Saturday, May 24.

FIRST DIVISION.

[Scottish Land Court.

GRANT *v.* MORISON'S TRUSTEES.

Landlord and Tenant — Property — Small Holding — Application for Renewal of Tenancy by Tenant who Prior to Passing of Act had Received Notice to Quit—Competency — Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 2 (1) (ii).

A tenant from year to year who had, prior to the passing of the Small Landholders (Scotland) Act 1911, received notice to remove, applied to the Land Court after the commencement of the Act for a renewal of his tenancy.

Held that the application was competent.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), enacts—Section 2—"*Who to be Landholders.*—(1) In the Crofters Acts and this Act (hereinafter referred to collectively as the Landholders Acts) the word 'holding' means and includes . . . (ii) As from the commencement of this Act, and subject as hereinafter provided, every holding which at the commencement of this Act is held by a tenant from year to year who resides on or within two miles from the holding, and by himself or his family cultivates the holding with or without hired labour (hereinafter referred to as an existing yearly tenant). . . . . (2) In the Landholders Acts the word 'landholder' means and includes, as from the respective dates above mentioned, every existing crofter, every existing yearly tenant, every qualified leaseholder, and every new holder, and the successors of every such person in the holding, being his heirs or legatees."

Section 33—"*Provisions as to Statutory Small Tenants.*—With regard to statutory small tenants, the following provisions shall have effect—(1) A statutory small tenant means and includes a tenant from year to year, or leaseholder, not otherwise disqualified in terms of this Act, in regard to whom section 2 of this Act provides that he shall not be held an existing yearly tenant or a qualified leaseholder, and the successors of such tenant or leaseholder in the holding, being his heirs, legatees (if within the relationship specified in section 16 of the Act of 1886), or assignees (if assignation be permitted by the lease)."

This was a Special Case stated by the Scottish Land Court for the opinion of the First Division of the Court of Session in an application at the instance of George Grant, crofter, Waulkmill, Banff, *applicant*, against Major C. J. Perceval, Simla, India, and another, trustees of the late Lieut.-Col. F. de L. Morison of Bognie and Mountblairy, and as such proprietors of the estate, *respondents*.

The Case stated—"1. George Grant, crofter, residing at Waulkmill, in the parish of Alvah and county of Banff (the applicant), was tenant of the croft of Waulkmill, situated in said parish and county, extending to about fifteen acres or thereby, under lease between the late Duke of Fife and the late Mary Grant and Ann Grant and him, dated 28th January and 17th February 1893, until the term of Whitsunday 1911, when the said lease expired through the running out of the term of endurance therein stipulated. The said George Grant's tenancy was then renewed, or held as renewed, by tacit relocation for the year from Whitsunday 1911 to Whitsunday 1912, in virtue of the 18th section of the Agricultural Holdings (Scotland) Act 1908.

"2. The applicant resided on said holding and cultivated it by himself or his family during the year from Whitsunday 1911 to Whitsunday 1912.

. . . . . .

"4. On or about the 19th day of August 1911 the said trustees of the said Lieutenant-Colonel de Lemare Morison served a notice by registered letter in terms of the above-cited section of the Agricultural Holdings Act 1908 upon the said George Grant to remove from the said croft of Waulkmill at the term of Whitsunday 1912.

"5. . . . On 7th May 1912 the said George Grant, in virtue of the provisions contained in the Small Landholders (Scotland) Act 1911, presented an application to the Scottish Land Court for an order determining whether he is a landholder or a statutory small tenant in and of the said holding of Waulkmill, and for an order fixing a first fair rent therefor, or alternatively for an order fixing a first equitable rent therefor, and the period of renewal of his tenancy thereof. This application was duly served on the proprietors of the holding, respondents therein.

"6. The application came before the Scottish Land Court for hearing, at Banff, on 22nd May 1912. At the hearing, the proprietors (respondents therein) appeared by an agent, and objected to the competency of the application, in respect that the applicant, having received notice on 19th August 1911, prior to the passing of the Small Landowners (Scotland) Act 1911, to remove from the holding specified in the application at the term of Whitsunday 1912, was not, as at 1st April 1912, the date when the Act came into operation, a 'tenant from year to year' within the meaning of said Act, and particularly of section 2, sub-sections (1) (ii) and (2), and section 32, subsection (1) thereof, and was therefore neither a landholder nor a statutory small tenant within the meaning of the Small Landholders (Scotland) Acts 1886 to 1911. The agent further stated that, in reliance on the said notice to remove receiving effect, the proprietors had agreed to let the applicant's holding to another tenant, with entry at the term of Whitsunday 1912, but did not specify the date of the agreement, the name of the tenant, or produce any document relating thereto. This statement was not admitted by the other party.

"7. On 31st May 1912 the following inter-

locutor was issued by the Land Court:— . . . 'Find that the applicant was, on 1st April 1912, in lawful possession as a resident tenant from year to year in and of the holding specified in the application: Therefore repel the objection to the competency of the application founded on the said notice of removal. . . ."

The *questions of law* were—"(1) Whether the applicant was on 1st April 1912 a tenant from year to year within the meaning of the Small Landholders (Scotland) Act 1911, and particularly of section 2, subsections (1) (ii) and (2), and section 32, subsection (1) thereof? And (2) Whether and in respect that the applicant had been served before the said Act passed, with notice to remove from his said holding at the term of Whitsunday 1912, the said application was competently made to the Land Court?"

Argued for appellants—Where, as here, the tenant had received notice to remove before the passing of the Act he was not entitled to the benefits of its provisions.

Counsel for respondent was not called upon.

LORD PRESIDENT—[*After referring to the decision in Clyne* v. *Sharp's Trustees, supra*]—It is argued here that the tenant does not come within the words of section 2 (1) (ii) of the Act because he received a notice of removal at Whitsunday 1912. Doubtless if the law had not been altered the effect of that notice of removal would have been that when Whitsunday came the tenant would not enter upon another year on tacit relocation but would have to go. But then the Act of Parliament was passed which puts the statutory right in front, so to speak, of the landlord's right to let the holding to whom he pleases, and it seems to me that if it had been intended to exclude from the statutory right any tenant who was sitting under notice to quit nothing would have been easier than for the Act of Parliament to say so. The Act, however, does not say so, and I think that that determines the matter.

LORD KINNEAR—I agree.

LORD JOHNSTON—I concur.

LORD MACKENZIE—I agree.

The Court answered the second question in the affirmative, and refused to answer the first question as stated.

Counsel for Appellants—D. M. Wilson. Agents—Duncan & Hartley, W.S.

Counsel for Respondent—W. Mitchell. Agents—Graham, Johnston, & Fleming, W.S.

Saturday, December 7, 1912.

BILL CHAMBER.

[Lord Hunter.

A *v.* B.

Bankruptcy—Sequestration—Deed of Arrangement duly Confirmed by the Court—Petition for Sequestration by Creditor in Debt Incurred Subsequent to Deed of Arrangement — Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 18 *and* 38.

The Bankruptcy (Scotland) Act 1856, sec. 18, provides—"That no sequestration shall be awarded by any Court after production of evidence that a sequestration has already been awarded in another Court and is still undischarged." Section 38 enacts that if the Lord Ordinary or Sheriff is satisfied that a deed of arrangement "has been duly entered into and executed and is reasonable, he shall approve thereof, and declare the sequestration at an end; and such deed shall thereafter be as binding on all the creditors as if they had all acceded thereto; provided always that the sequestration shall receive full effect in so far as may be necessary for the purpose of preventing, challenging, or setting aside, preferences over the estate."

The creditors of A, who had been sequestrated, entered into a deed of arrangement for winding up A's affairs, which was duly confirmed by the Court, and the sequestration was declared to be at an end. B, a creditor of A in a debt incurred subsequent to the deed of arrangement, then took proceedings for sequestration of A's estates, which were objected to by A and by C, the trustee under the deed of arrangement. *Held* (*per* Lord Hunter) that the proceedings for sequestration taken by B were competent.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), secs. 18 and 38, so far as required are quoted *supra in rubric.*

This was a note of suspension and interdict brought by A, and by C, the trustee under a deed of arrangement between A and his creditors, against B, in which A and C sought to interdict B from taking further proceedings in a petition for the sequestration of A's estates.

The circumstances of the case and the contentions of parties appear from the Lord Ordinary's note *infra.*

LORD HUNTER — This is certainly an unusual application. On 30th November 1912 I pronounced the first deliverance in an application for the sequestration of the estates of the bankrupt. The application was made at the instance of a creditor, who in his affidavit and claim stated that the debtor was justly indebted and owing to him £300, being the principal sum contained in an extract registered protest at the instance of the applicant against the bankrupt dated 16th Novem-