Accordingly I think we must adhere to the Lord Ordinary's interlocutor and refuse the reclaiming note. No exception was taken to the issue, which will stand as adjusted by the Lord Ordinary.

LORD DUNDAS—I agree with some reluctance. I think this case is very near the line which separates relevancy from irrelevancy, and although I am a good deal impressed by the fact that there seems to have been no previous case of this kind which has been thrown out upon the pleadings, I must say that this record tempts one very much to create a precedent in that direction.

There is nowhere on this record any allegation of the usual arts and wiles which are averred in actions of this sort—professions of courtship and affection with a view to marriage. There is no averment of threats of violence or of actual violence such as occur in some of the cases. There is no averment, as occurs in others of the cases, of a gradual process of debauching and corrupting the mind of the woman ultimately seduced. There is, as your Lordship has pointed out, merely the baldest averment that the man taking advantage of his position as the employer of the girl, who was his servant, overcame her scruples. It seems to me that in allowing this record to pass, as I think it may pass, we are going almost to the extreme limit of indulgence.

LORD GUTHRIE—I agree in thinking that the case is a very narrow one, but I also think that there is sufficient here to entitle the pursuer to inquiry.

LORD SALVESEN was absent.

The Court adhered.

Counsel for the Reclaimer (Defender)—Wilton, K.C.—King Murray. Agent—D. Maclean, Solicitor.

Counsel for the Respondent (Pursuer)—Morton, K.C.—Forbes. Agent—Alexander Ross, S.S.C.

Wednesday, November 19.

FIRST DIVISION.

[Exchequer Cause.

KEIR *v.* GILLESPIE.

Revenue—Income Tax—Occupancy of Lands—Pastoral Holding—"Husbandry"—Finance Act 1918 (8 *and* 9 *Geo. V, cap.* 15), *sec.* 21.

The occupation and use of land for the purpose of grazing sheep is included under the term "husbandry" in section 21 of the Finance Act 1918.

The Finance Act 1896 (59 and 60 Vict. cap. 28) enacts—Section 26 (1)—"Where this or any other Act enacts that income tax shall be charged in any year at any rate, there shall be charged, levied, and paid during that year in respect of all property, profits, and gains respectively described or comprised in the several Schedules A, B, C, D, and E in the Income Tax Act 1853, the tax at that rate . . . for every 20s. of one-third of the annual value of lands, tenements, hereditaments, and heritages chargeable under Schedule B in the said Act in respect of the occupation thereof."

The Finance Act 1918 (8 and 9 Geo. V, cap. 15) enacts—Section 21—"Sections 26 and 27 of the Finance Act 1896 (which relate respectively to the application of the Income Tax Acts, and to annual value for the purpose of exemption from or abatement of income tax under Schedule B) shall, as respects income tax under Schedule B, have effect as if for the references to one-third of the annual value there were substituted references to an amount equal to twice the annual value: Provided that where it is proved to the satisfaction of the Income Tax Commissioners concerned that any person occupying any lands and assessed to income tax in respect thereof under Schedule B is not occupying those lands for the purposes of husbandry only, or mainly for those purposes, the above provisions shall . . . apply in relation to those lands as if for the reference to an amount equal to twice the annual value there were substituted a reference to an amount equal to the annual value."

Duncan Keir, farmer, Oldtown of Carnaveron, Alford, Aberdeenshire, *appellant*, being dissatisfied with a decision of the Commissioners for the General Purposes of the Income Tax Acts for the County of Aberdeen assessing him to income tax upon twice the annual value of certain hill grazings occupied by him, took a Case for appeal in which Thomas Gillespie, surveyor of taxes, Aberdeen, was *respondent*.

The Case set forth— . . . "[The appellant appealed against the following] assessments made [upon him] for the year ending 5th April 1919, as occupier, under Schedule B of the Acts 16 and 17 Vict. cap. 34, and 8 and 9 Geo. V, cap. 15, section 21, on an amount equal to twice the annual value, in respect of the following subjects in the county of Aberdeen, of which the appellant is entered in the valuation roll for the year 1918-19 as tenant and occupier, namely:—

No. on Roll.	*Parish of Strathdon.*	Yearly Rent or Value.
209	Croft and house, Conryside, . .	£ 9 1 1
343	Farm and house, Dunanfew and Dunfiel,	31 19 9
355	Grazings, Faevait and Delnadamph .	127 3 7
	Note.—From this rent is deducted £8, the annual value of two houses, Nos. 356 and 357 on roll, of which appellant is tenant but not occupier, thus leaving a net value of £119, 3s. 7d. on which appellant is assessed.	
427	Land, Skellater, Mains of, . .	28 2 6
	Parish of Glenmuick.	
311	House and Grazings, Glenfenzie . .	60 0 0

I. The following *facts* were admitted:—(1) The subjects, although variously described in the entries in the valuation roll, were in each case occupied by the appellant for the grazing of sheep. (2) The income arising from the occupation of said subjects is chargeable under Schedule B of the Income Tax Act 1853. (3) Appellant claimed that he should be assessed on the annual value of the above entries in the valuation roll in place of twice the annual value as contained in the notices of assessment. . . . (6) No proof was led by the appellant."

The *contentions* of the appellant included —"(*a*) That the appellant who occupied as grazings lands in respect of which the assessments appealed against were levied, was not occupying those lands for the purposes of husbandry only or mainly for those purposes. (*b*) That the true meaning of the words 'occupying those lands for the purposes of husbandry only or mainly for those purposes' was occupation for the purpose of tillage or cultivation, and that as the appellant did not till or cultivate the soil of those holdings, which consist mainly of hill grazings, therefore he did not occupy the lands for the purposes of husbandry."

The contentions of the respondent were—"(*a*) That the meaning of 'husbandry' was not restricted to tillage and agricultural operations only, but extended to all farming operations, and included the rearing of sheep and the grazing of lands by sheep or cattle. (*b*) That the Income Tax Acts from 1842 downwards made no distinction between farmers generally and those occupying lands for the purposes of husbandry, and that especially the Income Tax Act of 1851, section 3, and the Income Tax Act of 1853, section 46, both showed by the marginal notes that persons occupying lands for the purposes of husbandry were considered as tenant farmers. That persons occupying lands as graziers were considered as farmers with respect to such lands, and could not accordingly be held as 'not occupying lands for the purposes of 'husbandry only or mainly for those purposes,' and (*c*) That the assessments appealed against were correctly made on an amount equal to twice the annual value, and that the appellant was not entitled to have an amount equal to the annual value substituted for twice the annual value, as he was occupying those lands for the purposes of husbandry only or mainly for those purposes."

The Commissioners being of opinion that the word "husbandry" included the use of lands for the purpose of grazing, and that therefore the appellant had not proved that he was not occupying those lands for the purpose of husbandry only, or mainly for those purposes, dismissed his appeal.

The following authorities were referred to:—The Income Tax Act 1842 (5 and 6 Vict. cap. 35), section 63, and Schedule B; the Income Tax Act 1851 (14 and 15 Vict. cap. 12), section 3; the Income Tax Act 1853 (16 and 17 Vict. cap. 34), section 2, Schedule B, and section 46; the Inland Revenue Act 1880 (43 and 44 Vict. cap. 20), section 52; the Customs and Inland Revenue Act 1887 (50 and 51 Vict. cap. 15), section 18; the Finance Act 1896 (59 and 60 Vict. cap. 28), section 26: the Finance Act 1918 (8 and 9 Geo. V, cap. 15), section 21; *Inland Revenue* v. *William Ransom & Sons*, [1918] 2 K.B. 709; *Meux* v. *Cobley*, [1892] 2 Ch. 253; *in re Cavan Co-operative Society*, [1917] 2 I.R. 594, *per* Madden, J., at p. 605; Chambers' English Dictionary, 1914; the New English Dictionary; the Century Dictionary, 1889; and Stormonth's English Dictionary, *voce* "husbandry" and "husbandman"; Tusser's Five Hundred Pointes of Good Husbandrie.

At advising—

LORD PRESIDENT—In my judgment the decision of the Commissioners in this case is correct and ought to be sustained. The appellant is a sheep farmer who occupies certain lands in Aberdeenshire "for the grazing of sheep," and the question at issue is, Are these lands occupied "for the purposes of husbandry"? I am of opinion that they are so occupied. Confessedly no light is thrown by the statutes on the meaning of the word "husbandry." It has no technical meaning, and must be taken in its ordinary acceptation. What is that? Is it confined to tillage or cultivation, as the appellant contends, or does it embrace "all farming operations," as the Surveyor of Taxes contends? For the answer to these questions I rather think we must turn to the dictionary, and having regard to the object and purpose of the statutes we are construing take the widest meaning which is there put upon the expression. Now when I turn to Stormonth's Dictionary, a work of recognised authority, I find as I expected that "husbandry" is defined just as "the business of a farmer,'" and "husbandman" as the "man who manages the concerns of the soil." If that meaning be accepted—and I consider it is the meaning which ordinary people place on these words—the appellant's case fails. According to the New English Dictionary "husbandry" signifies "the business or occupation of a husbandman or farmer, including also the raising of livestock and poultry." The attempt to confine "husbandry" to the "tillage" of the soil fails, for tillage is defined as the "art or practice of preparing land for seed and raising crops." Manifestly that is too narrow a definition. To adopt it, as the Lord Advocate pointed out, would be to confine husbandry to the raising of crops which are artificial and not natural. "Husbandry" has in these days come to have a much more extended meaning than that, but even if turning over the soil to enable a crop to be grown were essential we have it in the cutting of drains on the sheep farm. "Husbandry," as Mr Justice Kenny pointed out in the case of *In re the Cavan Co-operative Society* ([1917] 2 I.R. 594, at p. 608) "presupposes a connection with land and production of crops or food in some shape," but let me add, it does not presuppose the use of artificial means to prepare the land for raising the crops. I may say in passing that I agree with the expositions of the term "husbandry" given by Mr Justice Madden in the case which I have just cited. The point raised is a very short one. Neither judicial decision nor statutory enactment nor practice throws any light upon it. All that one can say about it is that in common parlance lands devoted to grazing sheep are occupied "for the purposes of husbandry," and that a sheep farmer is a husbandman in the ordinary acceptation of the term. And this is what the Commissioners have decided. I move that we affirm their determination.

LORD MACKENZIE—The Commissioners have held that the word "husbandry" as

used in the 21st section of the Finance Act 1918 includes the use of lands for the purpose of grazing, and that the appellant has not proved that he was not occupying the lands in question for the purposes of husbandry only, or mainly for these purposes.

The appellant led no proof, and we know nothing of the facts, though the nature of the ground may be inferred from the names of the parishes, Strathdon and Glenmuick. In the argument before us the abstract proposition was maintained that the meaning of husbandry is confined to tillage or working of the ground. It may be that in its origin the word husbandman meant the man who ploughed and planted, as distinguished from the man who owned flocks and herds. No such limited meaning can now be attached to the word, which is thus defined in the Oxford English Dictionary, "The business or occupation of a husbandman or farmer; tillage or cultivation of the soil (including also the rearing of livestock and poultry, and sometimes extended to that of bees, silkworms, etc.); agriculture, farming."

The point is a very short one, and its determination depends not so much on a view of the law as on the meaning to be put in an imperial statute upon a word in ordinary use in the English language. I am of opinion that the determination of the Commissioners was right.

LORD SKERRINGTON—I should concede to the appellant that the term "husbandry" may be and probably originally was applied to the cultivation or labouring of the ground, and in contrast to the use of the land for pasture, but the word is undoubtedly susceptible of a wider interpretation. In choosing between them one must consider the context of the statutes and their subject-matter. It was not argued that there was anything either in the context or in the subject-matter of the Income Tax Acts which favoured the narrower construction, and which would confine the expression "purposes of husbandry" to arable as distinguished from pastoral purposes. For the reasons which your Lordships have explained I think that at the present day the primary and natural meaning of the term "husbandry" as applied to land includes all those uses of it which are commonly described as "farming." The rearing of sheep and cattle and the production of milk are generally recognised as within the province of the husbandman. Some light upon the subject may, I think, be obtained from the statutes passed in the first half of the nineteenth century with regard to servants in husbandry. For instance, by the Act 4 Geo. IV, cap. 34, section 3, servants in husbandry were subjected to imprisonment for breach of contract. On the other hand, they were exempted from the provisions of the Truck Act (1 and 2 Will. IV, cap. 37), section 20. In legislation of that character it would be difficult to suppose that a vital distinction was intended to be set up between the position of a ploughman on the one hand and of a cattleman on the other hand. Both were farm servants, or servants in husbandry, or agricultural servants, in the wide sense of these phrases. In the case of *Clark v. M'Naught*, (1846), Arkley, p. 33, the suspender had been engaged "as kitchen woman and byre woman," and the question was whether she was to be regarded as a domestic servant, in which case she could not be imprisoned, or as a servant in husbandry, in which case imprisonment was lawful. I notice in the argument for the employer this passage—"Dairy husbandry is a distinct branch of husbandry, and a master may suffer as much loss by desertion from that employment as from any other." The High Court of Justiciary decided that although she worked in the kitchen she must be dealt with as a servant in husbandry, or in the language of the Lord Justice-General (Boyle), Lord Mackenzie, and Lord Moncreiff, as "an agricultural servant." The legislation with which we are now concerned aims at taxing the profits earned by the class of persons who employ servants in husbandry, and I see no room for distinguishing between the return from an arable or a mixed farm and that from a farm which is purely pastoral.

I accordingly agree with your Lordships that the appeal fails.

LORD CULLEN—I am of the same opinion. The distinction sought to be drawn by the appellant does not correspond with the manner in which holdings for farming purposes are in use to be let and occupied, and if it were accepted it would become necessary for the purposes of assessing income tax to treat such holdings and their rental or annual value as divided up between the fields or portions thereof ploughed or planted during the particular year of taxation, and the fields or portions in pasture or not ploughed or planted. It is impossible, I think, to hold that the Legislature intended such a result.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellant—Macmillan, K.C.—A. M. Mackay. Agent—H. Bower, S.S.C.

Counsel for the Respondent—The Lord Advocate (Clyde, K.C.)—R. C. Henderson. Agent.—Stair A. Gillon, Solicitor of Inland Revenue.

Friday, November 7.

FIRST DIVISION.

CAMPBELL *v.* CAMPBELL.

Parent and Child—Custody—Female Pupil—Father's Right All Other Things being Equal—Guardianship of Infants Act 1886 (49 *and* 50 *Vict. cap.* 27).

In a petition by the father craving the custody of his daughter, who was about two years of age, it was common ground that the spouses were living separate owing to incompatibility of temper. No misconduct was alleged such as to dis-