

Wednesday, March 19.

FIRST DIVISION.

[Lord Murray, Lord Ordinary
on the Bills.

WADDELL v. HOWAT.

Process—Bill Chamber—Suspension and Interdict—Function of Bill Chamber in Dealing with Note of Suspension and Interdict.

Where the Lord Ordinary on the Bills had determined the merits of a question raised in a note of suspension and interdict and refused the note, the Court, in respect that it was not the function of the Bill Chamber to try the merits of questions suitable for trial in the Court of Session, recalled the interlocutor and remitted the case to the Bill Chamber in order that the note might be passed for trial.

Robert Waddell, West Morham, East Lothian, brought a note of suspension and interdict in the Bill Chamber against (1) David Erskine Howat, Edinburgh, and Thomas Elder, farmer, Stevenson, Haddington, and (2) the Board of Agriculture for Scotland, to restrain the respondents from proceeding under or acting upon a nomination of arbiter by the Board under the Agricultural Holdings (Scotland) Act 1923 in a claim for compensation under that Act at the instance of the respondent Howat against the complainer.

The parties averred, *inter alia*—“(Stat. 1) The complainer Robert Waddell is the proprietor of the lands of Morham Mains, otherwise known as Morham Muir or West Morham, in East Lothian, conform to disposition by John Howatt, veterinary surgeon, Londonderry, and others, trustees acting under the trust-disposition and settlement of the late John Howatt, veterinary surgeon, Pollokshaws, dated 11th 14th, and 16th, and recorded in the Division of the General Register of Sasines for the county of East Lothian 21st November 1922. The respondent David Erskine Howat, who presently resides at 47 George IV Bridge, Edinburgh, was the tenant or occupier of the said lands of Morham Mains under an arrangement with the said trustees which came to an end at the term of Martinmas 1922, when by agreement dated 22nd, 26th, and 28th September and 5th October 1922 between him and the said trustees the said respondent renounced all rights of possession of the said farm and lands competent to him from and after the said term. . . . (Ans. 1) Admitted under reference to the said disposition and agreement for their terms. (Stat. 2) The entry of the complainer Robert Waddell to the said lands of Morham Mains was at the term of Martinmas 1922, and following upon the termination of the occupation of the respondent David Erskine Howat at the said term he intimated a claim against the complainer under the Agricultural Holdings Acts for payment of the sum of £181, 12s. 1d. as compensation for unexhausted

manures, &c. The complainer repudiated the claim, whereupon the said respondent applied to the Board of Agriculture for Scotland to appoint an arbiter to settle the differences which they alleged had arisen between the complainer and the said respondent as to the compensation payable under the Agricultural Holdings Acts, and the Board of Agriculture on 19th November 1923, notwithstanding that the complainer exhibited to them the disposition of the said lands in his favour, appointed the respondent Thomas Elder of Stevenson, Haddington, as such arbiter. (Ans. 2) Admitted under reference to the said claim for its terms. Explained that the said claim was intimated to the complainer on or about 5th January 1923, at which date the complainer was landlord of the said holding within the meaning of the Agricultural Holdings Acts, and therefore the proper person to receive any claim made under the said Acts by the respondent. Further explained that by the said agreement between the respondent and the said John Howatt's trustees it was provided that the respondent should make all claims competent to him under the said Acts against the incoming occupier or owner, and that following thereon the articles of roup under which the complainer bought the said holding from the said trustees provided (*sexto*) that the purchaser should be bound to relieve the said trustees of all claims competent to the agricultural tenant in virtue of his tack, compensation under the Agricultural Holdings Act 1920, and for improvements, meliorations, or otherwise. Further explained that the complainer on receiving the said claim from the respondent intimated to the respondent on 9th January 1923 a counter-claim against the respondent for £500 as damages, and for compensation payable by the respondent to the complainer as the proprietor of the said holding at common law and under the Agricultural Holdings Acts, and required any arbitration which might take place between them in reference to the said holding and the said claim by the respondent to extend to the said counter-claim. (Stat. 3) There never was any privity of contract regarding the said lands between the complainer and the said David Erskine Howat, and the relation of landlord and tenant never existed between them. No rents were ever due or payable by the said David Erskine Howat to the complainer, and there is no claim at the instance of the said David Erskine Howat against the complainer which can form the subject of arbitration. . . . (Ans. 3) Admitted that no rents were due or payable by the respondent to the complainer. . . . *Quoad ultra* denied. Explained under reference to Answer 2 that the complainer was landlord of the said holding at the time when the said claim was made, and that by intimating the said counter-claim the complainer admitted the competency of the respondent's said claim, and that all questions relating to the said claim fall to be dealt with by the said arbiter Thomas Elder.

The complainer pleaded—"The relation of landlord and tenant never having existed between the complainer and the respondent David Erskine Howat, the complainer is entitled to interdict and interim interdict as craved."

The respondents pleaded, *inter alia*—"2. The determination of the validity of the said claim being a matter for the decision of the said arbiter, the note should not be passed. 3. The said claim being a competent and valid claim against the complainer the note should not be passed. 4. The complainer having admitted the competency of the said claim is barred from maintaining that the said claim is incompetent."

On 6th February 1923 the Lord Ordinary on the Bills (MURRAY) dismissed the note.

The complainer reclaimed.

LORD PRESIDENT (CLYDE)—The interlocutor reclaimed against in this suspension and interdict is one pronounced in the Bill Chamber dismissing the note. It is as plain as can be from the explanations of counsel that the note raises serious questions for trial, and the note ought to have been passed into the Court of Session in order that they might be tried on adjusted pleadings. It would therefore be a waste of time to hear further argument on the merits; even if we formed an opinion favourable to the appellant, the only interlocutor we could ourselves pronounce would be to pass the note for trial in the Court of Session. I say again, what I have had to say recently on more than one occasion, that the purpose of the Bill Chamber is not to try the merits of questions which are suitable for trial in the Court of Session. The function of the Bill Chamber is (first) to determine whether there is a proper question to be tried in the Court of Session, and if so to pass the note, and (second) to consider the question whether an interim interdict should or should not be granted. There may be cases in which the point raised is near the border line, but assuredly this case is not one of them. The only possible course for us to follow here is to recall the interlocutor reclaimed against and to send the case back to the Bill Chamber in order that the note may be passed. Counsel for the appellant informed us that there is at least one question of importance which he intends to raise when a full record is made up, and which is insufficiently stated on the open record—a circumstance which only emphasises the inexpediency of the procedure followed in the Bill Chamber.

LORDS SKERRINGTON, CULLEN, and SANDS concurred.

The Court recalled the interlocutor reclaimed against and remitted to the Lord Ordinary on the Bills to pass the note.

Counsel for Complainer—D. Jamieson. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for Respondents—D. P. Fleming, K.C.—J. S. C. Reid. Agents—W. H. Mill & Company, W.S.

HIGH COURT OF JUSTICIARY.

Wednesday, March 19.

(Before the Lord Justice-Clerk, Lord Hunter, and Lord Anderson.)

[Sheriff Court at Dumfries.]

DRYDEN v. MACKAY.

Justiciary Cases—Betting—Place Used for Betting—Bar of Public-house—Implied Permission by Licensee—Liability of Licensee—Betting Act 1853 (16 and 17 Vict. cap. 119), secs. 1, 3.

The licensee of a public-house was convicted in the Sheriff Court of having knowingly and wilfully permitted the premises to be used by a bookmaker for the purpose of betting. It was proved that on various occasions bets had been made on the premises by the bookmaker with the aid of betting slips, that it was a well-known fact that he was to be found there at certain hours of the day, and that he did not resort thereto for purposes of refreshment. It was further proved that the bets were made openly at a side counter or close to the main counter, that on each occasion the appellant was either standing behind the main counter serving customers or sitting in a chair behind the counter, and that the premises were of such a size, being only 9 feet by 9 feet, that the accused could see plainly all that was going on in them. *Held*, on appeal, that the facts found proved were such as to entitle the Sheriff-Substitute to hold that a betting business was being carried on in the premises with the permission of the occupant thereof, and conviction *upheld*.

The Betting Act 1853 (16 and 17 Vict. cap. 119) (extended to Scotland by the Betting Act 1874 (37 Vict. cap. 15)) enact—Section 1—"No house, office, room, or other place shall be opened, kept, or used for the purpose of the owner, occupier, or keeper thereof, or any person using the same, or any person procured or employed by or acting for or on behalf of such owner, occupier, or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof, betting with persons resorting thereto. . . ." Section 3—"Any person who, being the owner or occupier of any house, office, room, or other place, or a person using the same, shall open, keep, or use the same for the purposes hereinbefore mentioned or either of them, and any person who, being the owner or occupier of any house, room, office, or other place, shall knowingly and wilfully permit the same to be opened, kept, or used by any other person for the purposes aforesaid or either of them, and any person having the care or management of or in any manner assisting in conducting the business of any house, office, room, or place opened, kept, or used for the purposes aforesaid or either of them, shall on summary conviction thereof [be liable in certain penalties]."