statute, and that leave was necessary in order to allow the action to proceed. As a matter of convenience leave would have been given as a matter of course, because the question whether the arrestee was or was not in a position to pay would arise more conveniently after the decree of furthcoming had been issued against him.

There is, however, a clause in this statute, namely, section 1 (7), which seems to me to apply to a case like the present where the common debtor is a German. It is there stated that nothing in the Act is to defer the operation of any remedies of a creditor in the case of a sum of money payable by or recoverable from the subject of a sovereign or state at war with His Majesty. Now to hold that the statute applies at this stage would defer the operation of the remedies of a creditor in a question with an alien enemy. Different considerations will arise as soon as the decree of furthcoming has been pronounced, because the diligence against the alien enemy will then be completed, and the only question then remaining to be settled between the pursuers and the arrestee will be whether the latter is unable to make immediate payment owing to the war. It will accordingly be necessary for the pursuers to obtain the leave of the Court before proceeding to do diligence against the arrestee upon the decree of furthcoming.

LORD DEWAR—I concur.

LORDS JOHNSTON and MACKENZIE were absent.

The Court recalled the interlocutor of the Lord Ordinary and remitted the cause to him for further procedure.

Counsel for the Pursuers (Reclaimers)—Moncrieff, K.C.—D. R. Scott. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Arrestees (Respondents)—Macphail, K.C.—Ingram. Agents—J. K. & W. P. Lindsay, W.S.

Saturday, March 3.

SECOND DIVISION.

[Sheriff Court at Lanark.

COLTNESS IRON COMPANY, LIMITED *v.* BROWNLEE.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58)—*Injury by Accident — Supervening Insanity—Onus of Proof as to Continuance of Incapacity from Original Cause.*

A miner employed at a colliery was injured on the head through an accident arising out of and in the course of his employment. Being totally incapacitated from work compensation was paid him by his employers. He subsequently accepted a sum in full settlement of his claim and granted a discharge. This document was reduced by action in the Court of Session upon the ground that when he signed the receipt and discharge he was of unsound mind. In an arbitration under the Workmen's Compensation Act 1906 the miner craved the arbitrator to award him compensation in respect of his total incapacity for work due to the supervening insanity, which he averred was caused by the accident he sustained in the course of his employment. The arbitrator found it proved that the miner had physically recovered, and that a connection between the physical injury and the insanity could not be proved or disproved. *Held* that the arbitrator had erred in awarding compensation, it being for the miner to establish his case and there being neither proof nor presumption that the respondent's insanity was associated with the original injury.

In an arbitration in the Sheriff Court at Lanark under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between the Coltness Iron Company, Limited, Forth, *appellants*, and Thomas Brownlee, miner, Forth, *respondent*, to fix the amount of compensation payable by the appellants to the respondent in respect of total incapacity for work, due to insanity, the Sheriff-Substitute (SCOTT MONCRIEFF) awarded compensation, and stated a Case for the opinion of the Court.

The Case stated—"This is an arbitration brought under the Workmen's Compensation Act 1906 in the Sheriff Court of Lanarkshire at the instance of the respondent in which the Sheriff was asked to award him compensation under the said Act at the rate of 14s. 5d. per week from 5th November 1913 in respect of injuries sustained by him through accident arising out of and in the course of his employment with the defenders on 28th February 1912.

"The case was heard before me and proof led on the 17th day of November 1916, when the following *facts* were admitted or proved:—1. That the respondent while in the employment of the appellants upon 28th February 1912 met with a severe accident to the scalp of his head, which incapacitated him from work and caused his removal to the infirmary. 2. That liability upon the part of the appellants was admitted and compensation paid until 5th November 1913 although not under a recorded memorandum of agreement. 3. That upon last-mentioned date compensation was stopped, but that it was subsequently offered at a reduced rate, and that the respondent refused to accept it. 4. That in February 1915 the appellants offered to pay to the respondent the sum of £50 in full settlement of his claim, and that respondent accepted said offer upon 24th March 1915, received the money and granted a receipt, also signing a memorandum of agreement which was subsequently recorded upon 3rd April following. 5. That in the following month of December the respondent brought an action of reduction of said receipt and memorandum in the Court of Session upon the ground that when he signed said document he was of unsound mind. 6. That upon 6th July 1916, after certain proof had been led, the

Lord Ordinary of consent granted the reduction sought. 7. That there is nothing to show that prior to the accident the respondent was other than a healthy man in mind and body. 8. That the respondent is now and has been since at least September 1914 insane, and that he is incapacitated for work at present in consequence of his insanity. 9. That there is no physical incapacity for work nor has there been for some time. 10. That the respondent's average earning amounted to £1, 8s. 10d. per week.

"I found that while the respondent had failed to prove that the insanity which accounts for his present incapacity is due to the accident, the appellants had not proved that a new cause has intervened, and that the *onus* being in point of law upon them they had not discharged it. I therefore found the respondent entitled to compensation at the rate of 14s. 5d. per week as from 5th November 1913 until further orders of Court. I also found the respondent entitled to expenses, and certified Doctors Robertson and Cotterill as skilled witnesses."

The *questions of law* for the opinion of the Court were—"1. Was I right in the circumstances in holding that the *onus* was on the appellants to dissociate the cause of respondent's incapacity since September 1914 from the injury sustained by him in February 1912? 2. In the circumstances was I entitled to award compensation to the pursuer?"

The Sheriff-Substitute appended the following note to his judgment:—

Note. — "In my opinion an important question in this case is upon whom lies the *onus* of proof? There are two recent decisions in the Court of Session dealing with the subject. In one of them the *onus* was held to be on the employer, in the other upon the workman. The former is that of *M'Callum* v. *Quinn*, 1909 S.C. 227, 46 S.L.R. 141, in which the arbitrator found that a workman was unable to work in consequence of a cardiac affection which was not proved to be in any way connected with the injuries for which compensation was payable. He also found it not proved that a workman still suffered from such injuries as to be incapable. It is the first of these findings which bears upon the present case. Lord Pearson says (and the other Judges do not differ)—"I think it rests upon the employer to prove (1) that the supervening cause was not connected with the original injuries, and (2) that the original injuries have ceased to operate as an effective cause of incapacity." I infer from this that even if the arbitrator had found that incapacity from the original injuries had ceased, in Lord Pearson's opinion the employer would have still had to disconnect the supervening cause from the original injuries. This is what in my view they failed to do in the present case. I consider that neither party has succeeded in establishing what each seeks to prove. There is a conflict of medical evidence. There are presumptions which favour both sides. A man, hitherto healthy in mind and body, sustains a severe injury to his head—is in fact scalped. After an interval undoubted symptoms of insanity manifest themselves and still continue. An eminent alienist authority sees a clear connection of cause and effect between the accident and the present condition. On the other hand there seems to have been no actual injuries to the material of his brain, and slight, if any, concussion, and the symptoms of insanity took a very considerable time to develop, though they may have been preceded by those of a neurasthenic character. Two specialists going upon these facts, and also upon the form of the insanity which is known as persecutory paranoia, consider that there is no connection between the brain injury and his present mental condition. The verdict which I return is one of not proven. There are two circumstances in which the case of *M'Callum* differs from the present. In the former there was a recorded memorandum of agreement entered into after the accident; here there was none. In that case also it was the employer who came into Court; here it is the workman. But while it is only upon a recorded agreement that a workman can do diligence, it seems to me that where parties are at one as to the accident and the liability for compensation, and compensation is actually paid, the absence of a recorded document does not affect the position of the workman. As to the fact that in this case it is the employee who comes into Court that certainly throws upon him a certain *onus*, but this *onus* can shift. Here it has been proved that he was incapacitated, that compensation was paid and offered even at a date two years after the accident, that (and this most important) his recovery has never been established either by certificate of medical referee or decision of an arbitrator, and finally, that he is presently unable to work. Does it not lie upon the defenders in this state of matters to prove that a new cause of incapacity has intervened? I take the view that it does? The other case to which I have referred is that of *M'Ghee* v. *The Summerlee Iron Company, Limited*, 1911 S.C. 870, 48 S.L.R. 807. In that case the arbitrator found himself in the same position as I now find myself. He held that the workman had not proved that a supervening incapacity was due to the accident, but also that if the *onus* was on the employers they had not discharged it. He was of opinion, however, and the Court of Appeal agreed with him, that the burden of proof lay with the former and decided accordingly. But in this case a medical referee had already certified that the workman was fit for his former work, and it was upon this ground that he was held bound to prove that his renewed incapacity was due to the accident. Here there has been no such evidence of recovery, and in this fact lies the distinction between *M'Ghee's* case and the one now under consideration."

The appellants argued—The class of injury in the present case was quite different from the injury in any other case in which the *onus* had been laid on the employers to dissociate it from the resultant incapacity for work of the employee. It was a very high *onus* on the employers to have to prove that the injury could not possibly have been the

cause of the incapacity, and especially was this so where, as in the present case, the new injury was so entirely different from the original injury. A long interval elapsed between the date of the accident and the first appearances of symptoms of insanity. Counsel referred to *M'Callum* v. *Quinn*, (1909) S.C. 227, 46 S.L.R. 141; *M'Ghee* v. *The Summerlee Iron Company, Limited*, 1911 S.C. 870, 48 S.L.R. 807.

The respondent argued—The employers here were the pursuers, and as such ought to prove their case. The workman established the original issue when he obtained compensation. In the present case there was an incapacity lasting for twenty months, whereupon insanity supervened. It resembled other cases where some physical defect supervened. However improbable the result of the injury might be, if there was evidence of it the Court was bound to accept it. The second finding here amounted to an admission of incapacity for work, and the employers had to show that it was unconnected with the original injury. The fact that insanity was a possible result of the injury sustained was established by the Sheriff-Substitute. Counsel cited *Dunham* v. *Clare*, [1902] 2 K.B. 292; *Eunan* v. *Dalziel & Company*, 1913 S.C. 246, 50 S.L.R. 143; *Malone* v. *Cayzer, Irvine, & Company*, 1908 S.C. 479, 45 S.L.R. 351; *Wishart* v. *Gibson & Company*, 1914 S.C. (H.L.) 53, 51 S.L.R. 516.

At advising—

LORD SALVESEN—The material facts of this case as stated by the Sheriff-Substitute are as follows:—On 28th February 1912 the respondent, who was a workman in the employment of the appellants, was injured by an accident arising out of and in the course of his employment. The accident consisted in an injury to his scalp of a severe kind. The employers admitted liability and paid half wages to the workman up till 5th November 1913, when on information that he had completely recovered from the injury arising out of the accident they stopped further payments. The workman did not acquiesce, and in consequence of his attitude negotiations took place between him and the employers, as the result of which they offered him a sum of £50 for a full discharge. This sum was accepted by the workman and a discharge given, which was afterwards set aside by the Court of Session in an action of reduction on the ground that the workman at the time of granting it was of unsound mind.

The Sheriff-Substitute has found that the respondent's insanity commenced in September 1914, and that in consequence of this he is now unable to earn his living. On the other hand he has expressly found that the respondent has completely recovered from the physical injuries due to the accident. Unfortunately he has not stated, and probably had not materials before him for stating the date when such recovery took place, but states only that it was some time before the date of his finding. That is quite consistent with the recovery being complete by November 1913, when the payment of compensation ceased, although on the other hand it is also consistent with partial incapacity having continued after that date. The Sheriff-Substitute appears to have drawn the inference from the negotiations between the workman and his employers, which culminated in the payment of £50 above mentioned, that at the date of this payment the workman had not fully recovered from the injuries; but this is obviously not a necessary inference. The payment may simply have been offered on the footing that the appellants were desirous of settling this claim.

In the autumn of 1916 the present proceedings were commenced to obtain compensation as for total incapacity. The present incapacity of the workman admittedly arises from his mental state. *Prima facie*, therefore, it was the duty of the respondent to prove that that incapacity resulted from the accident which, as the Sheriff-Substitute has found, had not caused any lesion to the brain and only slight, if any, concussion at the time when it occurred. There is no finding as to any symptoms of mental disturbance arising during the period when the respondent was recovering from his physical injuries, nor indeed any finding on the subject except that in September 1914 he was found to be insane. Evidence was led by medical experts on both sides, and the Sheriff-Substitute came to the conclusion that it had not been proved that the mental disturbance which now renders the respondent incapable of earning his livelihood was connected with the accident from which he recovered. Nevertheless the learned Sheriff-Substitute had reached the conclusion (1) that there was an *onus* upon the employers to prove that the insanity of the respondent was not due to the accident but to some supervening cause unconnected therewith, and (2) that in the absence of such evidence a presumption arises in law that it was so caused.

In reaching this conclusion the Sheriff-Substitute relies upon the decision in the case of *M'Callum*, 1909 S.C. 227, 46 S.L.R. 141. Now in order to appreciate what was actually decided in that case it is necessary to see what the Courts have laid down both before and after with regard to the conditions on which alone the workman can succeed. In *Malone*, 1908 S.C. 479, 45 S.L.R. 351, the applicant averred an accident to Malone's only remaining eye, which took place on 25th May 1907, and stated that in consequence of this injury he received a severe shock, that his nervous system completely broke down, that owing to the gradual loss of sight in his right eye and consequent blindness his mind became affected, and he became insane, and on 20th August 1907 committed suicide. The Lord President (Dunedin) quoting from the judgment of Lord Collins in *Dunham* v. *Clare*, [1902] 2 K.B. 292, said—"The only question to be considered is—Did death or incapacity in fact result from the injury?" and thought that inquiry could not be excluded. He went on, however, to point out that the claimant would have to do something more than show there was a possibility of death arising

from such an injury in such a way; she must show that it was in fact the result of the injury. In the case of *Euman*, 1913 S.C. 246, 50 S.L.R. 143, all that was decided was that there was evidence before the arbitrator from which he might reasonably draw the inference in fact that the disease from which the workman died was the consequence of the accident. In both cases it is plain that the Court thought it must be reasonably proved to the satisfaction of the arbitrator that the cause of death, although directly resulting from disease, was causally connected with the original accident. There was no suggestion in *Euman's* case, where the workman was injured on 18th July 1911 and died on 14th August thereafter, and had remained completely incapacitated during the whole intervening period, that the *onus* of showing that death did not result from the accident was upon the employer. I cannot suppose that the decision in *M'Callum's* case, which intervenes, is to be regarded as inconsistent with these two authorities. The application was at the instance of the employers to end the compensation, and Lord M'Laren said—"In order to disentitle the appellant to further compensation it must be proved that he has recovered from his injuries, and as the finding falls short of this requirement it will not support a decree for ending the payment." In the present case the findings are in marked contrast, for the Sheriff-Substitute has found that there is no physical incapacity for work—in other words, that the workman has completely recovered from the physical injury which he received and which is the only one that can be affirmed as having resulted from the accident. Lord Pearson's observations on the question of *onus* I think go too far where, as here, the incapacity is due not to any physical cause, but to insanity. If they were carried to their legitimate conclusion, a man who became insane while he was in receipt of compensation as for partial disablement would be immediately entitled to have his compensation increased to the amount appropriate to complete incapacity, although the insanity had emerged long after the accident, unless the employer was able to prove that it could not by any possibility have been connected with the original injury or that it was due to some supervening cause. That would be an *onus* which in most cases an employer, who has no knowledge of his employee's family history, could not discharge. It is enough, however, for the decision of this case to say that the arbitrator's findings only affirm a physical injury from which there has been complete recovery, and in these circumstances I am clearly of opinion that the workman must show to the satisfaction of the arbitrator that in fact the insanity resulted from the physical injury. This the Sheriff-Substitute has found not to have been proved. Accordingly the appeal must be sustained. As the date, however, of the workman's recovery from the physical injuries has not been fixed, I propose that the applicant should be found entitled to compensation down to the date when he brought his application, and that the first question in law should be answered in the negative.

LORD GUTHRIE—I am of the same opinion. In the first part of his note the arbitrator, founding on Lord Pearson's opinion in the case of *M'Callum*, seems to hold that if a workman entitled to compensation under the Workmen's Compensation Act 1906 recovered from the original incapacitating effects of the accident, as these appeared at and immediately after the accident, and other incapacitating effects subsequently develop, there is a universal rule that the employer in such a case must discharge the *onus* lying upon him of disconnecting the supervening incapacity from the original incapacity. In a later part of his note however the arbitrator recognises that at least when it is the workman who asks the Court to award compensation, and not, as in *M'Callum's* case, the employer who seeks reduction or termination of payment, the primary *onus* is on the workman, and he goes on to say that this *onus* can shift. The latter seems to me the sound view. I do not think that Lord Pearson can have meant to lay down any universal rule as to *onus* applicable at any distance of time between the two periods of incapacity and whether there was or was not any natural or probable connection between them.

Therefore the only question is whether the workman has shifted the *onus*, and whether it has been proved that the workman's present incapacity resulting from insanity is due directly or indirectly to the accident. On this matter the Sheriff is with the appellants, for he finds that the respondent has failed to prove that the insanity which accounts for his present incapacity is due to the accident. Had the Sheriff found to the opposite effect his finding would have been conclusive unless that finding was inconsistent with any reasonable view of the evidence as set out in the Stated Case. In this case it is not said by the respondent that this arbitrator's verdict of not proven, right or wrong, is not one reasonably consistent with the evidence.

It is right, however, to add that as the case stands I could not have supported a conclusion by the arbitrator that the respondent had discharged the *onus* lying on him.

In argument it was attempted to spell out from the findings and the note that the original injury being to the scalp of the head it was natural and probable (as in *Euman's* case as distinguished from *Malone's* case) that insanity would or might supervene as a direct or indirect result, even although (1) the arbitrator states "there seems to have been no actual injury to the material of his brain, and slight, if any, concussion"; (2) the insanity was not ascertained for two years and six months after the accident; and (3) it is not found that there were any intervening and connecting symptoms.

In the question of shifting the *onus* the respondent chiefly relied on (*a*) the appellants' offer of a reduced rate of compensation after they ceased to pay on 5th November 1913, and (*b*) the payment by them to the

respondent of £50 on 24th March 1915, that is to say, six months after insanity had been diagnosed in September 1914. Neither of these admitted facts will avail the respondent. In neither case is it said that the reduced rate offered or the money paid was more than reasonable compensation for the period subsequent to 5th November 1913 and prior to the cessation of physical incapacity, for which, so far as appears from the Stated Case, the appellants may have been in any view liable.

It is no doubt possible that a case may arise in which the arbitrator's findings will be held to lead by a process of exclusion to the result maintained in this case by the respondent. There is no such case here. Insanity may result from heredity, grief, excitement, overwork, irregular habits, and in a certain number of cases without any traceable cause. The form of insanity in this case, unfounded belief in persecution, is a common one, and indeed, at least in a mild form, may co-exist with active participation in ordinary life.

LORD ANDERSON—The first question of law ought, in my opinion, to be answered in the negative on the short ground that as there is neither proof nor presumption that the respondent's insanity is *associated* with the original injury, there is no *onus* on the appellants to *dissociate* it therefrom. It is now well settled where the burden of proof lies in cases of this kind. A workman claiming compensation under the Act must prove that he has been incapacitated wholly or partially by reason of personal injury occasioned by an accident arising out of and in the course of his employment. In other words the *onus probandi* is on the employee to establish liability under the Act against the employer. If the incapacity of the workmen is due to a supervening cause he must establish a causal connection between this *novus actus interveniens* and the original injury—*Malone; Euman.* After the employer has been saddled with statutory liability the *onus* is upon him to free himself therefrom; he must prove that the incapacity of the workman which resulted from the accident has determined in whole or in part.

In the present case it is common ground that the employers accepted liability in February 1912 as for total incapacity, and paid compensation on this footing down to 5th November 1913, when further payment as for total incapacity was refused. As there had been no memorandum of agreement recorded, the remedy of the workman depended upon whether or not an agreement to pay compensation had been entered into. If it had, the proper procedure was to record a memorandum thereof and charge the employer thereupon—*Colville & Sons*, 8 F. 179, 43 S.L.R. 129. If no agreement had been entered into, the remedy of the workman was to apply for arbitration under section 1 (3) of the Act. The respondent has adopted the latter course, and as no complaint is made as to the competency of the procedure I assume that it is correct. But although the employee is, so far as form is concerned, in the position of a pursuer, I am of opinion that he is really the respondent in a process of review which the employers have set in motion. The object of the process is to challenge the action of the employers in terminating at their own hand the payment of compensation; the question raised is whether or not the compensation should be ended—(See opinions of Lords Adam and M'Laren in *Jamieson*, 5 F. 958, 40 S.L.R. 704). The burden of proof is thus upon the employers to establish that incapacity had ceased at 5th November 1913 or at some date subsequent thereto. The arbitrator suggests that there is conflict between the two cases of *M'Callum* and *M'Ghee* which he refers to in his note. I am unable to agree with this view. I think that these decisions are quite reconcilable. In both the general rule I have referred to as to the *onus probandi* was recognised and applied, to wit, that it was for the employer to establish that the incapacity of the workman had come to an end in whole or in part. In *M'Callum* the Court held that the employer had failed to discharge that *onus;* in *M'Ghee* it was decided that the *onus* had been discharged by the production of the medical referee's certificate of fitness. In the present case I am of opinion that the employers discharged the burden of proof which the law lays upon them when they established that the physical effects of the injury had terminated. When this had been made out it was for the workman to prove that despite physical cure he was still incapacitated by something causally connected with the accident, to wit, insanity. The workman has failed to satisfy the arbitrator that a causal connection has been established between the present condition of insanity and the original injury. In these circumstances it would be manifestly unjust to make the employers liable for the workmen's present condition, which may be as plausibly and cogently attributed to other causes as to the original injury. I am accordingly of opinion that the first question should be answered in the negative.

As regards the second question, the facts found by the arbitrator do not enable us to make a categorical answer. The employers have failed to prove that incapacity had ceased wholly or partially as at 5th November 1913. Indeed it is a reasonable inference that there was total physical incapacity until the middle of the year 1915, because the slump sum of £50, which is the equivalent of twenty months' full compensation, was offered by the employers in settlement of the workman's claim subsequent to 5th November 1913. Accordingly the arbitrator was justified in awarding full compensation as from that date. On the other hand the award of compensation seems to be bad in so far as it is indeterminate, because the employers have proved that physical incapacity had wholly disappeared "for some time" prior to the date of the proof, that is, 17th November 1916. We do not know what the arbitrator means by "some time," and accordingly are unable to specify with exactitude the date on which payment of compensation ought to have been deter-

mined. I agree with your Lordships that the case need not go back to the arbitrator for the determination of this small matter, and I think we are doing full justice to the respondent in awarding him compensation as for total incapacity down to the date of the present application.

The LORD JUSTICE-CLERK and LORD DUNDAS were not present.

The Court answered the first question of law in the negative.

Counsel for the Appellants—Hon. W. Watson, K.C.—Gentles. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Moncrieff, K.C.—Burnet. Agents—Simpson & Marwick, W.S.

Wednesday, March 7.

SECOND DIVISION.

[Sheriff Court of Forfarshire.

FINDLAY *v.* MUNRO.

Lease — Outgoing — Compensation for Improvements — Temporary Pasture—Benefit Allowed to Tenant — Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 1 (1) *and* (2) (*a*), *First Sched., Part III* (26).

A tenant entered a farm in 1882 and continued his occupation thereof under a new lease granted in 1901. The lease provided a five-course rotation for the worked land, but contained this clause —"Declaring, however, that the tenant may, if he prefers it, allow any portion of the said lands specified to be cultivated in a five-shift rotation to lie in grass for a longer period than two years, but on his breaking it up he shall be bound to adhere to the rotation above prescribed, with this exception, that he shall be entitled to take two white crops in succession after grass which has lain not less than three years." At his outgoing the tenant left a large amount of temporary pasture, and claimed compensation therefor under the Agricultural Holdings (Scotland) Act 1908, First Sched., Part III, sec. (26). *Held* that as the sowing down in grass was done under the obligations of the lease, the leaving of it in that state was not an improvement for which he could claim compensation.

Opinions per Lords Salvesen and Guthrie that the right given to take two white crops in succession off land which had been three years in grass was not a benefit allowed by the landlord to the tenant under the Agricultural Holdings (Scotland) Act 1908, sec. 1 (2) (*a*), and that a benefit consisting in temporary pasture received at the commencement of the lease would fall to be estimated as at the beginning of the last lease, not as at the tenant's first entry to the lands, *e.g.*, in this case in 1901 and not in 1882.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) enacts—Sec. 1 (1) —"When a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act he shall . . . be entitled at the determination of a tenancy, on quitting his holding, to obtain from the landlord, as compensation under this Act for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant. (2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—(*a*) Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement. . . ." First Schedule, Part III—"*Improvements in respect of which consent of or notice to landlord is not required*—. . . (26) Laying down temporary pastures with clover, grass, lucerne, sainfoin, or other seeds sown more than two years prior to the determination of the tenancy."

An arbitration having been held under the Agricultural Holdings (Scotland) Act 1908 between Sir Hugh Thomas Munro, Bart., of Lindertis, proprietor of the farm of Kirkton of Kingoldrum, *respondent*, and Charles Findlay, Glenhill, Kirriemuir, formerly tenant of the farm, *appellant*, the arbiter (Mr Peter Purdie Campbell, Edinburgh) at the request of the proprietor stated a Case under the statute for the opinion of the Sheriff of Forfarshire as to whether the tenant was entitled to claim compensation for the large amount of temporary pasture on the farm at the outgoing.

The Case stated—"2. By lease, dated 9th and 14th days of October 1882, entered into between the now deceased Sir Thomas Munro, Baronet, then of Lindertis, and the said Charles Findlay, there was let to the said Charles Findlay all and whole the farm and lands of Kirkton of Kingoldrum, in the parish of Kingoldrum and county of Forfar, as then possessed by Thomas Newton as tenant therein, with the exception of a small field next the Glebe, and that for the period of 19 years from and after the term of Martinmas 1882. The lease contained mutual breaks at Martinmas 1889 and 1896. The rent stipulated under the lease was £525 sterling.

"3. The said *lease*, in addition to the ordinary clauses common in the agricultural leases in the district, contains the following clause with reference to cropping —'The tenant binds and obliges himself and his foresaids to cultivate, manage, and manure the lands hereby let in a skilful manner according to the most approved rules of good husbandry, and so as not to wear out or deteriorate but to improve the same, and without prejudice to the said generality the tenant binds himself and his foresaids as regards the whole arable land of the farm other than the fields known as the Bog and Bogleys, to cultivate the same according to the following five-course rotation, viz.—(*first*) grass which may be cut or pastured, (*second*) grass which shall be pastured only, (*third*) white crop, (*fourth*) green crop properly laboured and manured,