telegrams, and other communications in writing passing between the pursuer or anyone on her behalf and the defenders the testamentary trustees of the said deceased Thomas Mackenzie, or any of them, or anyone on behalf of them, or of anyone of them prior to the raising of the action. 5. The whole business books of the said Messrs Mackenzie, Innes, & Logan, that excerpts may be taken therefrom at the sight of the commissioner of all entries therein relating to any of the matters mentioned on record and made prior to the raising of the action. 6. All deeds or documents of a testamentary nature executed by the said deceased Thomas Mackenzie prior to 23rd March 1910, and having reference to the pursuer and the said Violet Mackenzie or either of them. . . ."

On 9th December 1915 the Lord Ordinary granted the diligence with the exception of the calls, 3, 5, and 6.

Opinion.—"I agree with Mr Watson that the documents called for are confidential, but if the defenders had been able to show that they were essential to prove any facts averred on record I think that difficulty might have been overcome in a case of this kind. They say that the documents are necessary to prove that the deceased was *not* married to the pursuer, but they have no averment on record that he ever made any communication of that kind to his solicitors, and even if he had I doubt whether it would have been good evidence against the pursuer."

The defenders, other than the trustees, reclaimed, and argued—Confidentiality was a privilege of the client, not of the agent—Begg on Law-Agents, 2nd ed. p. 319; Dickson on Evidence, sec. 1682; Taylor on Evidence, 8th ed., vol. i, sec. 928, 935; *M'Cowan* v. *Wright*, 1852, 15 D. 229, *per* Lord Justice-Clerk at p. 231. Confidentiality could not exclude the law agents' business books when the client was dead. The modern practice was to give a wide call—*Jones* v. *Great Central Railway Company*, 1910 A.C. 4, *per* Lord Chancellor (Loreburn) at p. 6—especially in cases involving the marriage relation. Even the confidentiality between husband and wife yielded when the question was marriage or no marriage. Law agents were examined in *Hamilton* v. *Hamilton*, 1839, 2 D. 89; *Duran* v. *Duran*, 1904, 7 F. 87, 42 S.L.R. 69.

The trustees argued—The books could not be evidence but were wanted merely for cross-examination. The diligence should not be granted—*Livingstone* v. *Dinwoodie*, 1860, 22 D. 1333, *per* Lord Justice-Clerk at p. 1334. Confidentiality was the client's, but in the cases where diligence to recover the books was granted the dispute was with outside parties, not as here a domestic dispute—*Lady Bath's Executors* v. *Johnston*, November 12, 1811, F.C.; *M'Cowan* v. *Wright*, 1852, 15 D. 229, *per* Lord Wood, p. 237; *Munro* v. *Fraser*, 1858, 21 D. 103, *per* Lord President, p. 107. The diligence should not be granted, but the partners of the firm could be called as witnesses—*M'Neill* v. *Campbell*, 1880, 7 R. 574, 17 S.L.R. 392. The English practice was so different from ours that it could not be appealed to.

The opinion of the Court (LORD PRESIDENT, LORDS MACKENZIE and SKERRINGTON) was delivered by

LORD PRESIDENT—In the circumstances of this case, and as a question of status is involved, the diligence will be granted.

The Court recalled the interlocutor of the Lord Ordinary, and granted the diligence.

Counsel for Pursuer—M. P. Fraser. Agents—Martin, Milligan, & Macdonald, W.S.

Counsel for the Trustees—Watson, K.C.—Dykes. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for the other Defenders—Sandeman, K.C.—Wilton. Agents—Davidson & Syme, W.S.

Wednesday, December 15.

SECOND DIVISION.

[Sheriff Court at Dumfries.

COPLAND *v.* BROGAN.

Reparation—Negligence—Mandate—Reasonable Care—Onus of Proof.

A was in the habit of entrusting B with the duty of going to a bank at which A kept an account, there cashing A's cheques, and bringing back the proceeds to A. On one occasion, when on his way back from the bank, B lost the money. In an action by A against B for repayment of the money the evidence did not show how the money was lost. The Court *granted* decree, *holding* that there was an *onus* on the defender, which he had failed to discharge, of proving that he had taken reasonable care of the money.

Primrose Caldwell Copland, residing at Dalton School House, by Lockerbie, *pursuer*, brought an action in the Sheriff Court at Dumfries against James Brogan, carriage hirer, Dalton Village, *defender*, to recover £34, 14s., with interest and expenses, which sum in a package the defender had received for delivery to the pursuer.

The pursuer, who was clerk to the Parish Council and inspector of poor, as such kept a banking account with the Royal Bank of Scotland at Lockerbie, and was in the habit of from time to time asking the defender, who one day a-week drove a waggonette to and from Lockerbie, to take a bank book and cheques to the bank and bring back the proceeds in cash. This the defender did gratuitously. On Thursday, January 15, he received from the bank as usual a packet, which contained £34, 14s., for delivery to the pursuer. He placed it in his inside jacket pocket and proceeded on his way home. Between the Crown Hotel, Lockerbie, where he collected his passengers, and Dalton, he alighted twice to set down passengers at Hightae. On arrival at Dalton he found the packet missing, and nothing was ever heard of it. He was perfectly sober.

The pursuer pleaded, *inter alia*—"(1) The defender having received the sum of £34, 14s. to be handed over by him to the pursuer, and having wilfully failed to do so, decree should be granted as craved, with expenses. . . . (3) The pursuer having suffered loss through the gross carelessness and culpable negligence of the defender, decree should be granted as craved, with expenses."

The defender pleaded—"(1) The defender having taken every reasonable care and precaution for the safe carriage and delivery of the package in question, and same having been lost or stolen from him, the pursuer cannot hold the defender liable in indemnity for the loss thereof, and the defender ought therefore to be assoilzied from the conclusions of the action, with expenses. (2) The defender being under no obligation to execute commissions for the pursuer, having executed the commission in question simply as a favour to the pursuer, and having taken every reasonable precaution for the safe delivery of the package in question, the pursuer cannot hold the defender liable in indemnity for the loss thereof, and the defender ought to be assoilzied from the conclusions of the action, with expenses."

On 10th November 1914, after a proof led, the Sheriff-Substitute (CAMPION) pronounced this interlocutor:—". . . *Finds* (1)—That the pursuer, who is clerk to the parish council and inspector of poor for the parish of Dalton, has been in the habit from time to time of asking the defender to deliver letters to and bring back to him packages from the Royal Bank of Scotland at Lockerbie, where the pursuer keeps an account: (2) That on 15th January 1914 the pursuer gave the defender a sealed letter containing three bank pass-books, cash amounting to £8, and three cheques for the sum of £13, £17, and £4, 10s. respectively, to hand in to the Royal Bank of Scotland at Lockerbie, and to receive cash for the said cheques and bring the same to the pursuer: (3) That the defender agreed to execute such commission for the pursuer, and on 15th January 1914, between 11 o'clock forenoon and 12 noon, he delivered the said packet to Mr William Rae, accountant in the Royal Bank of Scotland at Lockerbie, receiving from him between 2 and 3 o'clock afternoon of the same day a packet to be handed over to the pursuer, containing three bank pass-books and money amounting to £34, 14s., consisting of £14 in notes, £15 in half-sovereigns, and £5, 14s. in silver: (4) That about 4·30 o'clock the same afternoon, upon the defender's return from Lockerbie, the pursuer went down to receive the money from him as usual: (5) That the defender then informed the pursuer that he had not received any packet from the accountant of the Royal Bank of Scotland at Lockerbie, but that the accountant would probably be sending it out by post: And (6) that on the morning of 16th January 1914 the pursuer, not having received the packet, caused inquiry to be made at the bank in Lockerbie, when he was informed that a packet containing the three pass-books, together with the sum of £34, 14s., had been handed to the defender for the purpose of being delivered to the pursuer: Finds that in consequence of the defender having received the sum of £34, 14s. to be delivered by him to the pursuer, and having failed to deliver the same as undertaken by him, the pursuer has suffered loss to the amount of £34, 10s.; Therefore repels the pleas-in-law stated for the defender, and grants decree against him in terms of the craving in the writ for said sum of £34, 14s. sterling, with interest thereon from 15th January 1914. . ."

The defender appealed to the Sheriff (ANDERSON), who on 26th March 1915 pronounced this interlocutor:—". . . Sustains the appeal, recals the interlocutor of the Sheriff-Substitute of 10th November 1914: Finds (1) that the pursuer, who is clerk to the parish council and inspector of poor for the parish of Dalton, has been in the habit from time to time of asking the defender to deliver letters to and bring back to him packages from the Royal Bank of Scotland at Lockerbie, where the pursuer keeps an account; (2) That on 15th January 1914 the pursuer gave the defender a sealed letter containing three bank pass books, cash amounting to £8, and three cheques for the sums of £13, £17, and £14, 10s. respectively, to hand in to the Royal Bank of Scotland at Lockerbie, and to receive cash for the said cheques and bring the same to the pursuer; (3) That the defender agreed to execute such commission for the pursuer, and on 15th January 1914, between 11 o'clock forenoon and 12 o'clock noon, he delivered the said packet to William Rae, accountant in the Royal Bank of Scotland at Lockerbie, receiving from him between 2 and 3 o'clock afternoon of the same day a packet to be handed to the pursuer, containing three bank pass-books and money amounting to £34, 14s., consisting of £14 in notes, £15 in half-sovereigns, and £5, 14s. in silver; (4) That the defender placed the said package in his jacket pocket, and that on his return to Dalton he found that it had disappeared, and no trace of it has since been discovered: Finds that the pursuer has failed to prove that the defender was guilty of negligence in executing said commission: Therefore sustains the first plea-in-law for the defender and assoilzies him from the conclusions of the action. . . ."

Note.—". . . I cannot hold from all that transpired that criminal intent is proved, and I must therefore acquit the defender of any wilful appropriation of the money. Accordingly the case falls to be decided upon the second branch of the pursuer's averments, viz., whether there was any negligence, or if not whether the defender is liable for the loss in respect that he received the parcel and has failed to provide any satisfactory explanation of its disappearance.

"There is not a very large body of authority in Scots law on the subject of gratuitous mandate, which is the legal category in which this case must be placed. The Roman law imposed upon a gratuitous mandatory *summa diligentia*—the highest form of diligence. But it is doubtful if Scots law has followed this rule. Erskine lays it down that a gratuitous mandatory is only liable

for such diligence as he employs in his own affairs—Ersk. iii, 3, 36. But I think the law is more accurately expressed by Bell when he states the standard to be that the mandatory is bound to show reasonable care such as a man of common prudence generally exercises about his own property of the like description—Bell's Prin., 218. The question has been canvassed by modern judges whether there can be degrees of negligence, and it has been said that gross negligence is just negligence with a vituperative epithet added, which contributes nothing to the legal definition of negligence, which is the absence of such care as it is the duty of the person concerned to use. Accordingly what has to be decided is whether the defender failed to exercise such reasonable care as a man of ordinary prudence would use in safeguarding his own property. In *Sliven* v. *Watson*, 1 R. 412, Lord Neaves said that the relation of agent or mandatory once constituted a duty arose, and the mandatory is liable if he fail to perform it. But it is plain from that case, and particularly from the judgment of the Lord Justice-Clerk, that the Court considered that proof of negligence was essential, and Lord Neaves cannot be held to have meant that failure to carry out the mandate is enough, but that it must be failure in the duty imposed by the contract.

"Two instructive cases have occurred in Scotland in this branch of the law where the mandatory had been excused from liability although he failed to carry out the contract. In *Grierson* v. *Muir*, Hume, p. 329, it was held that the loss fell upon the mandant where the money had been abstracted from the mandatory by theft, the only evidence of the money having been stolen being that the pocket in which it was placed was found to have been cut, although the mandatory was in fact unaware how or when the money had been taken from him. That case happened in 1802, and in its circumstances was not dissimilar from the present. One farmer at a market asked another as an obligement to carry some money for him to the bank in Kirkcudbright to pay a bill with which the messenger had no concern, and the loss was only discovered on his reaching home. The Court found that the mandatory not having lost the money owing to any act of indiscretion, but in such a way as he could not reasonably be expected to guard against, he had not failed in the diligence exigible from him, and it was to be viewed as an accidental loss with which the mandant must put up. Again, in the case of *Anderson*, M. 10,082, the money was lost in a shipwreck, which was held to absolve the mandatory from liability and cause the loss to fall upon the mandant.

"These two cases show that the mandant takes the risk of his messenger being robbed or shipwrecked, the ground of judgment apparently being that these were circumstances outside the volition of the defender, and therefore not inferring negligence.

"The novel feature which I have to deal with is that there is no explanation of how the money came to be lost—whether it was stolen, or whether, having dropped out of the defender's pocket accidentally, it was merely lost, or was afterwards feloniously appropriated. It is therefore essential to determine upon whom lies the *onus* of proof. *Prima facie* it is for the pursuer to prove negligence, and that seems to be the view of the English court in a case under very similar circumstances. In *Doorman* v. *Jenkins*, 2 Ad. and Ellis, p. 256, Justice Pateson said 'I agree the *onus probandi* was on the plaintiff.' On the other hand, Justice Taunton in that case very justly pointed out that if there was no negligence and proper care was taken, these were circumstances which the defendant had the best means of knowing and might have exonerated himself. But that only shows that when the pursuer has established a *prima facie* case against the defender it is still open to the defender to rebut it by positive proof that due care was exercised. The case of *Doorman* v. *Jenkins* was decided upon the question whether there was evidence upon which a jury might find for the plaintiff, and a different question arises when a judge has to decide on the facts proved.

"The present case depends upon a very narrow distinction. The pursuer is unable to point to any precaution which an ordinarily prudent man would have taken which was neglected by the defender. All that is proved is that the parcel entrusted to the defender is not forthcoming, and the pursuer says that thereby a presumption of negligence is established. But it cannot be inferred that because the thing was lost all necessary precautions were not taken. Things may be lost by persons who value them greatly and take every precaution for their safe custody. There is therefore no necessary inference of negligence arising from the fact of a thing being lost, and in my opinion negligence in this case is not proved. While fully recognising the difficult position in which a pursuer may be placed in requiring him to prove the cause of the loss which the messenger himself cannot explain, I do not see that the ordinary rule can be departed from, that where negligence lies at the foundation of the liability the pursuer must prove negligence before he can fix liability on the defender.

"Gratuitous mandate is a voluntary contract which no one can be compelled to undertake. There is no antecedent agreement inferring an obligation the breach of which implies the sanction of damages, and no course of conduct of previous obligements could rear up an obligation compelling a person to undertake the commission on pain of being liable to damages. While things are entire, or even after the commission is entered upon, the mandatory might refuse to complete the undertaking, provided due notice was given and ordinary prudence had been shown in the service up to that point. The mandatory remains a voluntary agent, and accordingly there can be no damages for mere non-fulfilment as there would be in an onerous contract. Further, the property of the subject and the risk of its perishing without fault on the part of the mandatory remains with the

mandant. I am therefore of opinion that the fact that the commission was not executed does not necessarily infer liability unless it is proved that the failure to execute it was caused by the want of due diligence in its performance. I shall therefore assoilzie the defender from the conclusions of the action."

The pursuer appealed to the First Division of the Court of Session, and argued—The pursuer had shown that the article had been lost by the defender. Accordingly the *onus* shifted, and in order to escape liability the defender must show that the loss occurred through no want of reasonable care on his part, *i.e.*, as much care as a prudent man would use in keeping his own property—Smith's Leading Cases (12th ed.), vol. i, p. 215, and cases there quoted; Bell's Prin. (10th ed.), secs. 212 and 218; *Bullen* v. *Swan Electric Engraving Company*, (1907) 23 T.L.R. 258; *Wiehe* v. *Dennis Brothers*, (1913) 29 T.L.R. 250, *per* Scrutton, J., at 252; *Wilson* v. *Orr*, (1879) 7 R. 266, 17 S.L.R. 132; *Stiven* v. *Watson*, (1874) 1 R. 412, 11 S.L.R. 223; *Scott* v. *London Dock Company*, (1865) 3 H. and C. 596; *Pullars* v. *Walker*, (1858) 20 D. 1238; *Reeve* v. *Palmer*, (1858) 5 C.B. (N.S.) 84; *Doorman* v. *Jenkins*, (1834) 2 A. and E. 256; *Grierson* v. *Muir*, (1802) Hume 329; *Anderson*, (1583) M. 10,082. The evidence showed that the defender had failed to exercise reasonable care.

Argued for the respondent—In order to render the defender liable the pursuer must prove crass negligence on his part. Where the bailor alone received the benefit, the *onus* was on him to prove gross negligence. This principle applied in Scotland as well as in England—Smith's Leading Cases (12th ed.), vol. i, pp. 208, 209, 215, and 262; Sir William Jones' Law of Bailments, (1781), p. 10; Erskine, iii, 3, 36; Stair, i, 12, 10; *Powell* v. *Graves & Company*, (1886) 2 T.L.R. 663; *Giblin* v. *M'Mullen*, (1868) L.R. 2 P.C. 317, *per* Lord Chelmsford at 338 and 340; *Doorman* v. *Jenkins* (*cit.*); *Beauchamp* v. *Powley*, (1831) 1 Moo. & Rob. 38, *per* Lord Tenterden, C.J., at 40; *The Rendsberg*, (1805) 6 Rob. Adm. 142, *per* Sir William Scott at 155; *Coggs* v. *Bernard*, (1703), reported in Smith's Leading Cases, vol. i, p. 191; *Grierson* v. *Muir*, *cit.* The English cases cited by the pursuer were distinguishable in respect that the bailee received some benefit—See also *Ultzen* v. *Nicols*, [1894] 1 Q.B. 92. The cases of *Pullars* v. *Walker*, *cit.*, and *Wilson* v. *Orr*, *cit.*, were cases where the mandatory had the right to use the subjects. The evidence showed that the defender had exercised reasonable care.

LORD JUSTICE-CLERK—In the course of the argument a number of interesting legal questions have been discussed, but in my opinion the specialties of the case make it unnecessary for the Court to express an opinion upon these questions. The facts are these—The pursuer asked the defender to take a parcel containing a bank-book and cheques to the bank at Locherbie, and to bring back the proceeds in cash. This was a commission which the defender had been in the habit of executing for the pursuer, and on previous occasions the commission had been carried out satisfactorily. On the present occasion the defender took the parcel to the bank and left it; and in accordance with his custom he went back later to get the return package, containing the bank-book and a sum of money in gold and silver. He got an envelope containing the book and the cash, put it into his inner jacket pocket, buttoned up his jacket, and put on his overcoat. After leaving the bank he was in Lockerbie for two hours or so, but he was unable to give any detailed statement of what he did during that time. He saw several friends, and was in a public-house or hotel once or twice, where he had some liquid refreshment; but the pursuer does not allege that the defender was the worse of drink. When the defender got back to Dalton he found to his surprise that the package was missing. Within a few minutes after his arrival he told the pursuer that he had not received any packet from the bank and that the bank would probably be sending it by post. That was the evidence which the pursuer gave as to the conversation, and I do not find that the defender seriously differs from that account in cross-examination. Moreover, it practically agrees with the defender's statement on record. The pursuer next day made inquiries at the bank and was informed that the defender had received the package on the previous day. When the defender was informed of this he then stated that the packet must either have been lost or stolen. For my part I cannot accept the evidence which the defender gave, or understand how he could within a few hours of receiving the package from the bank take up the position, and persist in it, that he never got the package, and that the bank would be sending it on by post the following morning.

With regard to the English authorities which have been quoted, I have difficulty in accepting them as being in conformity with the law of Scotland, and I do not agree that the same rule of law as applies to gratuitous obligations under English law can be held as applying in this case. According to Bell's Principles there is an obligation on the depositary to "keep the thing with reasonable care," and the editor of the last edition of that work states that reasonable care in the case of a gratuitous depositary means "such care as a man of common prudence generally exercises about his own property of like description." Now the packet having gone astray while it was in the defender's custody, the *onus* in my opinion rests on him to explain how this happened, or at least to show that he exercised the necessary reasonable care. Here the explanation given did not in my opinion sufficiently discharge the defender of responsibility for the loss of the packet. The consequences would be most unfortunate if we were to hold that it did. On the defender's own statements and on the other evidence in the case there is enough to show that the defender in executing his commission did not exercise the care which a prudent man would have taken with regard to a valuable packet of this kind. Accordingly I think

that we ought to pronounce an interlocutor in the following terms:—[*His Lordship read the interlocutor as printed infra.*] It is right that I should add that there is nothing to warrant any imputation of dishonesty on the part of the defender.

LORD DUNDAS, LORD SALVESEN, and LORD GUTHRIE concurred.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff, dated 26th March 1915: *Find in fact* in terms of the findings in the interlocutor of the Sheriff-Substitute, dated 10th November 1914: Find further in fact (7) that the defender admits that on 15th January 1914 the defender received the packet in question from the bank to be delivered to the pursuer, that it was his duty to exercise reasonable care in executing said commission, and that he failed to do so: *Find in law* in terms of the finding in the Sheriff-Substitute's said interlocutor: Of new grant decree against defender in terms of the craving in the initial writ for the sum of £34, 14s. with interest from 15th January 1914. . . ."

Counsel for the Pursuer (Appellant)—Moncrieff, K.C.—T. G. Robertson. Agents—Bonar, Hunter, & Johnstone, W.S.

Counsel for the Defender (Respondent)—W. T. Watson—W. Wilson. Agents—Ronald & Ritchie, W.S.

Thursday, December 16.

FIRST DIVISION.

[Scottish Land Court.

MALCOLM *v.* M'DOUGALL.

Landlord and Tenant—Small Holdings—Holding — "Wholly Agricultural or Wholly Pastoral, or in Part Agricultural and as to the Residue Pastoral"—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 35—*Small Landholders (Scotland) Act* 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 26.

Circumstances in which *held* (*diss.* Lord Johnston) that a small thatched cottage with a plot of garden ground and a byre, a detached piece of arable land extending to one rood or thereby used mainly for the cultivation of potatoes, and a one-fifteenth share in a common grazing of 58 acres, let together at a rent of £4, 4s. 6d., constituted a holding within the meaning of the Small Landholders (Scotland) Act 1911.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), sec. 35, enacts—"In this Act . . . 'holding' means any piece of land held by a tenant which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment, or employment held under the landlord."

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 26, enacts—"(1) For the purposes of the Landholders Acts a holding shall be deemed to include any right to pasture or grazing land held or to be held by the tenant or landholder, whether alone or in common with others, and the site of any dwelling-house erected or to be erected on the holding or held or to be held therewith, and of any offices or other conveniences connected with such dwelling-house. . . . (3) A person shall not be held as existing yearly tenant or a qualified leaseholder under this Act in respect of—(*f*) Any land that is not a holding within the meaning of the Agricultural Holdings (Scotland) Act 1908."

On 24th March 1913 Malcolm M'Dougall, Bellanoch, Argyllshire, applied to the Scottish Land Court to determine whether he was a landholder, or alternatively a statutory small tenant, in respect of subjects occupied by him in the village of Bellanoch, belonging to Colonel Edward Donald Malcolm, C.B., of Poltalloch.

The proprietor objected that the said subjects were not a holding within the meaning of the Act in respect that the arable land and grazing occupied by Malcolm M'Dougall were merely appurtenant to the cottage occupied by him. The application was heard at Lochgilphead on 10th July 1913, when evidence was led and parties heard, and the subjects were afterwards inspected by the Court.

The Land Court on 31st December 1913 pronounced a final order in these terms—". . . Repel the objection stated for the respondent: 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 has been stated: Therefore find that he is entitled, in virtue of the 32nd section of the Act of 1911, to a renewal of his tenancy and to have an equitable rent fixed. . . ."

Note. — "The landlord objected to the competency of the application on the ground that the land occupied by the applicant is appurtenant to his cottage, and is not a holding within the meaning of the Agricultural Holdings (Scotland) Act 1908, and does not therefore come within the scope of the Small Landholders Acts.

"In addition to the garden ground held by the applicant along with his house he has a detached plot of ground of about one-fourth of an acre in extent, used mainly for the cultivation of potatoes and occasionally cropped with other crops, and he has also one-fifteenth share in a common pasture extending to 58 acres or thereby, together with part of a byre. The rent of the whole is £4, 4s. 6d.

"The plot of land held by the applicant along with his house is one of several plots of land. These plots are similar to the 'lotted lands' held by villagers in certain parts of Scotland, and for the reasons stated in the case of *John M'Currach* v. *Countess of Seafield's Trustees*, 1 Scottish Land Court Reports, p. 82, confirmed by the Court of