the said vessel, a shore labourer lighted a cigarette and threw the match down; the match, still alight, fell among some shavings on the floor of the poop, setting fire to the said shavings; the fire thus caused lighted the pursuer's trousers, burning him severely; that the pursuer had, previously to the fire, been shifting a barrel of kerosene oil from which some of the oil had leaked on his trousers; that he was injured by the fire; and that he has not yet recovered.

Under those circumstances I think that only one result can be arrived at, namely, that the accident did arise out of and in the course of the employment of the pursuer. That it arose in the course of his employment is not doubtful. It has been argued to us that it did not arise out of the employment. Now I think it did, and for a very simple reason, the pursuer had got the oil upon his trousers owing to the work to which he was put; he was surrounded by shavings on the poop owing to the work to which he was put; and therefore it was a result of the work to which he was put that the pursuer at that moment was working in a position in which he was in more than ordinarily inflammable surroundings. An accident occurred by which the inflammable surroundings were set on fire and the pursuer was injured. That, in my view, is an accident arising out of the pursuer's employment.

I think that the fallacy of Mr Horne's argument was that he treated the throwing down of the match as the accident. It was not the throwing down of the match that was the accident; the fire was the accident; but the throwing down of the match was the cause of the accident. It was through the accident, namely, the fire, that the pursuer was injured. Well, I think that was a risk to which he was exposed to a greater extent than other people because of his employment. Other people were not exposed to the risks of that fire because they had not to work on the poop among these shavings and to work with oily trousers. He was bound to work under those conditions.

I am therefore for sending back the case to the learned Sheriff-Substitute with an instruction to him to find that the accident arose in the course of and out of the pursuer's employment, and to assess the proper compensation.

LORD KINNEAR—I quite agree with your Lordship. I think it clear, upon the admitted facts, that the accident from which this man suffered occurred in the course of his employment, and I think it equally clear that it arose out of the employment, because the risk to which he was exposed was incidental to the particular work which he was required to do at the time, and was very much greater than the risks to which other people might be exposed from the same cause. I think that his duty compelled him to run a greater risk than people ordinarily run from being in the neighbourhood of careless persons who throw about lighted matches, because his duty was to work among very inflammable material with his clothes more or less saturated with inflammable oil, and a lighted match having been thrown among this material and set it on fire, I think he incurred an injury to which his employment specially exposed him and to which he would not have been exposed otherwise.

LORD JOHNSTON—I agree. I think that this accident has occurred from a normal risk to which all are exposed, but to which this man was abnormally exposed, and that he was so exposed by reason of the nature of his employment; and I therefore think that the accident arose out of, as well as occurred in, the course of his employment, and that he is entitled to compensation.

LORD MACKENZIE — I agree with your Lordships.

The Court pronounced this interlocutor—

"Answer the second question of law in the case in the negative. . . . Recal the determination of the Sheriff-Substitute as arbitrator: Remit the cause to him to find that the accident arose out of and in the course of the appellant's employment, and to proceed as accords, and decern."

Counsel for Appellant—Moncrieff, K.C.—Fenton. Agent—T. M. Pole, Solicitor.

Counsel for Respondents—Horne, K.C.—Carmont. Agents—J. & J. Ross, W.S.

Friday, May 23.

FIRST DIVISION.

[Scottish Land Court.

CLYNE *v.* SHARPE'S TRUSTEES.

Landlord and Tenant—Property—Small Holding—"Determination of Tenancy"—Tacit Relocation—Renewal of Tenancy as from Expiry of Lease—Competency—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, c.* 49), *sec.* 32 (4).

A statutory small tenant whose lease had expired at Whitsunday 1912, but who had remained in possession of his holding, applied on 16th August 1912 to the Land Court to grant a renewal of his tenancy and to fix a fair rent. The Land Court having renewed the tenancy as from Whitsunday 1912, the proprietors appealed, maintaining that as the respondent's lease had expired at Whitsunday 1912 it was incompetent for the Land Court to renew the tenancy as from that date.

Held that the respondent was entitled to a renewal of his tenancy as from Whitsunday 1912.

The Small Landholders (Scotland) Act 1911, sec. 32, enacts—"With respect to statutory small tenants the following provisions shall have effect:—" . . . (4) Except in any case where the landlord satisfies the Land Court

that there is reasonable ground of objection to a statutory small tenant (hereinafter in this section referred to as the tenant), and the Land Court find accordingly, the tenant for the time being shall, notwithstanding any agreement to the contrary, be entitled on any determination of the tenancy to a renewal thereof on the terms and conditions hereinafter specified."

This was a Special Case stated by the Scottish Land Court under the Small Landholders (Scotland) Acts, 1886 to 1911, for the opinion of the First Division of the Court of Session in an application at the instance of Angus S. Clyne, farmer, Torraviach, Caithness, against the Reverend Charles C. Cowie, U.F.C. Manse, Rothes, and others, trustees of the late Adam Sharp, Esquire, of Clyth, in the county of Caithness, and as such proprietors of that estate.

The Case stated—"(1) Under the Small Landholders (Scotland) Acts, 1886 to 1911, the respondent, the said Angus S. Clyne, applied as a statutory small tenant to the Scottish Land Court for an order fixing a first equitable rent to be paid by him for the holding possessed by him at Torraviach aforesaid, of which the appellants are the proprietors.

"(2) The respondent became tenant of the said holding at the term of Whitsunday 1907, at a rent of £25 per annum, under a missive of lease for five years. The said lease expired through the running out of the said stipulated term of endurance at Whitsunday 1912. No notice of removal had been given by either party to the other in terms of the Agricultural Holdings Act 1908. The respondent continued after Whitsunday 1912 and continues in possession of the holding. Nothing was done by either party in reference to the terms and conditions of the tenancy beginning at Whitsunday 1912 until the application referred to in next paragraph was presented.

"(3) The respondent's application to the Land Court was presented on 16th August 1912.

"(4) The application was duly served on the said trustees, and was heard by the Land Court at Wick on 30th September 1912. No objection was taken to the competency of this application. Proof was led and the holding inspected by members of the Court. Applicant asked renewal for one year; the proprietors asked that the term should be fixed at seven years. By consent of parties the period was fixed at seven years, subject to a break at the end of three years. Neither party maintained at the hearing of this application that the period and rent should run from Whitsunday 1913, or from any term other than Whitsunday 1912. . . .

"(5) On 13th December 1912 the appellants received intimation from the Sheriff-Clerk at Wick that the following final order had been pronounced in the application by the Land Court—'The Land Court . . . find that the applicant is a statutory small tenant in and of the holding described in the application, and that no ground of objection to the applicant as tenant had been stated: Therefore find that he is entitled to a renewal of his tenancy of the said holding, and to have an equitable rent fixed; and having considered all the circumstances of the case, holding, and district, fix and determine the period of renewal at seven years from the term of Whitsunday 1912, but providing by consent of parties that at the expiry of three years from Whitsunday 1912 the tenant shall be entitled to terminate his tenancy, and the landlord shall be entitled to object to the continuance of the tenancy for the remainder of the said period of seven years in the same manner as if the said period had been three years from the said term of Whitsunday; and fix and determine the equitable annual rent payable by the applicant at £20 sterling, to run from the term of Whitsunday 1912. . . .'

"(6) The appellants object to the final order of the Land Court (1) in so far as it fixes and determines the period of renewal of the respondent's tenancy of the holding as from the term of Whitsunday 1912, and (2) in so far as it reduces the rent of the holding as from the same term, and maintain that under the provisions of section 32 (4), (5), (6), and (7) of the Small Landholders (Scotland) Act 1911 it was *ultra vires* of the Land Court to fix an equitable rent for, or the period of the respondent's tenancy of, the holding for the current year to Whitsunday 1913, in respect (*a*) that the respondent's existing tenancy has not 'determined,' and (*b*) that the respondent failed to give notice requisite to terminate his tenancy at Whitsunday 1912 in terms of the Agricultural Holdings (Scotland) Act 1908. The appellants do not maintain that the term of removal must have arrived before the application is dealt with by the Land Court.

"(7) The respondent maintains (1) that in virtue of the definition of the expression 'termination of the lease' contained in section 31 of the Act of 1911 and of section 2 (1) (iii) the tenancy under the said lease terminated at Whitsunday 1912, and the Act of 1911 then applied to the holding, and that his renewed tenancy is from Whitsunday 1912, a tenancy to which subsections (4), (5), (6), (7), and (9) of section 32 apply; and (2) that neither the notice of removal prescribed by section 18 of the Agricultural Holdings Act 1908 nor any other notice is required to bring the Act of 1911 into operation."

The *questions of law* were—"(1) Whether, on the facts as stated, and having regard to the provisions of the Small Landholders (Scotland) Act 1911, the Land Court were entitled to fix the renewal of the respondent's tenancy of said holding and the equitable rent to be paid by him therefor, as from Whitsunday 1912? (2) Whether it is competent for the Land Court to entertain any application by the respondent for fixing an equitable rent and determining the period of renewal of the tenancy until he has given the notice of removal required to terminate an existing tenancy under the Agricultural Holdings (Scotland) Act 1908, section 18?"

Argued for appellants—(*Question* 1)—*Esto* that the applicant was a statutory small tenant in the sense of section 32 of the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), and that he was entitled under section 32 (4) to apply for a renewal of his tenancy, the Land Court were in error in making that renewal from Whitsunday 1912, for the lease had expired. The tenancy, to a renewal of which he was entitled, was that current at the date of the application, viz., the yearly tenancy by tacit relocation, under which he was then sitting. At the date of the application this tenant was possessing not on the lease but on the legal tack constituted by tacit relocation. [As to the nature of such a tack, reference was made to Ersk. Inst., ii, 6, 35, and 44.] The words "determination of the tenancy" meant the existing tenancy, *i.e.*, the tenancy constituted by tacit relocation. That being so, it was *ultra vires* of the Land Court to date the renewal of the tenancy from Whitsunday 1912. (*Question* 2)—The applicant was bound to give notice of his intention to terminate the tenancy or to ask reconsideration of its terms—Agricultural Holdings Act 1908 (8 Edw. VII, cap. 64), sec. 18. Not having done so, he was barred from making the present claim.

Argued for respondent—(*Question* 1)—*Esto* that at Whitsunday 1912 there had been a termination of the lease in the sense of section 31 (1) of the Act, there had also been a determination of the tenancy in the sense of section 32 (4), and the applicant therefore was entitled to a renewal as from that date, and, if he so desired it, on the same terms—section 32 (9). The fact that there had been tacit relocation was immaterial, for the effect of the Act was to supersede tacit relocation in holdings to which it applied. On its commencement the respondent became a statutory small tenant and entitled to apply for a renewal of his tenancy—section 32 (4). (*Question* 2)—No notice was prescribed by the Act and none therefore was necessary.

At advising—

LORD PRESIDENT—This is a Special Case stated by the Land Court requesting your Lordships' opinion upon a question of law. The facts upon which the matter arises are these. Angus Clyne was tenant of a holding upon the estate of Clyth, the proprietors of which are certain testamentary trustees. Clyne became tenant of the holding at a rent of £25 a-year at Whitsunday 1907 under a missive of lease for five years. The ish of the lease was accordingly Whitsunday 1912. No notice of removal was given either by the landlord or the tenant before that term, but on 16th December 1911, that is to say, not quite six months before the ish of the lease, the Small Landholders (Scotland) Act was passed, which came into operation on the 1st April 1912. Nothing happened as between the parties at the time of the expiry of the tenancy, but on 16th August 1912 Clyne presented an application to the Land Court asking the Land Court to fix the term of renewal of the tenancy and the equitable rent. The Land Court having considered the application, pronounced an order or judgment in which they found that the applicant was a statutory small tenant—"Therefore find that he is entitled to a renewal of his tenancy of the said holding, and to have an equitable rent fixed: And having considered all the circumstances of the case, holding, and district, fix and determine the period of renewal at seven years from the term of Whitsunday 1912"—I leave out other matters which are not of moment—"and fix and determine the equitable annual rent payable by the applicant at £20 sterling, to run from the term of Whitsunday 1912."

The point of law upon which our judgment is asked is whether that order was *intra vires* of the Land Court in respect that it made a new tenancy, or renewal of tenancy, run from Whitsunday 1912. The contention of the proprietors before your Lordships was that that was impossible, because the moment that the term of Whitsunday 1912 arrived—no notice having been given—a new tenancy was *ipso facto* constituted for one year by tacit relocation, and that although the Land Court had a power to ordain a renewal of a tenancy where a person was a statutory small tenant—which they did not deny that this man was—yet they could only arrange for a renewal of the existing tenancy. Now the existing tenancy, according to the argument, was a tenancy that began at Whitsunday 1912 and only expired at Whitsunday 1913; and therefore the landlords argued that this judgment of the Land Court was *ultra vires*, inasmuch as instead of dealing with a tenancy as from Whitsunday 1913, it dealt with it as from Whitsunday 1912.

The matter depends entirely upon the provisions of the Small Landholders (Scotland) Act, and this is the first time we have had an opportunity of considering its provisions. The scheme of the Act, or rather the way in which the provisions of the Act are arranged, is somewhat peculiar. The Act begins by reading in the expression "landholder" into the Crofters Acts, and then it goes on in section 2 to define what a landholder is. It first of all says that the word "holding" means and includes every holding which is held by a crofter. That we have nothing to do with in this case. Then it goes on to say that the word also includes (sub-head (ii) of section 2 (1)—"As from the commencement of this Act, and subject as hereinafter provided, every holding which at the commencement of this Act is held by a tenant from year to year who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (hereinafter referred to as an existing yearly tenant)." I pause to note that if the matter stopped there and we had nothing more, that would bring every

yearly tenant in Scotland within the purview of the Act. Then subhead (3) deals with those who have leases—"As from the termination of the lease, and subject as hereinafter provided, every holding which at the commencement of this Act is held under a lease for a term longer than one year by a tenant who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (such tenant . . . being hereinafter referred to as a qualified leaseholder)." There again, if nothing else was said, that would bring in every leaseholder in Scotland. But I may, without actually reading them, at once give the effect of subsequent sections of the Act by saying that many persons are excluded by what is called disqualification, and one of the disqualifications which prevent a person being an existing yearly tenant or a qualified leaseholder is where his holding is worth more than £50 a-year. Accordingly, whereas, with the first breath the whole existing leases in Scotland are brought in, by a subsequent part of the Act they are all cut out so far as they represent holdings worth over £50 a-year. But the point which I think is to be noted is this—that the period at which the inquiry is to be made to find out whether people are within the statutory classes of existing yearly tenants or qualified leaseholders is at the commencement of the Act. In other words, it is the date of 1st April 1912 that once and for all fixes the character of existing yearly tenant and qualified leaseholder. But although the section has defined existing yearly tenants and qualified leaseholders in the way in which I have just read, yet it goes on, in words which I shall gloss instead of reading, to say that they shall only be so considered if they have made their own improvements; but that if the landlord has made the improvements instead of them, then although they are existing yearly tenants and qualified leaseholders by force of definition, yet they shall not be held to be such, but instead they shall be subject to the provisions of the Act regarding statutory small tenants.

Now I shall apply the definitions of the statute to the facts here before I go further, for the sake of simplicity. That matter seems to be very clear. Mr Clyne was a person who on 1st April 1912 held land under a lease for a term longer than one year. He resided upon the holding and cultivated it himself, and the holding was not worth more than £50 a-year. Accordingly he quite clearly fell within the definition of sub-head (iii) of section 2 (1), that is to say, he was a qualified leaseholder. But then we are told that as a matter of fact Mr Clyne had not made his own improvements. Accordingly, under the provisions of clause (*b*) of section 2 (1) (iii), although he is a qualified leaseholder, he cannot be held to be a qualified leaseholder, but he is a person to whom the provisions of the Act applying to statutory small tenants applied. Well, that of course, having defined the position of Mr Clyne, at once sends us to the portion of the Act which tells us what is the position of a statutory small tenant, namely, section 32. That section begins—"With respect to statutory small tenants the following provisions shall have effect." The first subsection is practically a repetition of the definition which I have already extracted from the different provisions of section 2. Then, leaving out some sub-sections which I do not need to read, I come to subsection (4)—"Except in any case where the landlord satisfies the Land Court that there is reasonable ground of objection to a statutory small tenant (hereinafter in this section referred to as the tenant) and the Land Court find accordingly, the tenant for the time being shall, notwithstanding any agreement to the contrary, be entitled on any determination of the tenancy to a renewal thereof on the terms and conditions hereinafter specified." Then there is a provision that the terms and conditions of the renewed tenancy may be fixed, if the parties so choose, by agreement; and then it is provided, sub-section (7)—"Failing agreement, the landlord or the tenant may apply to the Land Court to fix an equitable rent, or to fix the period for which the tenancy is to be renewed, and the Land Court may thereafter determine the rent to be paid by the tenant, or the period of renewal, or both, as the case may be." And then sub-section (9) provides—"Subject as aforesaid, the terms and conditions of the renewed tenancy shall (except so far as agreed to be varied) be those of the determining tenancy, in the same way and to the same effect, as nearly as may be, as if the tenancy had been continued for the full period of renewal under tacit relocation, and the tenant shall be entitled, if he so desires, to a renewal on these terms and conditions."

Now I think that the effect of those provisions is not doubtful. We have, as I have already pointed out, to look at the date of 1st April 1912 to find out whether Mr Clyne was within the Act or not. On considering the circumstances of his case, we find that at 1st April 1912 he was a qualified leaseholder who in the somewhat curious terms of the Act is not to be held to be a qualified leaseholder, and he was a person, therefore, to whom the provisions as to statutory small tenants applied. He could not get the benefit of his right of renewal until his lease expired, and accordingly he did not get what you may call a practical right under the Act until Whitsunday 1912; but as soon as the Whitsunday term arrived, it seems to me that he was, in terms of the Act, notwithstanding any agreement to the contrary, "entitled . . . to a renewal thereof on the terms and conditions hereinafter specified." And the terms and conditions after specified were that, failing agreement between the parties—and no agreement here is alleged—all the conditions of the old lease were to remain as before, except only that the tenant had a right to ask the Land Court to fix for him the period of the renewal lease and the rent which he was to pay

under it. Now he did both those things, and I think he went quite timeously to the Land Court, for he really went almost as soon as the Land Court was constituted. Accordingly I think the order of the Land Court was justified.

My view is that under the Act a person in this condition is entitled, as soon as his lease has expired, to this statutory right of renewal, and that that statutory right of renewal, so to speak, suspends the operation of what I may call common law tacit relocation, which, under these circumstances, would have taken place if the Act had not been passed. I say "suspends," because I can imagine that, if no application at all was made to the Land Court, and if nothing else was said, and if the man simply went on year after year, it might be that he would be sitting under tacit relocation, he not having taken advantage of the provisions of the Act. And I think that that consideration gets rid of the difficulties which were suggested in argument as to what would have happened if the tenant had gone on for years and then come to the Land Court. I think that in that case it would have been found that he was too late. I think a person may disable himself from taking advantage of the provisions of the Act of Parliament by not being timeous. But here there was nothing of that sort. The fallacy, I think, of the argument for the landlords—which, upon the first statement of it, seemed convincing—lies in this, that it really presupposes that the right which the man gets to the renewed tenancy is a right which he gets from the Land Court on application. I do not think he does. I think he gets the right *ipso facto* under the statute, and that all that the Land Court does is to fix certain terms of the lease—very weighty ones certainly, namely, the ish and the rent; but, nevertheless, the lease itself—the renewed tenancy—depends upon the provisions of the statute and not upon the decision of the Land Court. That view really gets rid of the seeming difficulty which was put interrogatively in the argument, namely, on what title was this man sitting during, say, the month of June. "Tacit relocation," said the landlord. But I think the answer is that he was not. He was sitting under a statutory renewal of which the terms had not yet been fixed.

That being my opinion, I think the Land Court decided rightly on this matter, and that we should answer the question put to us in the affirmative.

LORD KINNEAR—I agree with your Lordship for the reasons which you have stated, and I do not think it necessary to repeat them in other words.

LORD JOHNSTON—I also agree with your Lordship, but with some hesitation I shall give my own view upon one part of the case. I have felt the difficulty, perhaps more strongly than your Lordship, which arises on a portion of the Act with which your Lordship has dealt, but I have been relieved by considerations which are somewhat different from those which your Lordship has stated.

The difficulty which I have experienced is in reconciling the common law idea of tacit relocation with the particular provisions of this 32nd section. Because it has seemed to me that if the judgment of the Land Court is correct, there is an opening for a tenant sitting on until the term arrives and then saying—"After all, I do not want this renewed and I am going away," and so leaving the landlord at the term in the lurch without a tenant. Let me turn to the provisions of section 32 of the Act. In the first place, in sub-section (4) there is the expression "on any determination of the tenancy," and that at once raises the question, why should the interpretation clause in section 31 use the expression "termination of the lease,' when one does not find "termination of the lease" used in section 32 (4), but a different term—"determination of the tenancy." I think that that difficulty may be got rid of by this consideration, that the determination of the tenancy includes not only the termination of the lease, but also the determination of a tenancy precedent to a statutory extension of the lease under the provision of section 32. But then sub-section (5) raises a much greater difficulty in respect that it declares the provisions of this section to be subject to all the provisions of the Agricultural Holdings Acts 1908 and 1910. Amongst other things these Acts not only recognise tacit relocation but make special provision for statutory notices to take the place of the common law notices required to prevent tacit relocation, and it is somewhat difficult to see how these provisions can apply to a current lease or to a tenancy extended under the Act, and yet that the tenant should be entitled to delay until after the determination of the lease, when, *ex hypothesi*, tacit relocation must have taken place, without giving notice that he wants reconsideration of the terms of his tenancy. But I think that the difficulty is obviated by this consideration—I think tacit relocation has in a case such as the present really taken place, and that the tenant who has allowed the proper time of notice to pass without giving notice has become tenant for at least another year in terms of sub-section (5); but there is this expression in the beginning of sub-section (5)—"Except so far as varied by this section." And I think that tacit relocation, though it has occurred, is so far affected by this sub-section that it is tacit relocation of the holding on the terms and conditions of the lease, all except those two items which the tenant or landlord, as the case may be, may call on the Land Court to determine for them under sub-section 7, namely, the rent and the duration. And in that way the idea of tacit relocation may be reconciled with the provision of this section of the statute.

For these reasons I agree with your Lordship in thinking that the judgment of the Land Court is sound.

LORD MACKENZIE—The only question which need be decided in this case is the first. The appellants contend that the Land Court had no power to fix a rent for the respondent's holding as from Whitsunday 1912, when the period fixed by the lease expired. Their argument is that from Whitsunday 1912 down to Whitsunday 1913 Clyne held by tacit relocation, and that there accordingly was for that year a legal tack the terms of which could not be altered. This contention appears to me not to be consistent with the provisions of the statute. The title of the respondent to the benefits of the Act (which came into operation on 1st April 1912) was that of a leaseholder, and under 2 (1) (*b*) a statutory small tenant. His title could not be that of a tenant from year to year at the commencement of the Act, because the ish stipulated in the lease was subsequent to the date when the Act came into operation. If, however, he was a leaseholder, the date of the "termination of the lease" means (under section 31 (1)) the expiration of the lease through the running out of the stipulated term of endurance, that is to say, Whitsunday 1912. This under section 32 (4) was the "determination of the tenancy." That expression was, in my opinion, used in that sub-section because different classes are being dealt with, and it was intended to cover termination of the lease in the case of the leaseholders, as well as the expiry of the year in the case of a tenant from year to year. The true construction of the Act is, in my opinion, this—On the Act coming into operation a right vested in the parties entitled under section 2, postponed only in the case of leaseholders to the termination of the existing lease, and in the case of tenants from year to year to the expiry of the year then current. The right which so vested could be made effectual by an application to the Land Court. To this extent the Act innovates upon the doctrine of tacit relocation. It is not necessary to decide what effect the doctrine of tacit relocation would have if the person in whom the right vested delayed, after the right had vested, in making his application.

In the present case I think it was not incompetent for the Land Court to do what they did.

The Court answered the first question of law in the affirmative, and found it unnecessary to answer the second question.

Counsel for Appellants—Murray, K.C.—Hon. W. Watson. Agents—J. & A. F. Adam, W.S.

Counsel for Respondents — Moncrieff, K.C.—T. G. Robertson. Agents—Gordon, Falconer, & Fairweather, W.S.

Friday, May 23.

FIRST DIVISION.

[Scottish Land Court.

CARMICHAEL *v.* MACCOLL.

Landlord and Tenant — Property — Statutory Small Tenant — Joint - Tenants — Application for Renewal of Tenancy — Competency — Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *secs.* 2 *and* 26 (8).

The joint-tenants of a holding whose lease had expired at Whitsunday 1912, but who had continued in possession, applied on 18th June 1912 to the Land Court for, *inter alia*, a renewal of their tenancy as from Whitsunday 1912.

Held (1) that the provisions of the Act with regard to statutory small tenants applied to joint-tenants, and (2), following *Clyne* v. *Sharp's Trustees* (*sup.*, p. 688), that the applicants were entitled to a renewal of the tenancy as from Whitsunday 1912.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) enacts—Section 2 —"*Who to be Landholders.*—(1) In the Crofters Acts and this Act (hereinafter referred to collectively as the Landholders Acts) the word 'holding' means and includes . . . . (iii) As from the termination of the lease, and subject as herein after provided, every holding which at the commencement of the Act is held under a lease for a term longer than one year by a tenant who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (such tenant, or his heir or successor, as the case may be, holding under the lease at the termination thereof being hereinafter referred to as a qualified leaseholder): Provided that such tenant from year to year or leaseholder (*a*) shall (unless disqualified under section twenty-six of the Act) be held an existing yearly tenant or a qualified leaseholder within the meaning of this section in every case where it is agreed between the landlord and tenant or leaseholder, or, in the event of dispute, proved to the satisfaction of the Land Court that such tenant or leaseholder, or his predecessor in the same family, has provided or paid for the whole or the greater part of the buildings or other permanent improvements on the holding without receiving from the landlord or any predecessor in title payment or fair consideration therefor; and (*b*) in every other case shall not be held an existing yearly tenant or a qualified leaseholder within the meaning of this section, but shall (unless disqualified under section twenty-six of this Act) in respect of the holding be subject to the provisions of this Act regarding statutory small tenants. . . . (2) In the Landholders Acts the word 'landholder' means and includes, as from the respective dates above mentioned, every existing crofter, every existing yearly tenant, every qualified