concurrent with that of the Justices of the Peace by the Summary Jurisdiction Act of 1908, that the jurisdiction which already existed in the Justices was a special and peculiar statutory jurisdiction. It was not a mere power of administering to litigants some particular department of the ordinary law, or some power to administer the ordinary law within particular limits of value or subject. It was a special and peculiar statutory jurisdiction involving the right to condemn and seize goods, for example, and so on, created by statute and specially appropriate to the particular objects of revenue legislation. Accordingly when a jurisdiction concurrent with that of the Justices was established in the Sheriff, it is difficult to resist the conclusion that the whole statutory powers and qualifications which were inherent in the jurisdiction of the Justices were intended to be communicated in their entirety to the Sheriff.

The Court answered the first question of law in the affirmative, and found it unnecessary to answer the second question.

Counsel for the Appellant — Solicitor General (Murray, K.C.)—Henderson. Agent —Robert Pringle, W.S.

Counsel for the Respondent — J. Macdonald. Agent — R. D. C. M'Kechnie, Solicitor.

COURT OF SESSION.

Wednesday, June 15.

FIRST DIVISION.

[Lord Anderson, Ordinary.

GORE *v.* WESTFIELD AUTOCAR COMPANY, LIMITED.

Process — Reclaiming Note — Signature of Counsel.

Objection having been taken to the competency of a reclaiming note on the ground that it was signed by the party reclaiming and not by counsel, the Court in view of the fact that the reclaimer was pleading his own case, and "as a special indulgence in the particular circumstances," *allowed* the note to be received.

Alexander Gore, Leith, raised an action for breach of contract against the Westfield Autocar Company, Limited, Edinburgh.

After proof the Lord Ordinary (ANDERSON) assoilzied the defenders.

The pursuer presented a reclaiming note signed by himself and not by counsel.

On 14th June 1921 the pursuer appeared in person and moved the Court to send the reclaiming note to the roll. Counsel for the defenders objected to the competency of the reclaiming note on the ground that it was not signed by counsel, and cited the following cases:—*Brown* v. *Whyte*, 1900, 2 F. 1039, 37 S.L.R. 784; *Hawks* v. *Donaldson*, 1889, 2 F. 95, 37 S.L.R. 70.

The 14th June being the last of the reclaiming days the Court dropped the note in order that the pursuer might in the course of the day have an opportunity of getting it signed by counsel.

In the Single Bills of 15th June the pursuer argued in person that he had a right to sign the reclaiming note himself. No authorities were cited.

The opinion of the Court (consisting of the LORD PRESIDENT, LORD SKERRINGTON, and LORD CULLEN) was delivered by the Lord President.

LORD PRESIDENT—I cannot say that the reclaimer has satisfied me that there is any good reason why his reclaiming note is not signed by counsel. There is no statute and no Act of Sederunt which regulates the matter, but the practice of the Court has invariably been that reclaiming notes should be signed by counsel. There are only one or two instances in the books—*Brown* v. *Whyte*, 1900, 2 F. 1039; *Davies* v. *Davies*, 1901, 4 F. 3—in which by indulgence a party litigant has been allowed to sign his own note. Now the present reclaimer is pleading his own case, and it may be that difficulties connected with his ignorance of the procedure of this Court are the cause of the note appearing before us in its present form. As a special indulgence in the particular circumstances we shall therefore allow the note to be received, but it must be clearly understood that this indulgence will form no precedent for other cases.

The Court sent the case to the roll.

Counsel for Pursuer and Reclaimer — Party. Agent—Party.

Counsel for Defenders and Respondents—Garrett. Agents — T. & W. Liddle Maclagan & Cameron, W.S.

Wednesday, June 15.

FIRST DIVISION.

[Sheriff Court at Inverness.

MACGILLIVRAY *v.* MACKENZIE.

Lease—Outgoing — Compensation for Improvements — Laying down Temporary Pasture—Whether Sown more than Two Years Prior to Determination of Tenancy —Lease for a Period of Years with Continuation thereafter from Year to Year— "Benefit" Given by Landlord—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 1 (1) *and* (2) (*a*), *and First Schedule, Part III* (26).

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64) enacts— Section 1 — "(1) Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act, he shall, subject as in this Act mentioned, be entitled at the determination of a tenancy, on quitting his holding, to obtain from the landlord, as compensation under this Act for the

improvement, such sum as fairly represents the value of the improvement to an incoming tenant. (2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account (*a*) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement . . . First Schedule, Part III—Improvements in respect of which consent of or notice to landlord is not required. . . . (26) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy."

In a lease for a period of five years from Whitsunday 1900 it was provided that after the expiry of the five years the tenancy would be continued from year to year so long as the same was not terminated by either party by giving one year's notice. At the commencement of the lease the farm consisted of 700 acres of permanent pasture and 105 acres of arable land. The tenant, who had vacated the farm at Whitsunday 1920, claimed compensation in respect of the laying down of 96½ acres of the arable land in temporary pasture more than two years before leaving the farm. *Held* (1) that the tenancy after 1905 was not by tacit relocation from year to year, but was a tenancy in terms of the provisions of the lease of 1900, and that accordingly the Agricultural Holdings Act 1908 was applicable; (2) that in the circumstances stated it was competent for the arbiter to hold that the laying down of the temporary pasture was an improvement entitling the tenant to compensation under the Act; and (3) that the mere fact that the landlord did not terminate the tenancy earlier did not constitute a "benefit" in the sense of section 1 (2) (*a*) of the Act.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), sec. 1 (1) and (2) (*a*), and First Schedule, Part III (26), is quoted *supra in rubric.*

In an arbitration under the Agricultural Holdings (Scotland) Act 1908 between William Macgillivray, formerly tenant of the farm of Garbole in the county of Inverness, and William Dalziel Mackenzie of Farr, the landlord, the arbiter George Alexander Ferguson, Surradale, Elgin, stated a Case for the opinion of the Sheriff.

The Case set forth, *inter alia* — "The claimant, the said William Macgillivray, claimed from the respondent, the said William Dalziel Mackenzie, the sum of £348 for the laying down of temporary pasture on 96½ acres or thereby of the said farm of Garbole more than two years prior to the determination of the tenancy at Whitsunday 1920.

"The claimant entered the farm of Garbole at Whitsunday 1886, and vacated the farm at Whitsunday 1920 with the exception of the arable land under crop, which he vacated at the separation of crop 1920 from the ground.

"Under the general articles, conditions, and regulations of the respondent's estate, by which the claimant was bound for the period from 1886 to 1900, it was, *inter alia*, provided that 'tenants shall not be restricted to any system or particular course of cropping. . . . Tenants may, if they choose, lay the whole of their farms under grass, provided the land be first properly cleaned and liberally manured and sown down with a sufficient quantity of good seeds.'

"By lease entered into between the parties, dated 29th February and 5th March 1904 (in which said general regulations, articles, conditions, and regulations were not incorporated or referred to), the respondent let to the claimant the said farm of Garbole for the space of five years and crops from and after the following terms and periods:—As regards the fallow land the first day of April 1900; as regards the houses, second year's grass, and pasture land, at the term of Whitsunday 1900; and as regards the arable land under crop, including hay crop, at the separation of the crop of the year 1900 from the ground, it being provided and agreed that after the term of Whitsunday 1905 the tenancy should be continued from year to year so long as the same was not terminated by either party at the term of Whitsunday on giving at least one year's written notice to the other party of his intention to terminate the same. With regard to the cultivation and management of the said farm, the lease does not prescribe any course of cropping, but provided and conditioned that the cultivation and management should be according to the most approved rules of good husbandry, and it was further thereby specially conditioned and agreed that the tenant should not break up or bring under cultivation any land on the said farm which at his entry was not cultivated as arable land without the express consent of the proprietor. At the claimant's outgo the proprietor or incoming tenant was bound to take over the whole corn crop, dung, and fallow land, and the first and second year's grass, and also the third year's grass in the event of the arable land being then worked under the six course rotation.

"When the claimant entered in 1886 the arable land on the farm extended to 111·376 acres (exclusive of permanent pasture), which were in first and second year's grass, corn crop, and fallow. At his entry the claimant took over from his predecessor all the first and second year's grass, corn crop, and fallow, and paid therefor. Prior to the year 1900 a field, extending to about six acres, was resumed by the respondent. Thus the above 111·376 acres was reduced to 105 acres or thereby. Up to the year 1900 the said arable land was cultivated in a five-shift course.

"In 1900, when a new lease was entered into, the claimant received no payment and no other consideration from the respondent in respect of grass or pasture on the farm nor for corn crop and fallow land. He constructively entered on the new lease in succession to himself as awaygoing tenant under the old lease. At entry under the new lease there was no temporary pasture

on the arable land of the farm laid down more than two years prior to the determination of the tenancy. The claimant continued to cultivate and manage the said arable land (extending to 105 acres or thereby) on the five-shift course until 1914. He then resolved to lay the farm under grass. In September 1916, after a large part (about three-fifths) of the arable land had been laid down in temporary pasture, he informed the respondent that he had done so. In the spring of 1917 the claimant informed the respondent that he intended to continue as he had begun till the whole of the farm was in temporary pasture. The parties are at issue on the question whether permission was asked or granted to the claimant to lay down the temporary pasture. I have not been able to see how it can be suggested that permission was asked or granted to do what had in large measure (about three-fifths) already been done. Certainly the respondent took no exception, nor could do so on practical grounds, because what the claimant proposed to do, and did, was to improve the farm by making a statutory improvement which did not require the landlord's consent. If the landlord had objected, assuming he had right to do so, I consider he would have acted contrary to his own interests.

"At awaygoing the claimant left on the farm 96½ acres of temporary pasture, all laid down after 1st January 1901, and more than two years before the determination of the tenancy.

"By laying down the said temporary pasture the claimant deprived himself of his right at the determination of his tenancy to get valuation for the grass crop and others as specified in said lease. The claimant is now claiming for the benefit accruing to the land by the laying down of said temporary pasture.

"The respondent pleaded, *inter alia*, as follows:—1. The claim is incompetent and irrelevant in respect (*a*) . . . ; (*b*) the said lease does not come within the scope of the Act of 1908 (see section 35). 2. That the provisions of the Act do not apply to the laying down of temporary pasture, whereby virtually the whole arable portion of the farm is converted into pasture, and that the Act only contemplates an improvement effected by a partial conversion of the arable ground into temporary pasture, consistent with the history and proper working of the arable land. 3. The permission which the proprietor gave to the claimant to depart from the terms of his lease as regards the cropping of the farm is a 'benefit' in the sense of the Agricultural Holdings (Scotland) Act 1908, and falls to be taken into account in ascertaining the amount of compensation, if any, to which the claimant is entitled. 4. Alternatively, (*a*) the operations carried out by the claimant being made in implement of the obligations contained in his lease, he is not entitled to compensation therefor, or (*b*) the laying down of temporary pasture in respect of which the claim is made having been done in order in a measure to make 'suitable and adequate provision' to protect the holding from injury or deterioration consequent on the concession given to the claimant, he is not entitled in view of the provisions of section 23 (3) of the Agricultural Holdings (Scotland) Act 1908 to any compensation in respect thereof. 5. In any case the claimant is not entitled to any compensation except in respect of the excess of the ground under temporary pasture at his waygoing over the ground under temporary pasture at his entry at Whitsunday 1900. 6. The claimant not having made any improvement in the sense of the Agricultural Holdings (Scotland) Act 1908, he is not entitled to any compensation. 7. No improvement having been effected in the holding at the claimant's waygoing by the alleged laying down of temporary pasture in question as compared with the state in which the holding would have been found had the tenant conformed to his contractual obligations, he is not entitled to compensation. 8. In any case the seeds sown by the claimant do not constitute a laying down of temporary pasture in the sense of the Agricultural Holdings (Scotland) Act 1908. 9. That after due advertisement no offers were received for the farm, and therefore there is no incoming tenant.

"The arbiter repelled the respondent's pleas 1 and 2 and proposed to find the following facts admitted or proved:—1. The claimant voluntarily, and not in fulfilment of any contractual obligation, laid down temporary pasture as contemplated and with the seeds specified in the Agricultural Holdings (Scotland) Act 1908, Schedule 1, Part III (26) on 96½ acres or thereby of the farm of Garbole subsequent to 1st January 1901, and more than two years prior to the determination of the tenancy of said farm. 2. An improvement has thereby been effected, and the sum of £348, which is the sum claimed, fairly represents the value thereof to an incoming tenant. 3. At the commencement of the lease of said farm in 1900 all the pasture on the arable lands and the corn crop belonged to the claimant, and the said temporary pasture in respect of which the claim is made, was laid down by him on the arable land of said farm, exclusive of any land which at his entry in 1900 was not cultivated as arable land. 4. In laying down said temporary pasture the claimant not only complied with the most approved rules of good husbandry but in addition made the improvement claimed for. 5. No permission was asked or received by the claimant to effect the said improvement, and no benefit was given or allowed by the respondent to the claimant in consideration of the latter executing the improvement. 6. The holding suffered no injury or deterioration from the action of the claimant in making said improvement or in connection therewith, and the making of the improvement was not done for the purpose of making provision to protect the holding from injury or deterioration resulting from any act of the claimant. 7. The respondent was informed in September 1916 that the claimant had laid down about three-fifths of the arable land in temporary pasture. He was also informed

in the following spring that the claimant proposed to lay down the remainder of the arable land in temporary pasture. He made no complaint, attached no condition, and stated no objection either then or subsequently. 8. The claimant was within his right in making said improvement. In any event the respondent acquiesced in or raised no objection to his doing so. 9. The farm as advertised was not the same subject as was tenanted by the claimant in respect that 700 acres or thereby of pasture were excluded. 10. The respondent entered into possession of the farm, is reaping the benefit of the improvement, and is liable to compensate the claimant therefor."

On the merits the arbiter makes the following observations:—"It is known to every practical agriculturist that a great benefit is given to land by a lengthy course of well laid down grasses and other seeds. The Acts of 1900 and 1908 recognise such an improvement. The arbiter found on inspection of the arable land on Garbole that the laying down in temporary pasture had been well executed. The pastures were surprisingly rich for a farm situated at such a high elevation, giving clear evidence of being well laid down both as regards seed and tillage and constituting an undergrowth that gave valuable feeding to the soil and merited compensation to extent of at least the sum claimed."

The *questions of law* stated for the opinion of the Sheriff were—"1. In the circumstances stated does the Agricultural Holdings (Scotland) Act 1908 apply as regards the right of the claimant to compensation for improvement for temporary pasture referred to in section 26 of Part III of Schedule 1 of said Act? 2. Does the laying down of said temporary pasture in the circumstances stated constitute an improvement for which the claimant is entitled to compensation under said Act? 3. Is the arbiter entitled to find that the respondent had given or allowed no benefit to the claimant in consideration of the claimant making the improvement?"

On 28th February 1921 the Sheriff (WATT) answered the three questions in the affirmative.

Note.—"A careful and able argument was submitted by the agent for the landlord, but I am unable to give effect to his contentions.

"(1) It appears to me that the Agricultural Holdings Act 1908 applies to all claims that can be made after it came into operation, and that the mere fact that the lease was entered into prior to the Act does not disentitle the tenant to claim compensation for improvements. It was argued that the Act does not operate retrospectively, and stress was laid on a principle enunciated in *Gardner* v. *Lucas* (5 Rettie (H.L.) 105), that unless there is a contrary expressed intention an Act of Parliament is to be presumed to be prospective and not retrospective. That was a very different case, and dealt with section 39 of the Conveyancing Act of 1874 referring to the execution of deeds. The terms of section 1 of the Agricultural Holdings Act are general, and plainly apply to all improvements whether under past or future leases.

"(2) That the laying down of the temporary pasture by the claimant was an improvement for which he is entitled to compensation I cannot doubt. It is one of the improvements specified in Part III (26) of the First Schedule of the Act, and occurring among those in respect of which consent of or notice to the landlord is not required. The arbiter says it was in the landlord's interest, though I have no doubt, in view of the great expense of labour and the state of the cattle market, it was also in the tenant's interest. It was argued that the provision in the lease that the cultivation and management should be according to the most approved rules of good husbandry fairly read meant that the farm should be cultivated by rotation, and further that laying down the whole 96½ acres in temporary pasture was not within the purview of Part III (26) of the First Schedule of the Act, which assumed that only a portion of the farm would be laid down in temporary pasture. I cannot agree with this. It is found in fact that laying the said acreage down in temporary pasture is according to the most approved rules of good husbandry, and there is no limit to the proportion of the farm that may be so laid down. It was suggested alternatively that the tenant could not claim as for an improvement seeing that if by laying down the temporary pasture he was cultivating the holding according to the rules of good husbandry, he merely fulfilled a contractual obligation —*Earl of Galloway* v. *M'Clelland*, 1915 S.C. 1062. But the tenant was under no contractual obligation to lay down the temporary pasture. Great stress was laid on the case of *Findlay* v. *Munro*, 1917 S.C. 417. The circumstances there clearly distinguish it from the present case. In *Findlay's* case the condition of the farm as to grass at the termination of the tenancy was the necessary result of the fulfilment by the tenant of his contractual obligation under the alternative mode of cropping of which he availed himself. His act in laying down the pasture was not a positive voluntary act which seems necessary to warrant the claim. Here the tenant was free to cultivate according to the rules of good husbandry, which did not necessitate laying down the area in question in temporary pasture.

"It was further argued that no compensation was payable because the improvement was made for the purpose of making provision to protect the holding from injury or deterioration (see section 23 (3)). It was said it was done to avoid damage due to not following a rotation in cropping. There is no substance in this contention. No damage was suggested as being prevented. It was not to protect the holding from deterioration, but on the contrary a positive and deliberate act to improve the subjects.

"The question (2) put by the arbiter does not raise the point as to whether the claim should only be for the excess of temporary pasture at the ish over that at the entry to the subjects in 1900, and this was not the subject of argument before me.

"(3) In my opinion the landlord gave no 'benefit' to the tenant in consideration of the latter executing the said improvement. The alleged 'benefit' according to the contention of the landlord's agent was his permission to turn the farm into temporary pasture, or his acquiescence in the change to temporary pasture. The 'benefit' contemplated by section 1 (2) (*a*) of the Act must I think be a 'particular benefit in consideration whereof the tenant has executed the specific improvements that are in question.' It is so put by Lord Kinnear in the case of *M'Quater v. Fergusson*, 1911 S.C. 640, at p. 644. While opinions on the Bench differed much as to the construction of 'benefit' in section 1 (2) (*a*) the meaning put on the term by Lord Kinnear above quoted seemed to meet with general approval. A majority of the whole Court differed from Lord Dunedin when he held in *M'Quater's* case that the 'benefit' must be 'specially mentioned and allowed' taking the view that it might be implied—*Earl of Galloway* v. *M'Clelland*, 1915 S.C. 1062. There is no express or implied benefit here given or allowed in consideration of executing the special improvement claimed for."

The landlord appealed.

The contentions of the parties sufficiently appear from the Stated Case and the Sheriff's note.

The following authorities were referred to —*Earl of Galloway* v. *M'Clelland*, 1915 S.C. 1062, 52 S.L.R. 822; *Findlay* v. *Munro*, 1917 S.C. 417, 54 S.L.R. 316; *Fergusson* v. *M'Quater*, 1911 S.C. 640, 48 S.L.R. 560; *Carron Company* v. *Donaldson*, 1858, 20 D. 681; *Bairds* v. *Harper*, 1865, 3 Macph. 543; Rankine on Leases, p. 279; Connell on the Agricultural Holdings Acts, Introduction.

At advising—

LORD PRESIDENT—The first question submitted for the decision of the Court in this appeal under the Agricultural Holdings Act 1908 is whether that Act applies in the circumstances stated as regards the right of the claimant to compensation for laying down temporary pasture, that being one of the improvements enumerated in Part III of Schedule I to the Act. The tenant's lease was for a period of years to Whitsunday 1905, with continuation thereafter from year to year until the same was terminated by a year's notice. Now a claim for laying down temporary pasture can only be made if the pasture was sown more than two years prior to the determination of the tenancy under which the tenant quitted his holding. The tenant quitted his holding at Whitsunday 1920. At that date the tenancy was, and had for fifteen years been, from year to year in terms of the provisions of the lease. The appellant maintains accordingly that the tenancy which determined at Whitsunday 1920 was a tenancy for one year only, and that the sowing down of pasture more than two years before — under a prior and distinct tenancy—does not entitle the tenant to compensation on quitting the holding at the determination of the last year's tenancy. I do not think this point raises any difficulty. The tenancy under which the tenant possessed when he quitted his holding and his claim to compensation emerged is exactly the same tenancy as that on which he possessed prior to 1905. The tenancy in question was a tenancy until Whitsunday 1905, or until such later term of Whitsunday as may have been preceded by a year's notice. Some argument was presented with regard to the case which would arise on a lease terminating at its contractual ish, and on possession being continued thereafter by tacit relocation. That case may raise a different question from that which arises in the present case, but it will be time enough to determine it when it arises. It does not arise here.

The second question is in the following form: — "Does the laying down of said temporary pasture, in the circumstances stated, constitute an improvement for which the claimant is entitled to compensation under said Act. There is no appeal to this Court except on questions of law, and we must therefore give this question a more restricted construction than its form would strictly justify. I assume that the question which the arbiter really intended to address to us was whether it was competent for him to hold that the laying down of temporary pasture in certain circumstances constituted an improvement within the meaning of the Act and schedule. It is necessary with regard to this question to notice a preliminary point taken by the appellant to the effect that there are no concluded findings of fact in the case by which the circumstances referred to are defined. The case is presented at the stage of the proceedings at which the arbiter has arrived in accordance with ordinary arbitration procedure in Scotland at proposed findings. At that stage, a question of law having emerged, the appellant asked the arbiter to state a case, and the arbiter has done so with reference to the proposed findings on which the question of law arose. I do not see what else the arbiter should or could have done. Indeed, I am not sure that — without a departure from the ordinary procedure—it can ever be possible to raise a stated case on a question of law after the issue of final findings of fact, because in the ordinary case no final findings of fact are issued by an arbiter until he issues his final award upon the whole case. There is no reason to doubt that the arbiter's proposed findings of fact represent the definite conclusions on matters of fact which—subject always to the possible effect of representations made to him by the parties—will form the basis of his decree-arbitral. The inconvenience of determining questions of competency arising out of circumstances established by proposed as distinct from final findings is apparent only but not real. In order to decide the question put to us it is necessary to consider findings 1, 2, and 4. According to finding 1 the laying down of this temporary pasture was done by the tenant voluntarily and—this is the crucial point—not in fulfilment of any contractual obligation. The lease, in short, in no wise required or enjoined the tenant to follow this particular mode of dealing with the land let to

him. Neither the express terms of the lease, nor the rules of good husbandry which were implicit in it, required that the land should be adapted to use as temporary pasture unless the tenant chose. This finding displaces the application to the present case of the decision in the *Earl of Galloway*, 1915 S.C. 1062. Nor is the present case within the decision of *Findlay* v. *Munro*, 1917 S.C. 419. There the tenant was bound by a five-shift rotation, but with liberty to let the grass lie longer than two years, provided that when he broke it up again he should bring the land so used back into rotation (subject only to the permission to take two successive white crops off it in doing so). It was held that the sowing down of all the grass was done in conformity with the five-shift rotation—as indeed it was—and that no claim for laying down temporary pasture could arise out of the circumstance that the tenant had availed himself of a permission to let it lie. Findings 2 and 4 must be considered together. According to finding 2, what the tenant has done is to effect an improvement the value of which to an incoming tenant is £348. It has been pointed out as a striking feature of this case that the conversion by the tenant of a farm consisting of 700 acres of pasture and 100 acres of arable land into a farm (practically) wholly pastoral, and on which for a considerable number of years at anyrate there can be little or no arable cultivation, is held to be an improvement. But when the arbiter finds that £348 is the value of what has been done to an incoming tenant, he must refer (and I do not doubt that he does refer) to a tenant incoming to the whole farm of 800 acres. If that were not the meaning of the finding a miscarriage of justice might occur, because the value of an improvement can only be measured by the addition of value to the holding as a whole. I think, however, I am bound to interpret this finding as being made in conformity with that obvious principle, and to hold it established as matter of fact that £348 is the amount by which to an incoming tenant this farm of 800 acres is improved by the conversion of the arable land into temporary pasture, even though the result is that there can be little or no arable cultivation on the farm for a number of years. Turning now to finding 4, it is necessary to take note of a further peculiarity presented by the tenant's claim. In the case of this particular farm we are informed by the Stated Case that no particular system of cropping was obligatory. But the rules of good husbandry of course applied to it. Now the arbiter finds as a matter of fact that the conversion of the arable portion of the farm into temporary pasture was a compliance with the rules of good husbandry. What the rules of good husbandry are in the case of a particular tenancy is a matter depending upon the situation and character of the tenancy and, above all, on the custom in the locality in which the particular tenancy is situated—*Carron Company* v. *Donaldson*, (1858) 22 D. 681. And it may be worth while to note in passing that the regulations of the estate of which this farm is a part—which regulations were, however, not imported into the lease—are consistent with the arbiter's finding regarding the effect of the customary rules of good husbandry in the locality in which the farm is situated. Now every tenant is bound to comply with the rules of good husbandry as part of his contract; and it is the distinguishing characteristic of an improvement which entitles to compensation that it is a contribution to the value of the holding resulting from some voluntary act of the tenant over and above the performance of his obligations as tenant—including compliance with the rules of good husbandry. If then the laying down of temporary pasture is no more than a compliance with the rules of good husbandry, can it be treated as an improvement entitling to compensation? Undoubtedly the Act so treats it, for it forms No. 26 of the schedule. And the reason which justifies that treatment—at least in the case of the present farm and neighbourhood—is that the laying down of temporary pasture is only one method—and that an optional one—of complying with the rules of good husbandry. Now, to observe a suitable rotation would equally comply with the rules of good husbandry. But if an addition to the value of the holding to an incoming tenant results from the adoption of the alternative of laying down temporary pasture, the statute credits the tenant with the voluntary selection of an improving method of cultivation to which he was not restricted either by his lease or by the rules of good husbandry. Accordingly I arrive at the result that the second question, as I have interpreted it, must be answered in the affirmative.

The third question is whether the arbiter was entitled to find that the appellant had given or allowed no benefit to the claimant in consideration of the claimant making the improvement. I think the answer to that question is not attended with difficulty. I think he was undoubtedly entitled to do so. In order that the landlord may be entitled to found upon any such benefit he must, in terms of section 1 (2) (*a*), be able to show that the benefit in question was given in consideration of the tenant executing the improvement. The benefit which it is said the landlord gave the tenant in this case is that he did not terminate his tenancy earlier than he did. If the landlord had proved that the tenancy was prolonged in consideration of an undertaking by the tenant to execute this particular improvement he might be entitled to found upon the benefit so given. But the landlord cannot found upon the mere circumstance that he did not terminate the tenancy earlier than he did without connecting such action with the tenant's method of treating the land in the way of consideration.

Lord Skerrington—I am not surprised that the landlord feels aggrieved at the award which the arbiter proposes to pronounce. It is startling to learn that it is according to the rules of good husbandry for a tenant farmer to alter the character of

his farm by taking away from a farm which is principally pastoral the small portion of arable land which has been thought a suitable adjunct to the pasture. But the matter does not stop there, as the landlord is asked to pay compensation in money for this change in his property. He is subjected to the further hardship that instead of the questions of law which he asked the arbiter to state for the opinion of the Sheriff, three questions have been substituted which are difficult to interpret and which do not clearly indicate the points in dispute.

I agree with the way in which the Sheriff has answered the questions of law and also with the manner in which your Lordship has disposed of certain other points to which he does not refer in the note to his interlocutor. The appellant's counsel has failed to show that the arbiter is prevented by any principle or rule of law from making the proposed award. His argument was really directed against the arbiter's findings in fact, in regard to which the arbiter is final. The result is that the appeal fails.

LORD CULLEN—I entirely agree. With regard to the first question, the lease was to endure for five years from Whitsunday 1900, and also thereafter until one year's notice should have been given on either side. Therefore after 1905 it was not a case of the lease being renewed from time to time but of abstention on both sides from terminating it.

As regards the second question, I proceed upon the findings by the arbiter—(first) the claimant voluntarily, and not in fulfilment of any contractual obligation, laid down the temporary pasture in question; and (fourth) in laying down the said temporary pasture the claimant not only complied with the most approved rules of good husbandry but in addition made the improvement claimed for. A special point was taken that the arbiter may have reckoned too large an area in the improvement and may not have made due allowance for the area which the tenant would have left in grass if he had cultivated in a five-shift rotation. I see, however, no ground whatever for supposing that the arbiter did not duly apply his mind to the statutory problem, viz., what was the value obtainable by an incoming tenant in consequence of the improvement effected by the claimant which otherwise would not have been obtainable? And it may be pointed out that a course of cultivation under a five-shift rotation would not have imposed on the claimant an obligation to have in grass any part of the farm for more than two years.

Coming to the third question, the landlord maintains that by refraining from terminating the tenancy he somehow or other put £348 into the claimant's pocket which ought to be set against this claim. But I can see no evidence whatever in the facts as stated by the arbiter that the landlord gave or allowed any benefit to the claimant in consideration of the claimant executing the improvement either to the value of £348 or any other sum. Presumably the landlord under the lease which he was content with received a rent which he considered an adequate return for the possession given under it.

LORD MACKENZIE did not hear the case.

The Court affirmed the interlocutor of the Sheriff and dismissed the appeal.

Counsel for the Appellant — Macphail, K.C.—Graham Robertson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Respondent—Wark, K.C. —J. Stevenson. Agents—Guild & Guild, W.S.

Saturday, June 18.

FIRST DIVISION.

[Lord Hunter and a Jury.

REEKIE *v.* M'KINVEN.

Process—Jury Trial—Application for New Trial on the Ground that it was "Essential to the Justice of the Case"—Vitiation of Verdict by Argument Addressed to the Jury—Alleged Representation that Verdict of £50 would Carry Expenses—Tender for £100 in Process—Verdict for £75—Jury Trials (Scotland) Act 1815 (55 *Geo. III, cap.* 42), *sec.* 6.

In an action for breach of promise of marriage, concluding for £500 damages, the defender made a judicial tender of £100 and expenses. The jury having awarded the pursuer £75 she applied for a new trial on the ground that counsel for the defender had in his address to the jury used words which represented that an award of £50 would carry expenses. The Court *refused* to grant a new trial, holding that the words used did not necessarily bear the interpretation sought to be put upon them by the pursuer, and that the presentation of the argument complained of had not prevented the trial from being a fair one.

Observed (*per* the Lord President) that "it is illegitimate and wrong to present argument to a jury on considerations connected either with the probable result of the case in the matter of expenses, or with the effect on expenses of any tender which may have been put in process."

The Jury Trials (Scotland) Act 1815 (55 Geo. III, cap. 42) enacts—Section 6—". . . In all cases in which an issue or issues shall have been directed to be tried by a jury it shall be lawful and competent for the party who is dissatisfied with the verdict to apply to the Division of the Court of Session which directed the issue, for a new trial on the ground of the verdict being contrary to evidence, on the ground of misdirection of the judge, on the ground of the undue admission or rejection of evidence, on the ground of excess of damages, or of *res noviter veniens ad notitiam*, or for such other cause as is essential to the justice of the case. . . ."

Jemima M'Arthur Reekie, Rutherglen,