Saturday, December 9.

COURT OF SEVEN JUDGES.

MATHESON *v.* THE BOARD OF AGRICULTURE FOR SCOTLAND.

Landlord and Tenant—Small Holdings—Application to Constitute New Holdings—Sisting Process by Land Court when Application Ripe for Judgment—Competency—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 25 (2).

The Board of Agriculture for Scotland desiring to constitute small holdings on the estate of a landowner, lodged applications with the Land Court. About twenty months later, when all the necessary steps had been taken and the applications were ripe for judgment, the Board, on the ground of the change of circumstances caused by the war, moved for a sist. The Land Court sisted proceedings in the applications *in hoc statu*. *Held*, in a Court of Seven Judges (*diss.* the Lord Justice-Clerk, Lord Salvesen, and Lord Skerrington), that it was competent for the Land Court to grant the sist craved.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) enacts—Section 25 (2)—"For the purposes of the Landholders Acts the Land Court shall have full power and jurisdiction to hear and determine all matters whether of law or fact, and no other Court shall review the orders or determinations of the Land Court: Provided that the Land Court may if they think fit, and shall on the request of any party, state a special case on any question of law arising in any proceedings pending before them, for the opinion of either Division of the Court of Session, who are hereby authorised finally to determine the same."

In applications to the Land Court by the Board of Agriculture for Scotland, *applicants*, for the creation of small holdings on the estate of Lieutenant-Colonel Duncan Matheson of Lewis, *respondent*, the applicants on 21st March 1916 lodged the following minute in each application:—"The applicants beg to state that owing to the altered circumstances which have arisen in consequence of the war they are desirous that further consideration of these applications should be deferred meantime, and accordingly respectfully crave the Court to sist proceedings *in hoc statu*." The respondent lodged answer in each application, as follows:—"Of this date (March 21st, 1916) the applicants lodged a minute craving the Court to sist proceedings *in hoc statu*, and thereafter the Court appointed the respondent to lodge answers to said minute. The respondent respectfully craves the Court to refuse the minute and to dispose of the application."

On 24th March 1916 the Land Court pronounced the following *order*:—"The Land Court having heard the solicitor for the applicants and counsel for the respondent on the minute for the applicants and answers for the respondent, grant the crave in said minute, and sist the proceedings *in hoc statu*."

The *note* appended to the order stated—"The Court is of opinion that these cases should stand over until the conclusion of the war. An application to that effect has been made to us by a responsible department of the Government upon grounds of expediency and economy, and that it is not proper at the present time that there should be more expenditure of public funds than necessary. In these cases, evidence has already been led, and a considerable amount of expense has been incurred, and if the Board of Agriculture were now forced to abandon any further steps of procedure on financial and public grounds that expense would be thrown away, because, as has been said, it is quite plain that in the Island of Lewis the demand for land is clamant, and in all likelihood if the schemes had to be abandoned at the present time, these schemes, or other similar schemes, would require to be taken up again after the war. If the process had to be begun *de novo*, that would be a waste of the public money which has already been expended upon them.

"Then, again, we think we have to consider the interests of the parties who are intended to be the new holders under these schemes. As Mr Reid has pointed out, the schemes taken together involve the settlement of something like 130 families. It is quite clear that at the present time it is out of the question for a public department to proceed with such a large scheme. But then if you consider the interests of these parties themselves we think it would be a very great hardship indeed upon the prospective tenants if the department were forced to proceed with these schemes at the present time. If we decided in favour of the Board that the schemes were such as we were entitled to pass, the Board would be at once faced with the question of providing tenants for the holdings. Now it is public knowledge that for the most part those prospective tenants would not be on the spot. Most of them are engaged in their public duties either in the Naval Reserve or in the other Forces of the Crown. The probable result would be that the Board could not really face the question either as to personnel or as to expenditure in carrying out the schemes at this time.

"Accordingly we think that in the very exceptional circumstances this is a proper motion for the Board of Agriculture to have made to us. We do not, of course, overlook the fact that there may be some difficulties in the administration of the estate caused by the fact of the applications having been made and now stopped, but we think that these matters could not be considered as of greater moment than the public interest, and we are of opinion that the Board have made this motion quite properly in the public interest.

"With regard to the question of competency, it seems to us that this motion is perfectly competent, and we say so for this reason that it is a motion made during the

procedure in this case, and we think it is perfectly plain from the powers contained in the Act that we have the control over our own processes. We quite agree that the circumstances are very exceptional, but we do not see that the motion is incompetent. If the proprietor thinks that the granting of this sist is incompetent, he can take his remedy either here or in some other Court.

"Accordingly we sist the process *in hoc statu*, leaving it to either of the parties to make a motion for the recal of the sist at any time when they may think it expedient to do so."

A Case having been stated, it narrated these *facts*—"1. On July 22, 1914, the Board of Agriculture lodged applications with the Land Court to determine and by order or orders to declare in respect of what land, if any, specified in the schemes appended thereto one or more holdings for new holders and enlargements of existing landholders' holdings might respectively be constituted upon the farms in question, namely, the farm of Galson, the farm of Gress, the farm of Carnish and Ardroil, and the farm of Oronsay and Stimervay, all on the estate of Lieutenant-Colonel Duncan Matheson of Lewis. The scheme proposed for the farm of Galson provided for the constitution of fifty-seven new holdings on the said farm. The scheme proposed for the farm of Gress provided for the constitution of forty new holdings thereon. The scheme proposed for the farm of Carnish and Ardroil provided for the constitution of twenty new holdings and seventeen enlargements of existing landholders' holdings thereon. The scheme proposed for the farm of Oronsay and Stimervay provided for the constitution of fourteen new holdings on the farm. It was proposed by the said schemes to utilise the whole land of each of the said farms other than Carnish and Ardroil for the constitution of new holdings, and to utilise the whole land of the said farm of Carnish and Ardroil for new holdings and enlargements of existing holdings as above mentioned. On October 20, 1914, answers were lodged on behalf of the proprietor, in which it was maintained that the proposed holdings and enlargements should not be constituted. On March 22 to 26, 1915, proof was led and counsel were heard for the proprietor and the Board of Agriculture. On or about June 8, 9, and 10, 1915, the farms in question were inspected by or on behalf of the Land Court. 2. An amended plan with proposed joint minute and copy correspondence were thereafter lodged by the Board of Agriculture, and counsel were heard thereon on 11th January 1916, and the applications were continued. 3. A proposed order in the Galson application was subsequently intimated to the Sheriff-Clerk at Stornoway, but was afterwards withdrawn."

The following *questions of law* were intimated :—"1. Are the orders complained of, dated 24th March 1916, *ultra vires* of the Land Court in the applications in question? 2. Are the said orders complained of incompetent in respect that they are not in substance orders for the regulation of procedure, but are in substance and effect a refusal to pronounce judgment?"

The case was heard on Thursday, 19th October 1916, by the Second Division, and was thereafter appointed to be argued before a Court of Seven Judges.

The respondent argued—At the time at which the Land Court sisted the cause every step of procedure had been exhausted except that of pronouncing judgment, and delay in doing so constituted a flagrant injustice to the proprietor, as the sist could only be regarded as an order for the convenience and expediency of the Board of Agriculture. The scheme was not in the public interest if it was found inexpedient to proceed with it, there being no demand for land, as all likely applicants were absent on military service. The delay in pronouncing judgment amounted to a refusal to pronounce judgment for an indefinite period. As the war might last for a very long time it was incompetent to postpone the decision of the case until peace should have been concluded. The Court of Session had a common law right of *mandamus* over the Land Court, and could order the latter to take action—*Forbes* v. *Underwood*, 1886, 13 R. 465, *per* Lord President Inglis at p. 467, 23 S.L.R. 324. Delay could only be granted for certain legitimate purposes—*Scott Plummer* v. *Board of Agriculture*, 1914 S.C. 1, *per* Lord Johnston at p. 3, 51 S.L.R. 26. Section 7 (11) (*a*)) of the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), along with sub-section 13, regulated the procedure of the Land Court in the formation of small holdings. In the present case there were particular reasons for the Land Court to proceed summarily owing to the hardship which would otherwise be caused, and in a summary process there was a presumption against a court being permitted to sist indefinitely—Summary Jurisdiction (Scotland) Act 1908 (8 Geo. V, cap. 65), secs. 21, 32 (2) and (6). Even when a right of appeal was very rigorously fenced the Court of Session, having the power to intervene, had a remedy to offer—Mackay's Manual, p. 93; M'Laren's Practice, p. 119. Other cases cited were—*Heritors of Corstorphine* v. *Ramsay*, F.C., March 10, 1812; *Presbytery of Caithness*, 1773, M. 7449; *Dalgleish* v. *Leitch*, 1889, 2 Wh. 302, *per* Lord Kyllachy.

The applicants argued—This Special Case was incompetent, and the Court of Session having no jurisdiction on this question had no power to entertain it. The only competent question of law was as to the rights of parties *inter se*, and the present case dealt with the inherent powers of the Land Court. The finality clauses of the Crofters' Holdings Act 1886 (49 and 50 Vict. cap. 29), sec. 25, and of the Small Landholders (Scotland) Act 1911, sec. 25 (2), differed. On the construction put by the Courts on the finality of decisions of the Crofters Commissioners, counsel cited *Cameron* v. *Duke of Argyll*, 1888, 16 R. 139, 26 S.L.R. 96; *Dalgleish* v. *Livingston*, 1895, 22 R. 646, *per* Lord Rutherfurd Clark at p. 658, 32 S.L.R. 347; and *Sitwell* v. *M'Leod*, 1 F. 950, *per* Lord President Robertson at p.

955 *et seq.*, 36 S.L.R. 762. The Land Court being a court of law was different from the Crofters Commission, and having the power to grant a sist, this particular sist was absolutely *intra vires* of the Court, especially as it was not in the public interest that judgment should have been pronounced at the present time. It was lawful for the Land Court from time to time to make rules for the conduct of its business, and these were to be found in sections 39, 106, and 120 of the Land Court Regulations—Johnston on the Small Landholders Act on p. 227 *et seq.* The Crofters Commission and the Land Court were empowered by section 6 (4) of the Crofters' Holdings Act to sist proceedings for removal. The Land Court had to keep the public interest in view in deciding whether to erect small holdings or not.

At advising—

LORD PRESIDENT — At a late stage in certain proceedings before the Land Court at the instance of the Board of Agriculture, in which Colonel Matheson is respondent, the applicants gave in a minute in the following terms—"The applicants beg to state that owing to the altered circumstances which have arisen in consequence of the war they are desirous that further consideration of these applications should be deferred meantime, and accordingly crave the Court to sist proceedings *in hoc statu*." Answers were ordered to be given in, and after parties were heard the Land Court pronounced an order in the following terms—"The Land Court having heard the solicitor for the applicants and counsel for the respondent on the minute for the applicants and answers for the respondent, grant the crave in said minute, and sist the proceedings *in hoc statu*."

The question of law presented for our decision is whether this order was *ultra vires*. I am of opinion that it was not. My reason is that the Land Court is a court of law, and consequently has power to regulate its own procedure. By section 25 (2) of the Small Landholders Act it is expressly provided that "the Land Court shall have full power and jurisdiction to hear and determine all matters, whether of law or fact, and no other Court shall review the orders or determinations of the Land Court." Now to stay procedure is to regulate procedure, and therefore to grant a sist is inherent in any court of law, including the Land Court. As Lord Curriehill—in the case of *Connell* v. *Grierson*, 3 Macph. 1166—says, a sist is entirely a matter of discretion in which the Court must balance the reasons urged on either side. If that be so, we cannot question the reasons which moved the Land Court to grant the order before us. That is a matter entirely within the discretion of the Land Court, and is outwith our jurisdiction.

It was urged that the order in question was *ultra vires*, because the sist was granted for an indefinite term. But many sists are granted in similar terms—it is a matter of discretion. The Land Court may consider and determine what ought to be the duration of the sist, and in the books there are examples of sists having been granted to wait the occurrence of events which might never happen.

It was further argued to us that this sist was *ultra vires*, because it amounted to a refusal of justice. That argument appears to me to beg the question, for it assumes that the sist was granted on wrong or insufficient grounds, and it is not open to us, in my opinion, to consider the grounds on which it was granted. To refuse a sist might in many cases frustrate the ends of justice, but once more this is a question of discretion for the Court exercising the power.

Finally it was urged that this sist was *ultra vires*, because it was equivalent to a refusal by a competent court to deliver judgment. But that is true of all sists, for during the continuance of a sist a court of competent jurisdiction refuses to deliver judgment, and it seems to me to be immaterial whether one step or more steps, or as in the present case no steps, intervene between the granting of the sist and the delivery of the judgment. As Lord Deas observed in the case I have referred to, "*Prima facie* it is a matter of right to either party to insist upon the cause going on, and the *onus* lies on him who wishes to stop." If that *onus* is discharged to the satisfaction of a court of competent jurisdiction, there is an end of the matter.

It appears to me that once it is established that the Land Court is a court of law competent to regulate its own procedure, all further questions are closed. I am for answering both questions in the negative.

LORD JUSTICE-CLERK—This process was initiated by the Board of Agriculture making an application to the Land Court to authorise them to constitute a considerable number of small holdings on several farms belonging to the respondent.

After proof and sundry proceedings, and parties having been fully heard, the case was in January 1916 finally ripe for judgment. On 21st March 1916 the minute read by your Lordship was lodged by the Board of Agriculture, and answers for the proprietor having been put in and parties heard thereon, the Land Court on 24th March 1916 granted the crave in said minute and sisted the proceedings *in hoc statu*. In their note the Court stated that in their opinion the cases should stand over until the conclusion of the war, and they explained that the reasons on which they were asked to do so, and which they accepted as sufficient, were the difficulty of financing the schemes and of finding tenants for the holdings in consequence of the state of affairs produced by the war.

I think the words "*in hoc statu*" add nothing to the order, which of course, not being a sist until a definite date, must be *in hoc statu*, leaving it to either party to move at any time for a recal.

Under the statute I think the process was intended to be a summary one and to be disposed of without delay.

If the Board did not want their applications to be granted, they had the easy

remedy of saying so and withdrawing their application.

I think there is neither precedent nor authority for a party who has applied to a court of law for a judgment saying to the Court, "It is not convenient for me that you should grant me the judgment which I have asked for, and therefore I move you not to decide the case," when the other party, who is prejudiced by the continuation of the process, asks for judgment and everything is ready for judgment being pronounced.

On principle I think such a sist is indefensible. It both delays and denies justice merely to suit the convenience of the party who instituted the process, and is in my opinion illegal. In my opinion no court of law is vested with a discretion to say at the request of the pursuer, "We will, in order to suit your convenience, delay deciding the case, though the whole proceedings preliminary to doing so are concluded, and although your opponent presses for judgment."

I am therefore for answering the questions, both of which I think are questions of law, in the sense desired by the respondent.

LORD DUNDAS—I agree with the Lord President. Under section 25 (2) of the Act of 1911 the Land Court have full power to determine all matters whether of law or fact, and no other Court may review their orders or determinations, the only limitation on these ample words being that contained in the proviso to the effect that they shall, on the request of any party, state a special case on any question of law arising in any proceeding pending before them for the opinion of either Division of the Court of Session, who are authorised finally to determine the same. Our jurisdiction under the statute is thus a very restricted one, and we must, I apprehend, use caution and discrimination in its exercise. In the applications here concerned the Land Court on 24th March 1916 sisted the proceedings *in hoc statu*, leaving it (as stated in their relative note) to either of the parties to make a motion for the recal of the sist at any time when they may think it expedient to do so. *Prima facie* the Land Court are absolute masters of their own procedure, and the granting or refusal of a sist of process is a matter of expediency within the discretion of that Court. On the face of the interlocutor, there would seem to be no room for affirming that the Land Court in pronouncing it proceeded *ultra vires* or in any way exceeded the limits of their jurisdiction. But the appellant contends that, even if the interlocutor be in form unexceptionable, it amounts in substance and effect to a refusal on their part to pronounce judgment. I am unable to affirm that contention. Whether it was wise or unwise, just or unjust, to grant the sist is not, I apprehend, a question for us but for the Land Court in their discretion to decide. They must be in possession of much fuller knowledge of the whole facts of the case than is available to this Court; they heard parties upon the motion for a sist; and they thought fit to grant it. I may say that the appellant's argument did not satisfy me that the Land Court's decision was wrong or unjust, but even if this Court were so satisfied that would not, I apprehend, warrant us in condemning the interlocutor. We could not do so merely on a difference of opinion, but only if we thought that the interlocutor amounted to a refusal by the Land Court to perform their duty. I do not think that any such case is made out against them. They appear only to have elected in their discretion to sist *in hoc statu*, subject to reconsideration at any time on the motion of either party. In other words, they declined on 24th March 1916 to pronounce judgment on the applications then and there as matters stood at that time. I cannot say that their interlocutor was incompetent, or that it amounted to a refusal to perform their duty. The course of events may, for all that appears, lead them to recal the sist and pronounce final judgment in the applications at any time upon a motion by either side. I am not prepared to assume upon such information as we possess about the circumstances of the case that the Land Court has acted illegally. It seems to me that at the worst they may have exercised a wrong judgment in a matter which was for their discretion, not for ours. I am therefore for answering the questions put to us in the negative.

LORD SALVESEN—The order of the Land Court which is complained of in this case is one sisting procedure *in hoc statu*, and the two questions of law which are submitted for our opinion are whether this order was *ultra vires* of the Land Court, or otherwise incompetent in respect that it is an order, not for the regulation of procedure, but in substance and effect a refusal to pronounce judgment. These two questions appear to me to raise the same point though in different aspects. As an abstract proposition it would be impossible to affirm that the Land Court have not the same power as any other tribunal of sisting procedure if this be necessary in the interests of justice, as, for example, when one of the parties has died in the course of the proceedings, or is for some other adequate reason unable to present his case. It is therefore necessary to advert to the facts as stated by the Land Court in order to determine the questions raised.

[*His Lordship having summarised the facts proceeded*]—Counsel for the Board maintained that this order was one that the Land Court might at any moment recal at the instance of either party, but the reasons which the Land Court have given in the note which is annexed to the order indicate plainly enough their intention to maintain the sist for at least the duration of the war, and possibly for some much longer period. They point out that if the applications were decided in favour of the Board the latter would at once be faced with the question of providing tenants for the holdings, that it is public knowledge that for the most part the prospective tenants are engaged either in the Naval Reserve or in other forces of the Crown, and that the probable result

would be that the Board could not actually face the question either as to personnel or as to expenditure by carrying out the schemes at this time. These arguments will only gain force as more and more men are required for the army abroad and the country is involved in ever-increasing debt to carry on the war. The order therefore, in my opinion, is plainly one which commits the Court not to adjudicate upon the application for an indefinite period. In the meantime the proprietor is put to a great disadvantage in the administration of his estates. Several of the farms which were originally let on long leases are held by the tenants by tacit relocation, and at any moment the proprietor may find himself—as in the case of one farm he already has—in the position of having to take over the management of the farms himself. It is obvious that he cannot find new tenants on fair terms while these applications are pending, and in consequence heavy loss may be incurred by him for which it is not plain that he would be compensated.

In these circumstances I am clearly of opinion that the orders of the Land Court are in substance and effect a refusal to pronounce judgment, and not as the tribunal say a mere matter of procedure. So far as the proprietor is concerned he has no right to intervene again in the process, although technically it is competent for him to move the Court to recal the sist. The Land Court have, however, precluded themselves from granting this motion, which it would therefore be futile for him to make.

I do not overlook the fact that the Board in this matter are presumably acting in what they deem to be the public interest. That may be said of every application by the Board of Agriculture, for it has no private interests to serve, but I do not think that the fact that one of the litigants is a public body entitles it to any special consideration. Had such an order been pronounced in the Sheriff Court it would have been appealable to the Court of Session, and I cannot doubt what the result of such an appeal would have been. Counsel for the Board were unable to adduce any instance of a case where, after it was ripe for judgment and had been taken to avizandum, any court had resorted to the extraordinary course of refusing to pronounce judgment in order to serve the interests or convenience of one of the parties to the prejudice of the other. The Land Court, no doubt, are final upon facts, but the question raised in this case is not one of fact but of law, and it has been so stated by the tribunal in the appropriate form. If the order complained of were a mere exercise of discretion with regard to procedure, I apprehend that we should be very unwilling to intervene even if we thought the discretion had been wrongly exercised. I cannot regard this order as of that nature. Counsel for the Board shrank from maintaining that if the Land Court had sisted procedure for ten years they would have been acting within their powers. I do not see any difference in principle between such a case and the present except that the period of the sist is indeterminate. In the case of the *Heritors of Corstorphine* v. *Daniel Ramsay*, March 10, 1812, F.C., it was decided that the Court of Session will review a judgment by an inferior court, though its jurisdiction is declared to be final, if it has refused to act or exceeds its powers. That decision is to my mind a sufficient authority for the case being disposed of as I propose, if authority were needed, which I do not think it is, for the Act by which the Land Court is constituted provides for an appeal on a question of law.

LORD MACKENZIE—I am of opinion that in the circumstances it was within the discreation of the Land Court to make the order of 24th March 1916, and that this Court should not interfere with it.

LORD GUTHRIE — In my opinion the objection to the competency of this Special Case is not well founded. Both the questions, if they be truly different, raise questions of law for this Court.

On the merits extreme views were argued, or at least suggested, on both sides. The proprietor (while admitting that the Land Court would have power to sist for a definite period during what he called the proper procedure in the case, in such circumstances as the death of a party or the illness of a member of the Court, that is to say, in cases of necessity) denied the right of the Land Court, even during proper procedure, to sist in any case involving the exercise of discretion, at all events where the discretion was exercised, as he alleges it it was exercised here, in the interest or assumed interest of one party, and against the interest or assumed interest of the other. Alternatively it was maintained that if such a discretionary power to sist existed, it was confined to the case of proper procedure, and did not cover the present case, in which a sist had been granted after the proper procedure in the case was over. In the circumstances of the present case the proprietor maintained that the Land Court had no discretionary power to sist, but were bound at once to pronounce judgment, because the case was no longer in the stage of procedure. He maintained that the sist complained of amounted to a refusal by the Land Court to exercise their statutory jurisdiction. It appears to me that it is only the last view which raises any difficulty.

I accept the proprietor's contention that this Court can, in conceivable circumstances, interfere with the proceedings of the Land Court if these involve a refusal to exercise their statutory jurisdiction. It appears to me that, whatever question might have arisen if the Land Court had tied their hands for a period terminable by the lapse of a particular time or on the occurrence of a certain event, or had pronounced an order which on the face of it was inconsistent with any view of the summary procedure which the 1911 statute contemplates, the terms of the Land Court's order in this case are sufficient to exclude any such question. If not, had no order at all been pronounced, it would seem to follow that the Court of Session could have

been asked, even within six months of the last ordinary step of procedure, to ordain the Land Court to pronounce immediate judgment, and it would also follow that the Land Court would have been bound to state a special case asking whether, whatever the circumstances might be, they were not bound at once to pronounce judgment. I cannot accept the proprietor's distinction between what he calls "during the stage of procedure" and "after the stage of procedure." Till judgment is pronounced, the case is still proceeding. In this case the Court could, for instance, have ordered a re-hearing.

But it was said that the order of the Land Court, whatever its terms, looking to the first sentence in the note, is equivalent to a refusal to pronounce judgment until the conclusion of the war. I doubt the proposal to construe an unambiguous order by reference to the terms of a note. But if this be competent, the last sentence in the note, as well as reference throughout to "the present time," shows that the first sentence proceeds on the assumption of no change in circumstances.

The question of the wisdom or fairness of the Land Court's order seems to me irrelevant. If it were relevant, there are no materials before us on which to form any reliable opinion. The course taken has been resolved on in the public interest, which is not necessarily the same thing as the interest of the Board. The question whether the chance of the expenditure already incurred turning out ultimately remunerative is such as to justify the course taken, and the question whether the order is or will be, on the whole, in the proprietor's interest, or if not, to what extent he will suffer by it—these questions depend on local conditions, of which I only know, as at one time Sheriff of the county, that they are very special, and that they are capable of ascertainment only on the spot.

I am therefore of opinion that both questions should be answered in the negative.

LORD SKERRINGTON—If this had been an ordinary litigation raising a disputed question of civil right, I should have thought that after the case was ripe for judgment it was beyond the power of any Court to sist process for no other reason except that one of the litigants found it inconvenient to proceed with the litigation. In view, however, of the fact, that the application by the Board of Agriculture to the Land Court involved the exercise by the Court of a jurisdiction which in this particular case was administrative and discretionary rather than judicial, I should have had difficulty in reaching the conclusion that the Court had no power to grant the sist of process moved for by the Board of Agriculture, had it not been for a consideration which was not referred to in the argument addressed to us, but which seems to me to be conclusive. Section 35 of the Small Landholders (Scotland) Act 1911 imposes upon landlords, without any compensation, a serious disability, which endures so long as a scheme for the compulsory constitution of small holdings is under consideration, because it empowers the Land Court to veto during that period the constitution of small holdings outside of the Act. The right thus expressly conferred upon the Land Court implies, in my opinion, a duty on the part of that Court not to delay giving its judgment beyond the time necessary for inspecting the subjects, hearing the evidence, and coming to a decision upon the various matters enumerated in section 7 (11) of the statute. It seems to me to be inconceivable that Parliament intended to empower the Land Court to prolong indefinitely the duration of its statutory power to interfere with a landlord in the lawful administration of his property. Accordingly I think that the two questions of law submitted in the Special Case ought to be answered in the affirmative.

The Court, by a majority of four to three, answered the questions in the negative.

Counsel for the Applicants—W. T. Watson. Agent—Sir Henry Cook, W.S.

Counsel for the Respondent—Hamilton. Agents—Skene, Edwards, & Garson, W.S.

Saturday, December 16.

SECOND DIVISION.

LAW *v.* CORPORATION OF GLASGOW.

Reparation—Road—Burgh—Defective Condition of Roadway between Tramway Line and Footpath—Accident to Foot-Passenger Alighting from Tramway—Liability of Local Authority—Relevancy of Averment.

A lady brought an action of damages for personal injury against a burgh on averment that the surface of a road, and particularly that part of it which was opposite a certain tramway stopping-place, had fallen into a state of disrepair; that in alighting from a tramway car at this point she slipped into a hollow in the roadway about two inches deep, and thereby sustained injuries to foot and ankle. *Held* that sufficient facts had been relevantly set forth to warrant inquiry.

Margaret Gibson Law, 24 Battlefield Gardens, Langside, Glasgow, *pursuer*, brought an action in the Sheriff Court at Glasgow against the Corporation of the City of Glasgow, *defenders*, for damages in respect of injuries sustained in alighting from one of the defenders' tram-cars on 15th August 1915 at a point where the roadway was in a state of disrepair.

The pursuer *averred*—"(Cond. 1) The defenders are the Corporation of the City of Glasgow, and they are the local authority charged with the duty of managing, maintaining, and repairing streets and roads within the city of Glasgow, and are responsible for the condition of the same, including that part of Clarkston Road,