Will, & Company, W.S., Edinburgh—Grahames & Company, Westminster.

Counsel for the Ellerman Lines, Limited—Sir John Simon, K.C.—Macmillan, K.C.—Normand—B. S. Sandeman. Agents—Hill, Dickinson, & Company, Liverpool—Boyd, Jameson, & Young, W.S., Edinburgh—Rawle, Johnston, & Company, London.

Counsel for Thomson, Shepherd, & Company, Limited—Macmillan, K.C.—Normand—B. S. Sandeman. Agents—Hill, Dickinson, & Company, Liverpool—Boyd, Jameson, & Young, W.S., Edinburgh—Rawle, Johnston, & Company, London.

Counsel for Dundee Harbour Trustees—Solicitor-General for Scotland (C. D. Murray, K.C.)—Sandeman, K.C.—Ingram. Agents—Shields & Kyd, Dundee—J. K. & W. P. Lindsay, W.S., Edinburgh—Thomas Cooper & Company, London.

COURT OF SESSION.

Wednesday, November 30.

FIRST DIVISION.

[Sheriff Court at Dumfries.

LOGAN *v.* FAIR.

Landlord and Tenant—Statute—Construction—"Landlord"—Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 *and* 11 *Geo. V, cap.* 17), *secs.* 5 (1) (*d*) *and* 12 (1) (*f*) *and* (*g*).

The Increase of Rent and Mortgage Interest (Restrictions) Act 1920 enacts—Section 5 (1)—"No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless . . . (*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself . . . or for some person in his whole time employment . . ." Section 12 (1)—"For the purposes of this Act, except where the context otherwise requires—. . . (*f*) The expressions 'landlord,' 'tenant' . . . include any person from time to time deriving title under the original landlord, tenant. . . . (*g*) The expression 'landlord' also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions 'tenant and tenancy' include sub-tenant and sub-tenancy, and the expression 'let' includes sub-let . . ."

Held that when a tenant sub-lets a house he is, after the termination of the sub-let, in his relation towards the sub-tenant still in occupation, a landlord within the meaning of the sections.

Crawford Logan, Gribton, Holywood, Dumfrieshire, *pursuer*, brought an action of removing in the Sheriff Court at Dumfries against William Fair, mason, Upper Cluden, Holywood, Dumfriesshire.

From the averments of the pursuer it appeared that he was tenant of the mansion-house and parks of Gribton, and as such had since January 1918 been tenant under certain trustees of a cottage known as Upper Cluden. When pursuer became tenant of the cottage his intention was to give the occupation to his grieve, but as that could not be arranged at the time he allowed the defender to become his sub-tenant for twelve months. The defender being still in occupation in 1920 and having informed the pursuer that he did not intend to cede occupation until he could obtain alternative accommodation, the pursuer, who required the cottage for his grieve, gave the defender formal notice to remove at Whitsunday 1921.

The defender *pleaded, inter alia*—"1. The pursuer's averments are irrelevant. 2. The pursuer not being the landlord of the cottage has no title to sue this action."

On 27th August 1921 the Sheriff-Substitute (CAMPION) pronounced an interlocutor in which he, *inter alia*, repelled the first and second pleas-in-law for defender.

Note.—"Despite an interesting argument to the contrary I incline to hold that the two first pleas-in-law stated for the defender fall to be repelled. The question to be answered is really whether the expression 'landlord' can for the purposes of this Act be held to include any person not the actual proprietor of the subjects let. For the purposes of this Act—except where the context otherwise requires—sub-section (*f*) of section 12 says—'The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee or mortgagor.' Now whether the Act has said it in so many words, I am of opinion that for the purposes of this Act the expression 'landlord' must be held to include one in the position of the pursuer in this action, the only person with whom the defender has any contract. To hold otherwise seems to me to leave a tenant who has sub-let without remedy and the restrictions on right to possession according to section 5 of no avail to him. It may be matter of indifference to the actual proprietor whether a sub-tenant goes or stays, and he may thus well decline to intervene with the risk of being found liable in expenses."

The defender having obtained leave appealed to the Sheriff.

On 14th October 1921 the Sheriff (MORTON) sustained the appeal, recalled the interlocutor appealed against, and sustained the second plea-in-law for the defender, and dismissed the action.

Note.—[*After a narrative of the facts*]—"In the debate before me the argument turned entirely on the right of the pursuer to bring the present action of removing. The pursuer argued that in terms of section 5 (1) (*d*) of that Act he was entitled to have the defender removed from the house, and the defender replied that the pursuer had no title under the Act to pursue an action of removing. In my opinion the defender's contention falls to be upheld.

"It was admitted by the pursuer that

only a landlord could take advantage of the provisions of section 5 (1) (*d*) of that Act, but his contention was that he fell within the definition of landlord under section 12 (1) (*g*) of the Act. In that section the following is the definition of landlord—'The expression "landlord" also includes in relation to any dwelling-house any person other than the tenant who is, or would be but for this Act, entitled to the possession of the dwelling-house.' This is the definition of landlord except where the context otherwise requires. Now I think, having regard to the notice to remove served by the pursuer upon the defender, the pursuer is a person who but for the Act would be entitled to possession of the dwelling-house. As that person must, however, be also a person other than the tenant, I am quite unable to see how he being the tenant could ever say that he falls within the definition of landlord in that section.

"Nor can I see that the context requires that in construing section 5 (1) (*d*) of the Act the word 'landlord' should there be held to include tenant. It is to be observed that the section comes in under the heading 'Further restrictions and obligations on landlords and mortgagees,' which does not appear a very apposite heading for a section conferring privileges upon tenants. Looking at the sub-section itself, it is to be remembered that the dwelling-house therein referred to may be an urban dwelling-house. If therefore the pursuer's argument is correct, the result would be that under one clause of the sub-section an urban tenant of a dwelling-house who had sublet it would be entitled to get an order for the removal of the sub-tenant if he could satisfy the Court that the dwelling-house was reasonably required by him for an employee of the sub-tenant. It is very difficult to figure a case where a dwelling-house could be reasonably required by one urban tenant for a person in the employment of another urban tenant, and that appears to me to be an argument against the construction suggested by the pursuer. I do not examine the sub-section further, for I confess that if anything is plain upon it, it is plain to me that the context requires that landlord should not be read so as to include tenant."

The Sheriff having certified the cause as suitable for appeal to the Court of Session and granted leave to appeal, the pursuer appealed to the First Division.

Argued for the appellant—The Sheriff was wrong. The pursuer stood in his relation to defender as landlord to tenant within the meaning of section 5 (1) (*d*) of the Act. The pursuer was a person deriving title under the original landlord (section 12 (1) (*f*)), and was a person who would but for the Act be entitled to possession of the cottage (section 12 (1) (*g*)). In the meaning of the Act "tenant" included "sub-tenant," and the words "other than the tenant" were to be interpreted accordingly.

Argued for the respondent—The Sheriff was right. The pursuer was not a landlord within the meaning of the section (5 (1) (*d*)). He was excluded by the words "other than the tenant" (12 (1) (*g*)). Further, there was no specific averment that the pursuer was entitled to possession but for the Act.

LORD PRESIDENT—This appeal is taken against an interlocutor of the Sheriff by which he sustained the second plea-in-law for the defender, viz., that "the pursuer (appellant) not being the landlord of the cottage has no title to sue," and dismissed the action. The only ground upon which that plea was maintained by the defender (respondent), both before the Sheriff-Substitute and the Sheriff, was a purely technical one arising upon the definition of the word "landlord" in the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. The Sheriff-Substitute had repelled the plea founding upon head (*f*) of sub-section (1) of section 12 of the Act. While I agree with the main part of the Sheriff-Substitute's reasoning in his opinion, I think that it is sub-head (*g*) rather than sub-head (*f*) on which it should be founded. For sub-head (*g*) is the one which contains the definition of the expressions "landlord" and "tenant." It provides that "landlord" includes "in relation to any dwelling-house, any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house." The person who would but for the Act be entitled to possession in the present case is the lessor to the sub-tenant, and that lessor is none the less the "landlord" within the meaning of the Act because he is himself tenant under the proprietrix. There is, I think, no difficulty in construing the definition if it is kept in view that the word "tenant" throughout the Act refers primarily to the person who is in possession under a let; and inasmuch as such a person may be either a tenant holding directly under the owner, or a sub-tenant holding directly under a tenant, it necessarily follows that the expression "landlord" includes a tenant (holding under the owner) who has sublet to a sub-tenant and stands to that sub-tenant in the relation of landlord. The Sheriff seems to have been misled by the words "other than the tenant" in the definition, but by a later part of the same sub-head (*g*) "tenant" includes sub-tenant, and in the light of the considerations which I have indicated it seems plain that the conclusion to which the Sheriff thought himself to be compelled by these words is without warrant. Further, the Sheriff has misread the introductory words of section 12, which provide that the definitions which follow are to apply "except where the context otherwise requires." He seems to have thought that it was necessary in construing section 5 (1) (*d*) to show that the context required that the word "landlord" as therein occuring should include the lessor to a sub-tenant. But that is exactly the contrary of what the statute provides. [*His Lordship then dealt with questions with which this report is not concerned.*]

LORD SKERRINGTON—The only point of general interest in this litigation relates to the construction of sections 5 and 12 of the Increase of Rent and Mortgage Interest

(Restrictions) Act 1920. Differing from the Sheriff, I think that the expression "landlord" as used in section 5 (1) (*d*) of the statute includes a principal tenant. That seems to me to follow from the interpretation clause, section 12 (1) (*g*). Even if that were not so, it would, I think, be difficult to hold that a person who is in truth and substance a landlord, and who comes under the statutory restrictions in that capacity, should be deemed not to be a landlord within the meaning of section 5 (1) (*d*) merely because he was not "included" within a clause which was intended to enlarge and not to restrict the natural meaning of the expression.

LORD CULLEN—I am of the same opinion. Section 12 (1) (*g*) of the Act provides that the expression "tenant" includes "sub-tenant." It seems to me clearly to follow that the words "other than the tenant" contained in the same section must be read "other than the tenant or the sub-tenant as the case may be." [*His Lordship then dealt with a question which is not reported.*]

LORD MACKENZIE did not hear the case.

The Court recalled the interlocutors of the Sheriff and Sheriff-Substitute, and remitted to the Sheriff-Substitute to proceed accordingly.

Counsel for Pursuer and Appellant—Moncrieff, K.C. — Jamieson. Agents — Mackay & Young, S.S.C.

Counsel for Defender and Respondent—Carmont. Agents—Webster, Will, & Company, W.S.

Thursday, December 22.

FIRST DIVISION.

[Lord Ashmore and a Jury.

ELLIOT *v.* GLASGOW CORPORATION.

Reparation — Damages — Excessive Damages — Solatium for Death of Infant Daughter—Jury Trial.

A child of about two years of age, the daughter of a workman, was knocked down and killed by a tramcar owing to the negligence of the driver. In an action by the father for solatium, in which no pecuniary loss was averred, a jury awarded £300. *Held* that in the circumstances the damages were not so excessive as to justify the Court in interfering with the verdict.

Observations per the Lord President as to the limited character of a claim for solatium only, and the strict moderation required of a jury in fixing an award in respect of it.

John Elliot, machineman, 77 Canning Street, Bridgeton, Glasgow, *pursuer*, brought an action against the Corporation of Glasgow, *defenders*, concluding for decree for £500 damages for the death of his infant daughter which he alleged had been caused by the fault of the defenders' servant.

The case was tried before Lord Ashmore and a jury.

The pursuer's evidence was to the following effect:—The pursuer, who was thirty-four years of age, was standing at the mouth of the close leading to his house on the evening when the accident happened. The child who was killed came out of the house with another daughter of the pursuer about five years of age. When the pursuer saw the accident he was overcome and fainted, was unable to pick up his daughter, and was helped into his house by a woman who lived next door. He did not go with the child to the doctor's where she was taken, and heard afterwards that she was killed outright. He was much attached to the child, and her death, in the manner in which it took place, was a severe shock to him from which he had not fully recovered.

The jury having found for the pursuer assessed the damages at £300.

The defenders obtained a rule upon the pursuer to show cause why a new trial should not be granted. At the hearing on the rule the following authorities were referred to—*M'Kiernan* v. *Glasgow Corporation*, 1919 S.C. 407, 56 S.L.R. 285; *Horn* v. *North British Railway Company*, 1878, 5 R. 1055, 15 S.L.R. 707; *Young* v. *Glasgow Tramway and Omnibus Company*, 1882, 10 R. 242, *per* Lord President Inglis at p. 245, 20 S.L.R. 169; *Casey* v. *United Collieries*, 1907 S.C. 690, *per* Lord President Dunedin at p. 692, 44 S.L.R. 522; *Landell* v. *Landell*, 1841, 3 D. 819; *Adamson* v. *Whitson*, 1849, 11 D. 680, *per* Lord Jeffrey at p. 682; *Black* v. *North British Railway Company*, 1908 S.C. 444, *per* Lord Dunedin at pp. 452 and 453, 44 S.L.R. 340; *Webster & Company* v. *Cramond Iron Company*, 1875, 2 R. 752, 12 S.L.R. 496.

At advising—

LORD PRESIDENT—This is an action by the father of a little girl, about two years of age, who was run down by a tramway car and killed. No pecuniary loss was averred, the claim being solely in respect of "solatium for the injury to the pursuer's feelings." The sum claimed was £500 and the award £300; the question is whether this award is so excessive as to entitle the defenders to a new trial. The case closely resembles that of *M'Kiernan* v. *Glasgow Corporation* (1919 S.C. 407), for in both cases the circumstances of the unhappy victim of the accident, and his or her tender years, left no room for any claim of real damage or direct pecuniary loss. When there is nothing to place in the scales except the pain and grief which the accident has occasioned to a bereaved survivor no standard for fixing the amount to be awarded as solatium is available. No parent, for example, would pass through such an experience for any sum of money. On the other hand it is quite clear that solatium is not met by a nominal award.

There are other cases which occur in the department of reparation in which somewhat similar difficulties arise. Thus substantial, as distinct from nominal, damages are awarded for breach of commercial contracts, although no actual loss is proved and although no legal measure exists for