putting an end to the lease.

Well, now, what reasons are capricious, and what reasons are not capricious, no man would try to define, because, really, no one could possibly *ab ante* figure all the possible reasons for which a landlord might wish to get rid of a tenant. But of this I am quite sure—and I think this is necessary to be said, because the arbiter seems a little doubtful upon this part— there may be perfectly good reasons for getting rid of a tenant which are not, in the strict sense of the word, agricultural reasons, and a landlord who gets rid of a tenant for one of these reasons, being a good one, is not liable under this clause. Now, what these, again, may be I cannot say. And, of course, the Legislature has gone the very great length of making a person called in from the outside the absolute judge upon that matter, because, if the arbiter says, "Your reason I consider a bad one," I do not know who is to interfere with him. But none the less I think it is obviously the intention of the statute that there may be a perfectly good reason inconsistent with what may be called agricultural reasons. An agricultural reason would of course be that the tenant was a bad farmer. That is plain enough. But there are many other classes of reasons. For instance, there is the reason that the

rent is too low, and that the tenant would not give any more. That would be a perfectly good reason. Whether you could prove that was so or not would depend upon different circumstances, and the best proof would be an offer from somebody else at a largely increased rent. Nobody could say that that was not a good reason for parting with a tenant. And in the same way I think it would come under the words of the second clause, because it could not be said to be a reason inconsistent with good estate management. Good estate management means getting as much as your property is worth.

There may be many other reasons equally valid. Suppose, for instance, the tenant made his farm the headquarters of low and disgraceful company. I imagine that would be a good reason for getting rid of him. Or suppose he made it his custom to take every opportunity of insulting and being disagreeable to the landlord's family. If I were an arbiter I would hold that to be a good and sufficient reason. Of course, what any particular arbiter might hold I do not know. But, at any rate, I think it is quite clear that reasons of both sorts are within the purview of the Legislature, although I cannot express it better—because it is not a definition I am giving—I cannot express it better than this, that the real object of the clause is, not to give fixity of tenure, but is to provide for compensation if there has been capricious action on the part of the landlord in refusing to renew the lease.

The answers I think we should give to these questions categorically are—The *First* in the affirmative. The *Second* that it is original manurial value. I am construing original manurial value exactly as the arbiter has done. The *Third* in the affirmative. The *Fourth*, yes, subject to deduction of such a sum as may be found deductible under the provisions of the note appended to the schedule. The *Fifth* was withdrawn. The *Sixth* in the affirmative. The *Seventh* and the *Eighth* we refuse to answer.

LORD KINNEAR—I concur.

LORD JOHNSTON—I also concur.

LORD M'LAREN was absent.

The Court pronounced this interlocutor—

"Answer the first question of law in the case in the affirmative: In answer to the second question find that the term 'value' falls to be interpreted as the original manurial value, meaning thereby the value of the manurial constituents thereof, such as nitrogen, potash, &c., before the feeding stuff was consumed: Answer the third question in the affirmative: Answer the fourth question in the affirmative, but subject always to deduction of such sum as may be found deductible under the provisions of the note appended to the schedule to the lease: Find it unnecessary to answer the fifth question: Answer the sixth question in the affirmative: Refuse to answer the seventh and eighth questions as stated: Recall the determination of the Sheriff-Substitute in so far as not in accordance with the above answers, and with said answers remit the case to the arbiter to proceed as accords: Find no expenses due to or by either party, and decern."

Counsel for Brown (Appellant)—Chree—MacRobert. Agents—Connell & Campbell, S.S.C.

Counsel for Mitchell (Appellant)—Murray, K.C.—Hon. W. Watson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Tuesday, December 14.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

CHARLES P. KINNELL & COMPANY, LIMITED *v.* A. BALLANTINE & SONS AND OTHERS.

Trade Name—Descriptive Name—Description of Article Sold—Likelihood of Deception—Interdict—Terms of Interdict.

A descriptive name, although *in initio* its exclusive use is due to patents, may become so exclusively associated with the goods of a particular manufacturer A as to acquire a secondary meaning denoting goods of his manufacture alone. A is then entitled to interdict B from using the name as descriptive of, or in connection with, similar goods, not of A's manufacture, sold or offered for sale by B, without clearly distinguishing such goods from the goods of A. A, however, is not entitled to a declarator that he has the exclusive right to use the name in connection with such goods, nor to an unqualified interdict.

Charles P. Kinnell & Company, Limited, hot-water engineers, Southwark Street, London, raised an action against A. Ballantine & Sons, engineers and iron-founders, Bo'ness, as a firm, and against David Ballantine and Archibald Ballantine, the individual partners of the firm, for declarator "that the pursuers have sole and exclusive right to the use of the name 'Horse Shoe' as applied to boilers, and that said name applies exclusively to boilers manufactured and supplied by the pursuers, and that the defenders are not entitled to sell, offer, or advertise for sale, or dispose of as 'Horse Shoe' boilers any boilers manufactured by them, or not manufactured and supplied by the pursuers," and for interdict against the defenders "from issuing circulars, lists of prices, or other documents in which boilers not manufactured and supplied by the pursuers, and in particular boilers of the defenders' manufacture, are described as 'Horse Shoe' boilers, and from in any other way describing boilers manufactured