the countries from which our supplies are drawn becoming engaged in war." Then the letter proceeds—"Dear Sirs, We hereby offer to undertake to supply all your requirements in pit props in accordance with your Schedule Class No. 12, from No. 41 to 61 inclusive, for 12 months from 1st July 1914 to 30th June 1915, at the annexed prices, and hope to be favoured with your acceptance." That was accepted by a letter of the same date signed by the managing director of the pursuers—"I beg to inform you that your offer for the various articles specified, as per enclosed schedule, has been accepted." Your Lordships have been referred to a facsimile of the letter from which it appears that the head-note is in red ink and is printed in a reasonably conspicuous position upon the form of the letter. The question is whether that red ink note is to be regarded as forming part of the contract or not. It seems to me clear that it must be so regarded. It is a letter, no doubt, but the parties were in the habit of writing letters upon business, and for convenience they appear to have had this head-note relating to the case of strikes and the case of war. The case of strikes is unfortunately so common that everyone would expect to find a provision made for what was to happen in case an occurrence of that kind took place. The case of war is also provided for by this note. It is said that the pursuers did not nor did any of the directors or officials read this clause, that their own attention was not directed to it, and that the attention of none of the higher officers of the company was called to it. That, to my mind, is utterly immaterial. The question is whether the red ink note was put in such a position in such type that it must be regarded reasonably as forming part of the terms which were offered by those who wrote the letter. It seems to me quite clear that this red ink note did form part of these terms. Many cases have been put. The case might be suggested of a postscript which had not been added at the end of the letter but was written in at the top of the page on which the letter begins with "Dear Sirs," so that there you would have—"P.S. It will of course be remembered that this is subject to the strike clause in the form with which you are familiar," or something of that kind. But here, for convenience, they had this printed clause in red ink, and it seems to me that it is quite impossible to divorce the letter, which is said to begin with the words "Dear Sirs" and end with the words "Yours truly," from the clause which is printed in such a way as to call attention to it and which purports to qualify the terms of the letter. It appears to me that the cases with regard to tickets on railways, which are merely vouchers for payment of a fare, have no application, and it is impossible to read the contract here apart from the red ink note. If that red ink note forms part of the contract, then the decision of the majority of the Inner House was right. They reversed the decision of the Lord Ordinary, and in my opinion they were right.

The appeal therefore fails.

LORD DUNEDIN—I concur. The judgment of Lord Mackenzie is entirely satisfactory to my mind, and I have really nothing to add to what he said.

LORD ATKINSON—I concur.

LORD SHAW—I am of the same opinion. Had I desired to write upon this case a separate judgment I fear that I should have made but an imperfect paraphrase of the judgment of Lord Mackenzie, with every word of whose opinion I agree.

LORD BUCKMASTER—I agree, and I have nothing to add.

Their Lordships dismissed the appeal with expenses.

Counsel for the Pursuers (Appellants)—Moncrieff, K.C.—C. H. Brown. Agents—Moncrieff, Warren, Paterson, & Company, Glasgow—Drummond & Reid, W.S., Edinburgh — Grahames & Company, Westminster.

Counsel for the Defenders (Respondents)—Lord Advocate and Dean of Faculty (Clyde, K.C.)—A. M. Mackay. Agents—Borland, King, Shaw, & Company, Glasgow—Dove, Lockhart, & Smart, S.S.C., Edinburgh—Ince, Colt, Ince, & Roscoe, London.

Thursday, January 24.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lord Dunedin, and Lord Atkinson.)

GLENDINNING *v.* BOARD OF AGRICULTURE FOR SCOTLAND.

(In the Court of Session, January 30, 1917, 54 S.L.R. 234, and 1917 S.C. 264.)

Process—Appeal to House of Lords—Jurisdiction — Question of Competency not Pleaded nor Fully Argued.

In the absence of full argument on the question of the competency of an action, no plea being tabled, the House of Lords, in a doubtful case, did not decline jurisdiction but entertained the action, holding the point open for future argument and decision.

Landlord and Tenant—Small Holdings—Arbitration—Alternative Award—Competency—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 7 (11) *—Agricultural Holdings (Scotland) Act* 1908 (8 *Edw. VII, cap.* 64), *Sched. II, para.* 9.

In an arbitration under the Small Landholders (Scotland) Act 1911 to fix the compensation payable to the tenant of a farm on its acquisition for small holdings, the arbiter found that there was a question of law involved as to the date to which the tenant's tenancy extended, and with the concurrence of parties gave alternative findings. The tenant brought an action of declarator to establish one of the alternatives. No plea to the competency of alternative findings was taken or fully argued. A previous case with alternative findings (*Scott Plummer* v. *Board of Agriculture for Scotland*, 1916 S.C. (H.L.) 94, 53 S.L.R. 207) had been entertained and decided, no plea to competency having there been advanced.

Held that, *following Scott Plummer* (*v. sup.*), the appeal in this case should be entertained, the point, however, being kept open.

Per the Lord Chancellor — "I think that the provision in the section that the arbiter has to decide the case within three months may be regarded as satisfied if within that time the arbiter states the facts finally so as to enable the courts to decide upon a point of law in an action upon the award, which indeed is the normal way of enforcing an award."

Landlord and Tenant—Small Holdings—Compensation—Termination of Lease—Agreement between Landlord and Tenant Subsequent to Board of Agriculture being Empowered to Take Farm for Small Holdings.

In December 1913 the Board of Agriculture was given power to take a farm for small holdings, and was given to Martinmas 1915 to exercise the power. This was intimated to the tenant. His lease expired at Martinmas 1914. In February 1914 he approached his landlord as to whether the latter intended to serve notice to quit for Martinmas 1914, and was informed that he did not intend to do so, not knowing if the Board were to proceed, and not wishing to be without a tenant for a year. The Board took possession at Martinmas 1914.

Held (*rev.* judgment of the Second Division) that the tenant was entitled to compensation for the loss of the profits on the year's tenancy, Martinmas 1914 to Martinmas 1915.

This case is reported *ante ut supra*.

The pursuer Glendinning appealed to the House of Lords.

At delivering judgment—

Lord Chancellor—This case raises some important questions with regard to proceedings for the acquisition of land for small holdings under the Small Landholders (Scotland) Act 1911.

That Act (1 and 2 Geo. V, cap. 49) makes provision as to the constitution of the Scottish Land Court and the Board of Agriculture for Scotland. The 7th section confers powers upon these bodies for the purpose of facilitating the creation of small holdings and the acquisition of land for that purpose. The 9th sub-section of this section makes provision for the acquisition of land compulsorily, and the constitution of new holdings thereon, under an Order of the Land Court to be made on application by the Board of Agriculture. Power is given by sub-section 11 to the Land Court to award compensation to owners and tenants of the land taken, but it is provided that if a landlord or tenant claims compensation exceeding £300 he may have the amount settled by arbitration and not by the Land Court, and may, failing agreement with the Board of Agriculture, apply to the Lord Ordinary on the Bills for the appointment of a single arbiter whose award is to be final and binding on the Board, but if no final award be given within three months from the date when the arbiter is nominated, the question is to be decided by the Land Court. The arbitration is to be conducted under the Second Schedule (paragraphs 1, 5, 10, and 11 excepted) to the Agricultural Holdings (Scotland) Act 1908, but with certain modifications. Under the 9th paragraph of that schedule, as modified, the arbiter may, at any stage of the proceedings, and shall, if directed by the Lord Ordinary, state in the form of a special case for the opinion of the Lord Ordinary any question of law arising in the course of the arbitration.

The appellant had at Martinmas 1894 become tenant of the farm of Ballencrieff, Aberlady, East Lothian, under a lease for 19 years from Lord Elibank. In August 1913 notice was given by the Board of Agriculture that they proposed to apply to the Land Court for the constitution of new holdings on the farm, and on the 14th October application was made to the Land Court for an Order. On 31st December 1913 the Land Court made an Order empowering the Board to constitute 30 new holdings upon the farm and to exercise this power up to the 28th November 1915. The Order also contained other auxiliary provisions. The appellant claimed to have the compensation determined by arbitration, and on his petition Mr J. S. Davidson was appointed arbiter under the Act of 1911. The Board of Agriculture took possession as at Martinmas 1914.

Before the arbiter the appellant claimed that his tenancy had been extended to Martinmas 1915, and made a claim for compensation for the loss of the profits which he would have made and of which he was deprived by reason of the Board's having taken possession. The question in dispute is as to the sum of £1500 claimed in respect of this loss of profits for the year 1914-15. The extension of the tenancy to Martinmas 1915 was alleged to have taken place in consequence of an arrangement with the landlord made in February 1914. It is asserted by the Board of Agriculture that such extension would be invalid on the ground that it was subsequent to the Land Court's Order of 31st December 1913, which, as the Board contended, deprived the landlord of the power to create any further interest in the land affected by the Order.

The arbiter, after hearing the parties, made his award, dated 22nd September 1914, and it is from the award itself and the documents therein referred to that the facts must be ascertained for the purposes of this case.

The material passages in the award are the following. One of the recitals runs as follows:—"And whereas it was contended in the said reference on behalf of the claimant that his tenancy of the said farm does not, and on behalf of the respondents that his said tenancy does, terminate at

Martinmas 1914 and the parties concurred in stating that I should, if so advised, issue alternative findings so that the judgment of the Court can be obtained upon this point."

The second finding is with regard to the tenancy and runs as follows:—"Second—That formal notice was duly given in accordance with the Agricultural Holdings (Scotland) Act 1908, section 18, on behalf of the said landlord to the claimant requiring him to remove from the said farm at said term of Martinmas 1913; that upon his receiving said notice the claimant on 15th November 1912 gave notice to the said landlord in terms of section 10 of the Agricultural Holdings (Scotland) Act 1908 that he would claim compensation under said section for unreasonable disturbance; that in the spring of 1913 negotiations were entered into for a new lease of the said farm, and on the 27th May 1913 the claimant made an offer to the landlord for a lease for a further period of fourteen years on certain conditions; that this offer was not accepted, as in consequence of the negotiations which had at that time been opened by the respondents for the acquisition of the said farm for small holdings, the agents of the said landlord did not see their way to tie their hands by a lease for a period of years, and accordingly, on 13th June 1913, while the said notice of removal was still current, holograph missives passed between the claimant and the law agent for his said landlord in the following terms:—"To the Right Honourable Viscount Elibank, Ballencrieff, Winn Road, Southampton. *Fenton Barns, Drem*, 13th June 1913. My Lord—(*Ballencrieff Farm*)—I am willing that instead of your notice of termination taking effect at Martinmas 1913, it should do so at Martinmas 1914, when my tenancy will accordingly cease and determine without further notice, and that the rent for crop and year 1914 shall be One thousand four hundred and forty pounds, payable half-yearly at Whitsunday and Martinmas 1914. No expenditure on your part to be required by me. Otherwise the terms and conditions of the current lease to hold good and be applicable to the extended year. Yours faithfully (adopted as holograph) JAMES P. GLENDINNING. Stamp 6d. F. G. H. 13th June 1913." "On behalf of Viscount Elibank I accept the above offer, and hold the matter as concluded accordingly.—FRANCIS G. HALDANE. Edinburgh, 13th June 1913."

In the third finding the arbiter stated the proceedings of the Board of Agriculture and the Order of the Land Court as to this farm. These proceedings I have sufficiently described above.

The fourth finding related to the alleged arrangement for an extension made in February 1914.—"Fourth. That in or about said month of February 1914 the claimant had a meeting with the factors of his said landlord and inquired, in view of his arrangements as to cropping during the ensuing season, whether they proposed to give him notice under the Agricultural Holdings Act terminating his tenancy under the said missives of 13th June 1913, and that the said factors then stated that so far as the landlord was concerned he had no desire to part with the claimant and would give no such notice, as they did not know whether the respondents were going to take possession of the said farm at Martinmas 1914, and did not wish to be in the position of having a derelict farm for a year; that the farm is for all practical purposes left in the four-course rotation which is one of the alternatives provided in the said lease."

The eighth and ninth findings are those on which the case mainly turns:—"Eighth. On a fair construction of the said missives of 13th June 1913, and the facts and documents before mentioned, I find that the claimant's tenancy of the said farm terminates at Martinmas 1914, and that damage or injury will be done to the claimant in respect that the land to be occupied by the new holders forms part or the whole of his tenancy and I therefore assess the compensation to which the claimant is entitled on this footing at the sum of £407, 10s. sterling, with interest at the rate of 4 per cent. per annum from Martinmas, 11th November 1914, until paid, and I ordain the respondents to pay to the claimant the said sum with interest as aforesaid. Ninth. Alternatively, and in the event of it being hereafter held that the compensation payable to the claimant falls to be assessed on the footing that his tenancy of the said farm continues after Martinmas 1914, I do hereby assess the amount of compensation to which the claimant is entitled as aforesaid at (*a*) the said sum of £407, 10s. with interest as aforesaid, and (*b*) the sum of £1500 with interest at 4 per cent. per annum from Martinmas, 11th November, 1914, until paid, in respect of loss of profit for crop and year 1915, and in the same event I ordain the respondents to pay to the claimant the two sums last mentioned with interest as aforesaid."

By the eleventh finding the arbiter found the respondents liable in one-third of the claimant's expenses, but went on to declare "that in the event of it being hereafter held that the tenancy of the claimant continues after Martinmas 1914" the claimant was to have the whole of his expenses to be taxed.

The present proceedings were commenced by the appellant—Mr Glendinning—against the respondents—the Board of Agriculture, by summons dated 10th March 1915. The summons claimed declarator that the pursuer was entitled to the farm for the year Martimas 1914 to Martimas 1915, and that the defenders should be decerned to make payment of £1500. Pleadings and pleas-in-law followed. The case came in the first instance before Lord Cullen, who granted a proof. An appeal was brought, which was heard in the Second Division before the Lord Justice-Clerk, Lord Dundas, Lord Salvesen, and Lord Guthrie. They sustained the first plea-in-law of the defenders the Board of Agriculture, which was that the pursuer's averments are irrelevant and insufficient in law, and dismissed the action with costs. No objection was raised by the defenders to the competency of the action, but the Lord Justice-Clerk and Lord Dundas expressed the view that it was not competent, while on this point Lord Salvesen and Lord Guthrie reserved their opinion. The grounds upon which all the members of the Court concurred in dismissing the action are not quite the same. They proceeded partly upon the view that the arbiter by his eighth finding had finally decided that the tenancy terminated at Martinmas 1914, and partly on the view that this finding was right upon the facts and documents stated in the award.

No objection on the ground of incompetency was taken at the Bar of your Lordships' House. The course which had been taken was the result of the agreement of the parties, and both concurred that the question should be decided by your Lordships' House. It is, however, necessary to consider the question of competency inasmuch as if it be clear that there is no jurisdiction your Lordships' House will not assume jurisdiction on the mere consent of the parties.

The ground on which two of the Judges in the Court below thought the action incompetent was that section 7 of the Small Landholders Act prescribes that if no final award be given in the case of an arbitration within three months from the date when the arbiter was nominated the question should be decided by the Land Court, and that it is not competent in arbitration under this section for the arbiter to make an award in the alternative.

The award in the present case is similar to that made in *Scott Plummer* v. *Board of Agriculture for Scotland*, 1915 S.C. 1048, 52 S.L.R. 806, and 1916 S.C. (H.L.) 94, 53 S.L.R. 207. In that case the question was whether on the true construction of section 7 (11) of the Act of 1911 the arbiter was entitled to award compensation to a landlord for any reduction in the selling value of his estate directly due to the establishment thereon of small holdings although the rental of the estate may not be diminished. The arbiter stated in his award that he considered this head of claim valid on the true construction of the statute. He assessed the compensation on this and other heads of claim at £4600, but went on to provide that in the event of its being held that this head of claim was not competent he alternatively assessed the compensation payable in respect of the other heads of claims at £750. No objection was taken to competency, and the case was decided both in the Court of Session and in this House on appeal without any reference being made to this question. In the present case the Lord Justice-Clerk distinguishes that case from the present on the ground that there the question was one of jurisdiction. But in that case it was quite competent for the arbiter to decide on the question of the construction of the statute under which he was acting as regards the heads of claim admissible. He was not a mere valuer appointed to assess the amount of compensation in respect of certain items. He was an arbiter competent to decide all questions both of fact and of law, and his appointment necessarily carried with it authority to decide the point of construction which was raised in that case. Having regard apparently to the importance of the point, he took the view that it was better that it should be decided by the courts and made an alternative award. In the present case the arbiter in like manner was perfectly competent to decide all questions of fact and law. He could decide whether the landlord's right to let was suspended by the order of the Land Court empowering the Board of Agriculture to take possession of the land, and he could also decide whether what took place between the landlord and tenant after the date of that order amounted to an extension of the tenancy in point of law by tacit relocation or otherwise.

At the request of the parties he made his award in the form before your Lordships. It is contended by the appellant that on its true construction that award is in the alternative so as to leave these questions for the adjudication of the courts. Assuming that on the true construction of the award this is what he did, the case appears to me to stand on the same footing as to competency with the *Scott Plummer* case.

The present proceedings have been taken by the consent of both parties, and no objection is made to the jurisdiction. It would be very unfortunate if it turns out that the whole of this prolonged litigation has been futile. In view of the course taken by this House in the case of *Scott Plummer* v. *The Board of Agriculture*, I think that we ought for the purposes of the present case to proceed on the view that there is jurisdiction. We have not had the question of competency fully argued, as the respondents did not dispute it. I think that the provision in the section that the arbiter has to decide the case within three months may be regarded as satisfied if within that time the arbiter states the facts finally so as to enable the courts to decide upon a point of law in an action upon the award, which indeed is the normal way of enforcing an award. In the case of very important points of law it is hardly convenient that they should be finally decided by the Lord Ordinary without the possibility of appeal, as with a case as stated under the Second Schedule of the Agricultural Holdings Act.

My present impression is that the arbiter may properly make his award in the alternative. The point is, however, too important to be finally decided without full argument. The House assumed jurisdiction in the *Scott Plummer* case, but there was no argument on the point, and it has not been fully argued in the present case, as the respondents did not dispute jurisdiction. If in any future case a similar course is taken and objection is raised, I think that it ought to be regarded as open to argument and reconsideration. It cannot be disputed that in a clear case it may be the duty of the Court to take the objection of incompetency, but I do not think it by any means clear that the present action is incompetent. In my judgment it would certainly be wrong to decline jurisdiction in the very special circumstances of this case when both parties have come here for a decision.

I now pass to the consideration of the case upon its merits.

The first question that arises is as to the effect of the award. It is contended for the respondents that the arbiter has found that the tenancy of the appellant ceased at Martinmas 1914. If this be so there is an end of the matter, as the arbiter had power to decide on all questions of law and fact. The paragraph in the award relied upon by the respondents is the eighth, and if that paragraph stood by itself I should agree that it amounted to a definite finding that the appellant's tenancy terminated at Martinmas 1914, so as to make impossible any claim in respect of the year from Martinmas 1914 to Martinmas 1915. But the eighth paragraph must be read along with the ninth paragraph, and to read the eighth paragraph as a final finding that the tenancy ended at Martinmas 1914 makes nonsense of the ninth paragraph, or as Lord Dundas put it, that paragraph becomes "superfluous, irrelevant, and ineffective." The two paragraphs must be read together, and it seems to me clear that the words in paragraph 8 "I find that the claimant's tenancy of the said farm terminates at Martinmas 1914" cannot be read as amounting to a final decision by the arbiter upon that point. Paragraph 8 is immediately followed by paragraph 9, which provides as follows:—"Alternatively, and in the event of its being hereafter held that the compensation payable to the claimant falls to be assessed on the footing that his tenancy of the said farm continues after Martinmas 1914, I do hereby assess the amount of compensation" at (*a*) £407, 10s., and (*b*) £1500 in respect of loss of profit for crop in the year 1915, and "in the same event I ordain the respondents to pay to the claimant the two sums last mentioned with interest as aforesaid."

This makes it clear that the award was intended to lay before the Court the materials necessary for determining the question whether the claimant was entitled in respect of the year 1914-15, and excludes to my mind all possibility of holding that the finding in paragraph 8 was meant to be a final decision upon the matter. This conclusion is strengthened by the recital which has been already set out to the effect that the parties were at issue on the question whether the tenancy terminated at Martinmas 1914, and that they concurred in stating that the arbiter "should, if so advised, issue alternative findings so that the judgment of the Court can be obtained upon this point." The arbiter evidently intended to exercise this power. The 11th paragraph of the award points to the same conclusion, for in dealing with the question of expenses he awards to the claimant one-third of his expenses, declaring that in the event of its being held that the tenancy continues after Martinmas 1914 he shall have the whole of his expenses. If the 8th paragraph decided the point no Court would have had any jurisdiction to re-open the question.

The question therefore arises whether on the facts stated the claimant was entitled to the farm for the year 1914-15.

The first point made by the Board of Agriculture (the respondents) was that the claimant's title to hold the farm for this year must be derived from relocation, express or implied, by the landlord in February 1914, which date was subsequent to the Order of the Land Court conferring upon the Board of Agriculture the power to convert the farm into small holdings. It was contended that this Order put an end to the landlord's power of disposition, and that no interest created by him after this Order could be effective so as to afford any claim for compensation in respect of the subsequent taking by the Board. In my opinion this contention fails. It is admitted that there are no express words in the statute to impose this disability, but it is said that it ought to be implied. The terms of the Order express that the Board of Agriculture are empowered to constitute, otherwise than by agreement, 30 new holdings of the land and to "exercise this power up to the 28th November 1915." There was nothing to bind the Board of Agriculture to exercise this power. At the date of the alleged relocation (February 1914) they had not exercised it, and the arrangement which is said to have the effect of relocation was stated, as appears from the 4th paragraph of the award, to have been entered into on the ground that the landlord's factors did not know whether the respondents were going to take possession of the farm at Martinmas 1914, and that he did not wish to be in the position of having a derelict farm for a year. As the Order left the Board of Agriculture free up to the 28th November 1914, I cannot come to the conclusion that under the statute it had the effect of preventing the landlord from re-letting. If this were the case, the result might be that by the operation of this statute farms might be derelict, which cannot possibly have been regarded as desirable by the Legislature. To bring about such a restriction upon the powers of the owner express words would be required, or necessary implication, and I cannot find either in the statute.

The second point made by the respondents against the claimant's tenancy for the year 1914-15 was that upon the facts stated such an extension of tenancy is not shown to have been created in point of law. From an early period in the law of Scotland tenancies would not terminate merely by the expiration of the term of the lease. It was further required that notice should have been given to go. This, however, did not apply to tenancies for a year or under, but by the 18th section of the Agricultural Holdings Act 1908 (8 Edward VII, c. 64) it was provided that notwithstanding the expiration of the stipulated endurance of any lease the tenancy shall not come to an end unless written notice has been given, in the case of leases for three years or upwards not less than one nor more than two years before the expiration of the lease, and in the case of leases from year to year or for any other period less than three years not less than six months before the expiration of the lease. The 19 years of the original lease in the present case expired at Martinmas 1913, and due notice had been given in accordance with the Agricultural Holdings Act, section 18, for that date. On the 13th June 1913 there were exchanged between the landlord and the tenant the missives set out in the second paragraph of the award which I have already stated. By these missives it was agreed that the notice for Martinmas 1913 should take effect at Martinmas 1914, when the tenancy should determine without further notice. It was contended for the respondents that this last provision amounted to a notice for Martinmas 1914 within the meaning of the Statute of 1908, but this contention does not appear to me to be sustainable and the parties themselves acted upon the view that notice would be necessary. Accordingly in February 1914, in answer to an inquiry by the claimant whether the landlord proposed to give notice under the Agricultural Holdings Act terminating his tenancy under the missive of 13th June 1913 (which would have been six months' notice to quit at Martinmas 1914), the factor stated that the landlord had no desire to part with the claimant and would give no such notice. Accordingly no notice was given, and the effect of section 18 was that the tenancy did not come to an end at Martinmas 1914, and there was therefore tacit relocation to Martinmas 1915.

It follows that the claimant was tenant for the year 1914-15, and there is no reason why he should not receive compensation in respect of the loss of his profits for that year. I am unable to read the findings in the 4th paragraph of the award in the sense attributed to them by the Lord Justice-Clerk when he says—"So far as the arbiter's findings are concerned—and we are bound to take his findings as conclusively established—they only amount to this that in the event of the Board of Agriculture not taking possession of the farm at Martinmas 1914 then the landlord and tenant were willing that the occupancy of the farm by the tenant should continue for another year, but I do not think that circumstance in the least affects the validity of the notice which was given originally for Martinmas 1913, and validly extended to take effect at Martinmas 1914, or necessitated a further notice to take effect at Martinmas 1914." The landlord and tenant intended, in my opinion, on the findings of the award, that the tenancy should continue for another year to avoid the risk of the farm being derelict. The suggested agreement that the occupancy should continue conditionally on the Board of Agriculture not taking possession seems to me improbable in itself and not to be borne out by the facts stated in the award. I think the tenant acquired as between himself and his landlord an absolute and not merely a conditional right of tenancy.

For these reasons I think that the judgment of the Second Division is erroneous, and that it should be reversed and judgment entered in favour of the pursuer for £1500, with costs here and below.

Lord Dunedin—My noble and learned friend Lord Haldane has authorised me to state that he concurs in the opinion which has just been delivered. I also concur.

Lord Atkinson—I concur.

Their Lordships sustained the appeal, and remitted the case back, with direction to enter decree for the appellant for £1500 and expenses in both Courts below, and allowed expenses of the appeal.

Counsel for the Appellant—Sandeman, K.C.—Watson. Agents—Guild & Guild, W.S., Edinburgh—Thorne, Priest, & Company, London.

Counsel for the Respondents—Solicitor-General (Morison, K.C.) — W. Mitchell. Agents—Sir Henry Cook, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Monday, January 28.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lord Dunedin, Lord Atkinson, and Lord Parmoor.)

OFFICER *v.* CHARLES R. DAVIDSON & COMPANY.

(In the Court of Session, March 17, 1917, 54 S.L.R. 362, and 1917 S.C. 485.)

Workmen's Compensation—"Out of and in the Course of the Employment"—Sailor—Ship's Engineer, Returning after Leave, Drowned in Harbour under Admiralty Control—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1).

A ship's engineer was given leave to go ashore for his own purposes. His ship was lying at a quay in a public harbour, which, however, was now controlled by the naval and military authorities, a pass being required for ingress to and egress from the harbour. Passes were only issued to persons having business at the harbour. On his way back the engineer fell into the harbour and was drowned while still some distance from the gangway to his ship.

Held (*dis.* the Lord Chancellor, *rev.* judgment of the First Division) that the accident was not one "arising out of and in the course of the employment."

Longhurst v. *John Stewart & Son, Limited*, [1917] A.C. 249, *distinguished. Authorities considered.*

This case is reported *ante ut supra.*

The employers, Charles R. Davidson & Company, appealed to the House of Lords.

At delivering judgment—

Lord Chancellor—This is an appeal from a judgment of the First Division of the Court of Session allowing the claim of the respondent on behalf of herself and her children to compensation under the Workmen's Compensation Act in respect of the death of her late husband Charles Officer. The deceased was in the employment of the appellants as chief engineer on board the