The Court answered the question submitted in the negative.

Counsel for the Appellant — *On Competency*—Horne, K.C.—Lippe; *On Merits*—Macmillan, K.C.—Paton. Agents—Alex. Morison & Company, W.S.

Counsel for the Respondent—Morton—Dykes. Agent—James Scott, S.S.C.

Wednesday, June 7.

SECOND DIVISION.

[Scottish Land Court.

HILL *v.* WILKIE.

Landlord and Tenant — Small Holding— Statutory Small Tenant—Tenant Sitting from Year to Year — Term from which Renewal of Tenancy and Equitable Rent may Run—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 32 (4).

A tenant of a small holding who had had a lease was sitting from year to year, the year running from Martinmas. In December he applied to the Land Court for an order fixing a first equitable rent and the period of the renewal of his tenancy.

Held that the equitable rent and the period of renewal of tenancy must run from the Martinmas following the application, not that preceding it.

Clyne v. *Sharp's Trustees*, 1913 S.C. 907, 50 S.L.R. 688, *distinguished.*

Landlord and Tenant — Small Holding — Rent — Equitable Rent — Improvements Executed under Stipulation in Previous Lease—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 32 (8).

A tenant of a small holding, who had executed improvements under a stipulation in his lease, applied to the Land Court to fix an equitable rent. *Held* (*diss.* Lord Salvesen) that the Land Court was not bound, in fixing the first equitable rent, to exclude from its consideration the improvements so executed by him.

Robert Wylie Hill of Balthayock, Perthshire, *appellant*, brought a Special Case in an application to the Land Court by George Wilkie, *applicant and respondent*, for an order determining whether he was a landholder or a statutory small tenant of his holding of Craignorth Pendicle, of which the appellant was proprietor, and for an order fixing a first fair rent, or alternatively a first equitable rent and the period of renewal of the tenancy.

The Case stated—"1. By lease, dated 18th and 21st May 1895, the said Robert Wylie Hill let to the said George Wilkie, Balthayock school and dwelling-house, together with 25 acres or thereby, imperial measure, of Craignorth Muir contiguous thereto, for the period of nineteen years from Martinmas 1895, with a break in favour of either party at Martinmas 1908. The rent stipulated was £18, 15s. for the first three years of the lease, and £31, 5s. yearly during the remainder thereof, payable at the two terms of Whitsunday and Martinmas by equal portions. The subjects are known as Craignorth Pendicle.

"2. By said lease it was provided that the proprietor should (1) put said dwelling-house into tenantable order, (2) convert the schoolhouse into a stable and byre capable of accommodating two horses and six cows respectively, (3) form the porch and coal cellar at end of school into a milkhouse, (4) convert one of the privies into a poultry house, (5) erect a wooden shed to measure 26 feet 6 inches by 16 feet internally, (6) provide a small wooden coal cellar, and (7) erect a wire fence on the north and east marches of said 25 acres of Craignorth Muir.

"3. By said lease it was conditioned and agreed upon that the tenant should break up not less than 5 acres of the land and bring it into tillage in each year, and should crop the land either on a five-course or six-course rotation, the land to be managed and cropped according to the rules of good husbandry, and all hay, turnips, straw, or other crops except the first cut of rye grass hay should be consumed on the land, and said George Wilkie being always bound and obliged to bring and apply to the land a full and sufficient supply of manure so as to prevent the land being at any time exhausted or deteriorated. With regard to the houses, fences, and ditches of the said pendicle the tenant agreed to accept same after the foresaid repairs and alterations were executed as in a complete state of repair, and to uphold them in that state during the currency of the lease, and to leave them in such state and condition at his removal, ordinary tear and wear excepted.

"4. In or about 1903 the said Robert Wylie Hill let other 10 acres of adjoining muir land to the said George Wilkie conform to offer by the applicant, dated 30th November 1903, whereby he agreed to rent the land at 18s. per acre for the first three years and 25s. per acre "for the remainder of his lease." No other written evidence was produced with reference to the let of this land, but it was not disputed that the agreement was that it was to be taken on the same terms as those contained in the lease so far as applicable thereto, and except in so far as modified by said offer. The applicant's holding now comprises the said 35 acres.

"5. Said lease was terminated by the proprietor at Martinmas 1908 by notice in terms thereof. Thereafter the applicant continued to possess the holding from year to year at the same rent as he had previously paid.

"6. On 31st December 1913 the tenant applied to the Court for an order determining whether he was a landholder or a statutory small tenant, and for an order fixing a first fair rent for the holding, or alternatively a first equitable rent therefor and the period of renewal of the tenancy thereof.

"7. Answers were lodged to the application by the proprietor, and the application

was heard on 14th April 1914, when evidence was led. No objection was stated to the competency of the application or the jurisdiction of the Court. Parties were agreed that the said George Wilkie was entitled to be declared a statutory small tenant. No objection was taken by the landlord to the tenant under section 32 (4) of the Act of 1911. The holding was inspected by the Court on 18th April 1914.

"8. It was admitted or proved (1) that said lease was entered into by parties of the dates it bears; (2) that the proprietor had carried out the repairs and improvements, and that the tenant had broken up the land and brought it into tillage, all as stipulated in the said lease; (3) that prior to the applicant's entry the land let under the said lease, and also the additional land let in 1903, consisted of moor and whins, that before the application to the Court was presented the said land had been improved by draining and the removal of the roots, whins, broom, and large stones, and had been converted into arable land by the tenant; (4) that the proprietor had supplied 3000 drain tiles or thereabouts which were put in by the tenant, and that the tenant had also supplied and put in 2000 tiles or thereabouts at his own cost; and (5) that the proprietor and the tenant had erected a wooden cattle shed at mutual cost, and that the tenant had put up at his own cost some division fencing and a piggery, and had also borne half the cost of certain small repairs to buildings executed by the proprietor.

"9. After inspection of the holding the Court were of opinion that assuming that the rent was fixed at a reduced figure for the first three years of possession under the said lease and letter of offer respectively in respect of the obligation undertaken by the tenant to improve the land as stipulated for, the said reduction was not fair consideration for the amount of the improvements actually executed and carried out by the tenant, but in so far as it was consideration to the tenant the Court gave effect to it as an element in fixing the equitable rent....

"11. In fixing the equitable rent the Court did not exclude from consideration the improvements executed by the tenant after the commencement of the said lease, and in pursuance of the stipulations thereof, but in so far as they took into consideration these and other improvements made by the tenant or at his expense, in fixing the equitable rent of the holding, they did so only to the extent to which they held in fact that the tenant had not received therefor payment or fair consideration from the landlord. Assuming but not deciding that certain of the said improvements were executed under a specific agreement contained in said lease, under which the tenant was bound to execute the same, the Court held that in fixing an equitable rent improvements executed in virtue of such a specific agreement in writing were not excluded from consideration. No question was raised in the pleadings or at the proof, as to the term from which the equitable rent and period of renewal of the statutory small tenancy should run, but the term was fixed, in accordance with the practice of the Court, as from the termination of the last completed year of tenancy prior to the lodging of the application.

"12. The proprietor *maintains* that the foregoing decision is erroneous in law, in respect that (1) the said George Wilkie's tenancy was tacitly renewed for a year from Martinmas 1912 to Martinmas 1913 on the old terms, and his application to the Land Court having been made during the currency of the year from Martinmas 1913 to Martinmas 1914 the determination of the tenancy such as would be, in terms of section 32 (4), an occasion for a renewal thereof is Martinmas 1914, and (2) the improvement of the 35 acres of the holding by the said George Wilkie by removing tree roots, whins, broom, and large stones and making it into arable land, being performed in implement of a specific obligation upon him in the said lease for which he received consideration in the form of a reduced rent for the first three years, such improvement is not an improvement made by or at the expense of the tenant for which he has not received payment or fair consideration from the landlord within the meaning of said Small Landholders (Scotland) Act 1911.

"13. The tenant maintains that the foregoing decision is a finding in fact and is right in law, that having regard to the provisions of the Small Landholders Act 1911 the Court were entitled to make the period of renewal of the said George Wilkie's tenancy of said holding and the payment of the equitable rent therefor run as from Martinmas 1913, that on a sound construction of the terms of the said lease between the parties the said George Wilkie was not under any obligation by said lease to remove tree roots, whins, broom, and large stones from the holding, nor to bring the whole of the holding under tillage as he did, nor to execute or pay for the numerous other permanent improvements which he did, and that as the Court found in fact that for these and other improvements made by him or at his expense on the holding he did not receive payment or fair consideration from the said Robert Wylie Hill within the meaning of the said Act, the Court were entitled, having regard to the provisions of the said Act, to take into consideration said improvements."

The *order* of the Land Court was—"Edinburgh, 26th May 1914.—The Land Court having inspected the holding and resumed consideration of the application and the evidence adduced, find and declare that the applicant is a statutory small tenant within the meaning of the Small Landholders (Scotland) Act 1911, in and of the holding specified in the application, and that no ground of objection to him as tenant has been stated under section 32 (4) of the said Act: Therefore find that he is entitled, in virtue of the said section, to a renewal of his tenancy and to have an equitable rent fixed: And having considered all the circumstances of the case, holding, and district, including the condition and value of the improvements made by the applicant and

respondent respectively or their respective predecessors in title, have determined, and do hereby fix and determine, the period of renewal at seven years, and the equitable annual rent payable by the applicant at £27 sterling, each to run from the term of Martinmas 1913: Find no expenses due to or by either party."

The *note* appended thereto stated—"The considerable reduction made on the rent is due (1) to the fact that the land is for the most part naturally poor, and (2) to the value of the permanent improvements made on the holding by the applicant without receiving from the landlord payment or fair consideration therefor. The applicant improved the whole of the 35 acres of his holding, removing tree roots, whins, broom, and large stones and making it into arable land. . . ."

The *questions of law* were—"(1) On the facts stated, were the Land Court entitled to make the period of renewal of the tenancy of said holding, and the payment of the equitable rent run as from Martinmas 1913? (2) Were the Land Court bound in fixing an equitable rent to exclude from consideration as tenant's improvements such improvements as were executed on the holding by the tenant in virtue of a specific agreement in writing under which the tenant was bound to execute said improvements? (3) In the event of the preceding question being answered in the negative, were the Land Court bound, in fixing an equitable rent, to exclude from consideration as tenant's improvements such improvements as were executed on the holding by the tenant in virtue of a specific agreement in writing under which the tenant was bound to execute said improvements, but for which he had not received payment or fair consideration from the landlord?"

Argued for the appellant—(1) The commencement of the renewal of the lease should have been Martinmas 1914 not Martinmas 1913. Renewal could only be granted "on any determination of the tenancy"—Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 32 (4)—and in December 1913, when the application was made, the tenancy did not determine till Martinmas 1914. Section 31 (1), defining "termination of the lease," confirmed this; and it was not permissible to innovate in the middle of a year's lease. *Clyne* v. *Sharp's Trustees*, 1913 S.C. 907, 50 S.L.R. 688, was really in favour of this view, although the decision was adverse owing to the very special circumstance that the Act had only just come into operation, the application though late for the term from which renewal was granted being made as soon as reasonably could be expected. If, moreover, a choice had to be made between the decision in *Clyne* and the statute, the statute must prevail. (2) The Land Court had erred in taking into account the improvements which the tenant was bound to execute. A tenant did not get compensation for an improvement if he was bound to execute it—*Earl of Galloway* v. *M'Clelland*, 1915 S.C. 1062, at 1101, 52 S.L.R. 822. It might be asked whether these were landlord's or tenant's improvements? That was a question upon which section 32 (5) of the 1911 Act entitled the Land Court to use its own knowledge, but they had to consider it fully. In this case the landlord removed the whins, &c., through the tenant by paying him for the work. According to the *Earl of Galloway* that made it a landlord's improvement, when there was, as here, a stipulation that the tenant should do the work. The second and third questions should be answered in the affirmative.

Argued for the respondent—(1) In the case of *Clyne* (*cit.*) it was decided that the Land Court was entitled to fix an equitable rent from the past term where the tenant was holding merely from year to year after the expiry of a lease for years. The Lord President at p. 913 said that tacit relocation was suspended by the Small Landholders (Scotland) Act 1911 (*cit.*), and that the tenant was rather under a statutory renewal. If in this case there was tacit relocation from Martinmas 1912 to Martinmas 1913, and so on, it was therefore a tacit relocation which carried the right with it of going to the Land Court to fix an equitable rent. That was the tacit relocation referred to by Lord Johnston in the case of *Clyne*. An analogous situation was that of a tenant under notice to quit when the Act came into force, for such notice did not make the tenant cease to be a tenant from year to year for the purposes, and entitled to avail himself, of the Act—*Morison's Trustees* v. *Grant*, 1913 S.C. 919, 50 S.L.R. 696. The case of *Clyne* might not be exactly an authority, but it stated the principle applicable here. The time taken in presenting the application was much less in this case than in that of *Clyne*, *i.e.*, the harking back of the rent, which the Land Court allowed here, was much less than in that of *Clyne*. Tacit relocation was not a continuation of the existing lease. It was a renewal of the lease from year to year; but the Land Court was entitled to step in at the "determination of the tenancy," *i.e.*, under the definition of "termination of the lease" in section 31 (1), at any time when the stipulated term ran out. The Land Court could therefore renew the tenancy and fix an equitable rent from the end of the last completed year—*Thomson* v. *Grant*, Scottish Land Court's Reports, vol. iii, p. 4. (2) It was for the Land Court to arrive at an equitable rent. That was a pure question of fact. There was no question of equity entitling the Court to review the Land Court's decision on the point. That this was so was proved by the Crofters' Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29), secs. 6 (1) and 8. But the Land Court had not erred here in considering the improvements made by the tenant under the stipulation in the lease. The section of the Act of 1911, 32 (8), referring to improvements was perfectly general. There was nothing therefore to prevent the Land Court from not shutting its eyes to improvements made under agreement—*M'Alpine* v. *Duke of Hamilton's Trustees*, 1914, Land Court Reports, vol. ii, p. 74.

At advising—

LORD JUSTICE-CLERK—In my opinion the first question ought to be answered in the negative. The applicant has been tenant of the holding since it was created in 1895, and subsequently enlarged in 1903—at first under a lease with an ish at Martinmas, and since the break was taken advantage of at Martinmas 1908 under tacit relocation from year to year.

The Act of 1911 came into operation on 1st April 1912. No notice to terminate the lease was given at Whitsunday 1912 or subsequently. But on 31st December 1913 the tenant made his application to the Land Court. By that date the tenant had completed his years' tenancies from Martinmas 1911 to Martinmas 1912, and from Martinmas 1912 to Martinmas 1913, and had entered on his tenancy for the year from Martinmas 1913 to Martinmas 1914.

The appellant before us maintained that the renewal and the new rent should run from Martinmas 1914 instead of from Martinmas 1913 as the Land Court had found. I think the appellant is right. In my opinion there was no "determination of the tenancy" in the sense of section 32 (4) until Martinmas 1914. "Determination of tenancy" means the termination of a lease by effluxion of time or from any other cause —Agricultural Holdings (Scotland) Act 1908, sec. 35. In my opinion the landlord and tenant had agreed, or must be held to have agreed, upon the terms and conditions of the tenancy for the period from Martinmas 1913 to Martinmas 1914 before the application was made, and the Land Court was not entitled to alter these terms so far as that year is concerned.

The case of *Clyne*, 1913 S.C. 907, was referred to and founded on by the applicant. I do not think either the decision or the opinions in that case apply to the present. There the ish was at Whitsunday. The statute came into operation only on 1st April 1912. The application was made on 16th August 1912, and, as the Lord President points out, this was really "as soon as the Land Court was constituted"; and his Lordship goes on to point out that delay in presenting the application might destroy the argument founded on what he calls the "suspension" of tacit relocation. I am of opinion that the circumstances of the present case are materially different from those in *Clyne*.

As to the second question the improvements in question were admittedly all made by the tenant. In my opinion they fall within the proviso of section 32 (8) of the Small Landholders Act. That proviso is in its terms absolute and unqualified. In particular, there is no such proviso as that which is expressed in sections 8 (*c*) and 9 (*c*) of the Crofters Act of 1886, and I see no sufficient reason for implying any such qualification. Nor do I think the reasoning of the decision in the *Earl of Galloway's* case, 1915 S.C. 1062, applies to the present question. I am therefore of opinion that the second question falls to be answered in the negative.

With reference to the third question, it is explained in articles 9 and 11 of the case how the Land Court dealt with the improvements in question. I am of opinion that the Land Court were entitled and bound in the discharge of the functions committed to them to act as they have done, and therefore that this question also falls to be answered in the negative. In my opinion the question raised under the proviso in section 32 (8) is in the circumstances of this case a pure question of fact, viz., Has the tenant made improvements for which he has not received payment or fair consideration from the landlord? That question of fact was one for the Land Court to decide, and I think that we cannot interfere with the result at which they have arrived.

LORD SALVESEN—The question of law for us is whether the Land Court were entitled to make the period of renewal of the tenancy run from Martinmas 1913. But for the case of *Clyne*, 1913 S.C. 907, I should not have thought this doubtful, Section 32 of the Small Landholders (Scotland) Act 1911, which has been called the statutory Small Tenants Code, provides (4) that "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 herein specified." If therefore the tenant's lease had been still current and had only terminated as at Martinmas 1914 the reduced rent could operate only as from that date. Does it make any difference that he was possessing not under a lease but on tacit relocation for a year?

The First Division appear to have answered this question in the affirmative in *Clyne's* case, but the circumstances were by no means the same as those in the present case. The tenant there took advantage of the Act almost as soon as the Court was constituted, and the case which has here occurred of a tenant who continues to possess at common law, not merely during the currency of the term in which the Act came into operation, but for a succeeding period of over twelve months, during which he gives no notice that he desires the tenancy to terminate, was left open. If instead of nothing being said by either landlord or tenant an agreement had been made between them continuing the tenancy for another year on the terms and conditions of the lease which had expired, there could, I apprehend, be no question; but tacit relocation is well known both to landlord and tenant, and it has precisely the same effect as the agreement which I have figured. As I read the Act it was intended in no way to relieve the tenant of obligations voluntarily incurred during the currency of any existing possession, but only to enable the tenant if he so desired to have an equitable rent fixed for the future. While at the date of the passing of the Act the tenant here had the potential rights which it confers, he might conceivably have disqualified himself by entering into a new agreement of lease at a rent above £50. He may have thought his existing rent perfectly equitable, and

indeed must be assumed to have done so when he did not take advantage of the provisions of the Act until so long a time had elapsed after it had come into operation. The circumstances of *Clyne's* case can never again come up for decision, and accordingly it is not necessary that it should be reconsidered. I could not myself have reached the same conclusion, but I think the present case is not covered by that decision, which has, no doubt, ruled many others *in pari casu*, but which must now have spent its force. I am therefore for answering the first question in the negative.

The second and third questions of law seem to state substantially the same point. Under the earliest lease the landlord had come under obligation to expend a considerable sum of money in adapting the houses on the holding for the use of an agricultural tenant, and in consideration of a reduced rent for the first three years, and of the improvements which the landlord was bound to execute, the tenant was taken bound to break up and bring into tillage not less than 5 acres of the land in each year. Eight years after the date of the first lease, by which time, as the tenant had fulfilled his obligations, the original 25 acres let were all in tillage, the tenant agreed to take a lease of 10 acres of adjoining moorland at a reduced rent for the first three years, and on the same condition that he was to break up and bring into tillage at least 5 acres of land annually. He was content to continue to possess on these terms for five years after the expiry of both leases. Now in these circumstances the Land Court in fixing the equitable rent have not taken into consideration the improvements executed by the tenant in virtue of the obligation which he undertook, and which consisted in the removal of the whins and large stones and other operations which were necessary to bring the land into tillage, except in so far as they considered that the tenant had received payment or fair consideration for these improvements from the landlord. The question for our consideration is whether they were entitled to adopt this course.

The directions to the Land Court as to fixing an equitable rent are contained in section 32, sub-section (8), and in substance they amount to this, that the Court shall fix a figure which in their opinion would be an equitable rent for the holding as between a willing lessor and a willing lessee. In other words, they are to take the holding in its actual state in the first instance and consider the sum at which it might fairly be let, but this general direction is subject to the proviso "that they shall allow no rent in respect of any improvements made by or at the expense of the tenant for which he has not received payment or fair consideration from the landlord." Does this clause apply to improvements which though made by the tenant were made by him under a specific obligation without which it may be assumed the original lease would not have been granted? In my opinion the answer must be in the negative, and I think the case is ruled by the decision of the Whole Court in the *Earl of Galloway*, 1915 S.C. 1062. The improvements which are contemplated by the Act are, I think, voluntary improvements made by the tenant, and the evil that was intended to be remedied was that arising out of the pre-existing common law under which the landlord received all the benefit of any improvements which the tenant might voluntarily make upon his holding. That injustice would simply be transferred to the landlord if the decision of the Land Court were supported. It must be assumed that the tenant had received fair consideration for the improvements which he made when he voluntarily undertook them on the conditions of the lease which he entered into. The other view involves that there must in each case be an inquiry as to whether the landlord had got the best of the bargain—if in the opinion of the Land Court sitting sixteen years later the value of the improvements exceeded the amount of the consideration which the landlord had agreed to give and the tenant to accept. In the case of an improving lease for a long term of years the inquiry would extend back to its very commencement, and while the tenant in this view would always be entitled to demand that the lease should be reformed in his favour, no corresponding advantage would be given to the landlord, though it might be that the tenant had got the let under exceptionally favourable conditions. I cannot attribute to the Legislature the intention of removing one iniquity only to erect another, and I think that any such construction of the Act would operate as a bar to improving leases for the future, and so defeat one of the main objects of the Act, which was to encourage the cultivation of land by small holders. Had the tenant died during the currency of his lease he would have performed its prestations without any claim for such compensation, and I cannot see any reason why the fact of his survivance should put him in a better position. I am therefore for answering these two questions in the affirmative.

LORD GUTHRIE—For the reasons stated by your Lordships, I think the first question should be answered in the negative. In regard to the second and third questions, I agree with your Lordship in the chair that the decision of the Land Court cannot be interfered with.

The landlord Mr Hill proposes to limit the application of section 32, sub-section (8), of the Small Landholders (Scotland) Act 1911 to the case of what he calls "tenant's improvements," meaning improvements made and paid for by the tenant, which he (the tenant) was under no obligation to execute. It is admitted that the words of the sub-section contain no such limitation, and apply in terms to the present case, because the improvements in question were made by and also at the expense of the tenant Mr Wilkie, and are therefore, in the ordinary acceptation of the expression, tenant's improvements, as distinguished from improvements made at the expense of the landlord, although not necessarily by him, which are landlord's improvements. In my opinion the words of the statute, on

which no light is thrown by any other part of the Act, do not, through any ambiguous expression, admit of construction. But suppose they do, the landlord's reason for construing the words so as to exclude consideration of improvements executed by the tenant and paid for by him under obligations in his lease, and for which he has neither been paid nor been allowed fair consideration, seem to me inadequate.

It is said that the tenant's contention would provide a remedy for a state of matters which the statute did not regard as involving any hardship or requiring any redress, because the object of the statute, and particularly of the clause in question, was merely to protect tenants against appropriation by their landlords of improvemements voluntarily made by the tenants. I cannot read the drastic provisions of the statute without coming to the conclusion that its origin and object went much deeper. The statute seems to me to be necessarily based throughout on the assumption—whether well-founded in fact or not it is not the province of the Court to say—that as between the smaller class of tenants and their landlords there was not freedom of contract.

Next, it was urged that the tenant's contention should not be sustained, because it would produce such serious, if not inextricable, difficulties in the way of proof as the Legislature could not have contemplated, involving as it would an inquiry possibly extending back many years when evidence would be unprocurable. I am not moved by this contention, seeing that the same difficulty would arise in the case of voluntary improvements, which are admitted to be within the purview of the section.

Lastly, it was urged that the case was ruled by the reasoning of the Judges in the majority in the case of the *Earl of Galloway*, 1915 S.C. 1062. But in that case the Court was dealing with a different set of words in a different statute, namely, the Agricultural Holdings Act of 1908. It was common ground that the main clause in question there was capable of construction, and other sections of the statute, along with certain parts of the schedules, were appealed to, as favouring the one construction or the other. The question there was how ambiguous words should be construed. Here, in my view, the Court is dealing with words incapable of construction.

Lord Dundas concurred.

The Court answered the first, second, and third questions in the negative.

Counsel for the Appellant — Sandeman, K.C.—W. T. Watson. Agents—Melville & Lindesay, W.S.

Counsel for the Respondent — Roberton Christie, K.C. — Macgregor Mitchell. Agent—T. M. Pole, Solicitor.

VALUATION APPEAL COURT.

(Finance (1909-10) Act 1910.)

Saturday, February 19.

(Before Lord Johnston, Lord Salvesen, and Lord Cullen.)

INLAND REVENUE *v.* SCOTTISH NEWSPAPER PUBLISHING COMPANY, LIMITED.

Revenue — Valuation — Increment Value Duty — Deductions to Obtain Assessable Site Value—"Any Part of the Total Value Attributable to Expenditure of a Capital Nature"—"Any Part of the Total Value Attributable to Matter which is Personal to the Owner"—Finance (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *secs.* 1, 2, *and* 25 (4) (*b*) *and* (*d*).

A printing company, for the purposes of its business, for which it was well suited, purchased for £725 a property whose original assessable site value was £282. Within a month, before it had paid for the purchase or taken possession, it re-sold the property, to a Government department for the proposed extension of adjoining premises, for £2100. A statutory referee, to whom the matter had been referred, fixed the assessable site value on the occasion of the transfer on sale at £647. He allowed from the sum of £2100, in addition to a deduction of £868 under section 25 (4) (*a*) of the Finance (1909-10) Act 1910, a deduction of £60 under section 25 (4) (*b*) to cover architect's fee and other expenses of the company incurred prior to its purchase in ascertaining suitability and cost of conversion, and a deduction of £525 under section 25 (4) (*d*), being the capitalised saving to the company in rent had its business been removed, as a "part of the total value directly attributable to matter which is personal to the owner."

Held (*diss.* Lord Johnston) that the deductions under section 25 (4) (*b*), and under section 25 (4) (*d*), were not allowable.

Lumsden v. *Inland Revenue*, [1914] A.C. 877, 52 S.L.R. 154; *Inland Revenue* v. *Walker*, [1915] A.C. 509, 1915 S.C. (H.L.) 1, 52 S.L.R. 151; *Glass* v. *Inland Revenue*, 1914 S.C. 449, 52 S.L.R. 414; and *Inland Revenue* v. *Clay & Buchanan*, [1914] 3 K.B. 466, *examined* and *commented on.*

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), Part I—*Duties on Land Values*—enacts—Section 1—"Subject to the provisions of this part of this Act there shall be charged . . . on the increment value of any land a duty, called increment value duty . . . (*a*) on the occasion of any transfer on sale of the fee-simple of the land. . . ." Section 2—"(1) . . . The increment value of any land shall be deemed to be the amount (if any) by which the site value of the land on the occasion on which increment value duty is to be collected . . . exceeds the original site value of the land as