investment or as having advised as to the investment. It seems to me that it is not proved that he selected the investment. It is proved that he told the pursuer that the only investments about which he could advise were investments in land, because they were the only investments that he knew about, and that she then selected the investment in land and instructed him to go on and invest her money.

That being so, I concur with your Lordships in thinking that the Lord Ordinary has correctly negatived the case made by the pursuer in the record and in the evidence. It was a case of advising, not of selecting, and as adviser he was bound to do two things—first, to explain the nature of the investment, and second, to read over to her the deeds she had to sign. It seems to me clearly proved that he did both. It does not follow she is dishonest when she gives a different account.

I only add, that while I hold that no legal liability attaches to Mr Baird in connection with the transaction in question, I think that as her friend it would have been better if he had endeavoured to dissuade a client in Mrs Stewart's position financially from the investment which she made. But that is to enter into a region with which we, dealing with the question as a legal one, have nothing to do. In Mr MacRobert's able argument I think the duties of a friend and the duties of an agent were often confused.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Blackburn, K.C. — MacRobert. Agent—Henry Wakelin, Solicitor.

Counsel for the Defenders and Respondents—Sandeman, K.C.—D. P. Fleming. Agents—Laing & Motherwell, W.S.

Thursday, October 29.

FIRST DIVISION.

[Sheriff Court at Hamilton.

MERRY & CUNINGHAME, LIMITED *v.* M'GOWAN.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8—*Industrial Disease—Liability of Last Employer.*

A miner was disabled by an industrial disease on the day after he entered the service of his employers. On his bringing an application to receive compensation from his employers it was found by the arbiter that the nature of his employment with them had contributed to his disablement, but that the disablement was due in part to his previous employment within twelve months of the disablement, and that the symptoms had first manifested themselves considerably before that period. *Held* that the disease being due to the nature of his employment within the twelve months previous to the disablement in the sense of section 8 (1) of the Act, compensation was recoverable in the first instance from the employers who had last employed him during that period.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Sec. 8—"Application of Act to Industrial Diseases—(1) Where (i) the certifying surgeon appointed under the Factory and Workshop Act 1901 for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act, and is thereby disabled from earning full wages at the work at which he was employed . . . and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement . . . whether under one or more employers he or his dependants shall be entitled to compensation under this Act as if the disease . . . as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—(*a*) The disablement . . . shall be treated as the happening of the accident . . . (*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due . . . (2) If the workman at or immediately before the date of the disablement . . . was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

"*Third Schedule.*

"Description of disease.	"Description of process.
"Anthrax.	"Handling of wool, hair, bristles, hides, and skins."

By Order of the Secretary of State, dated May 22, 1907, "nystagmus" as a disease opposite "mining" as a process comes under section 8 as if in the third schedule.

Michael M'Gowan, miner, 107 Stonefield Road, Blantyre, *respondent*, presented an application in the Sheriff Court at Hamilton against Merry & Cuninghame, Limited, coalmasters, Auchenraith Colliery, Blantyre, *appellants*, to recover compensation from them in respect of miners' nystagmus contracted by him while in their employment. Proof was led before the Sheriff-Substitute (HAY SHENNAN), sitting with a medical assessor, who found in favour of the respondent, and at the appellants' request stated a Case for the Court of Session.

The Case stated—". . . The following facts were admitted or proved:—(1) Since 28th January 1914 the respondent has been disabled by miners' nystagmus from earning full wages at the work at which he was employed. At the date of his disablement he was employed by the appellants as a

miner in their Auchenraith Colliery, Blantyre. (2) The respondent, who is 39 years of age, has spent his whole working life as a miner in safety lamp pits. (3) At 16th April 1913 and for eight months previously the respondent worked as a miner with Archibald Russell Limited in Dechmont Colliery, a safety lamp pit, and on that date he was totally incapacitated in the course of his work by an injury to his left knee. (4) For the incapacity following on this injury the respondent received full compensation of 14s. per week down to 25th June 1913, and thereafter partial compensation of 8s. 6d. per week, down to 24th December 1913, after which he accepted a lump sum of £25 in full of his claims in respect of the accident of 16th April 1913. (5) On 27th January 1914 the respondent entered the service of the appellants at Auchenraith Colliery, a safety lamp pit. He worked on that day and on the following day, but as he found his eyes troubling him he did not work after that date, viz. 28th January 1914. (6) On 14th February 1914 the respondent obtained a certificate from Dr John Goff, certifying surgeon, that he was suffering from miners' nystagmus, and that his disablement commenced on 28th January 1914. This certificate was appealed against, and the appeal was dismissed on 27th February 1914. (7) Thus the respondent's history during the twelve months prior to the date of disablement is that between 28th January 1913 and 16th April 1913, he was working as a miner in Dechmont Colliery, a safety lamp pit, that from 16th April 1913 he was idle, and that he resumed work on 27th January 1914, working for two days. (8) The respondent was suffering from nystagmus in April 1913, and he has never recovered from that attack of the disease. It is difficult to say at what period the symptoms first manifested themselves, but this must have been considerably before 28th January 1913, although the respondent may not have had his attention directed to them. There is no evidence that he was ever previously disabled by nystagmus. (9) Miners' nystagmus is an occupational disease, which developes gradually, owing to the cumulative effects of working in safety lamp pits over a prolonged period on constitutions susceptible to the disease. The final disablement may be the effect of many years of work. The disease may have begun to develope years before the miner is aware of its presence. (10) The attack of miners' nystagmus from which the respondent suffers was due in part to the nature of his employment during the period before 28th January 1913, and in part to the nature of his employment between 28th January 1913 and 16th April 1913, and on 27th and 28th January 1914. The nature of his employment during both periods contributed to his disablement. (11) The respondent was wholly incapacitated for work until 25th May 1914, when he became fit for certain forms of light work.

"I was of opinion that the respondent was entitled to compensation on the ground that the disease which disabled him was in part due to the nature of his employment during the twelve months preceding the date of disablement. On 24th May 1914 I issued my award, finding the respondent entitled to compensation of 16s. 8d. per week down to that date, and thereafter of 9s. 2d. per week."

The *question of law* for the opinion of the Court was—"On the foregoing facts was I right in holding that the disease from which the respondent suffers is due to the nature of the employment in which he was employed within the twelve months previous to the date of his disablement?"

Argued for the appellants—The word "employment" was used in two separate senses in the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58)—(1) as meaning the industry, namely, mining; (2) the particular service of an employer in that industry. By his findings the arbiter had placed on the appellants the *onus* of showing that the disease was not contracted in their employment in the former sense, whereas they merely required to show that it was not contracted in their employment in the latter sense. On the statement of facts this *onus* had been discharged—*Dean* v. *Rubian Art Pottery, Limited*, [1914] 2 K.B. 213. If the disease from which the workman was suffering was due in any part to his employment outwith the twelve months previous to the date of the disablement, then you had not in the sense of sec. 8 (1) (i) of the Act adisease due to employment within the previous twelve months. The disease must be contracted wholly within the previous twelve months. The phrase "due to" was in meaning nearer to "caused by" than to "contributed to by." The reason of the twelve months' limit was obvious, namely, that the Court should not need to make an unduly extended inquiry. The following sub-sections of section 8 of the Act were referred to—(1) (i), (2), (5), (6), (7), (8), (9), (10).

Argued for the respondent—The argument of the appellants was not consistent with all the sections of the Act. In sec. 8 (1) (i) of the Act disease meant disablement by disease, which reading clearly brought liability home to the appellants. To relieve themselves of this liability the appellants must prove that the disablement was not due to their employment. This they had failed to do. The question was purely one of fact, and the findings were conclusive that the disablement of the workman was due to the appellants' employment. In the case of *Dean* v. *Rubian Art Pottery, Limited* (*cit. sup.*), Cozens-Hardy, M.R., at 217, the workman failed to establish this. In the absence of such a finding no doubt the *onus* lay upon the workman to prove it, but this was not the case here in view of findings Nos. 6 and 10 of the arbiter—*M'Ginn* v. *Udston Coal Company, Limited*, March 8, 1912, 1912 S.C. 668, Lord President (Dunedin) at 672, Lord Kinnear at 675, 49 S.L.R. 531; *Scullion* v. *Cadzow Coal Company, Limited*, October 24, 1913, 1914 S.C. 36, Lord Johnston, at 42, 51 S.L.R. 39. The Act implied two separate conditions of

compensation—(1) That the disablement was due to the nature of the industry in which the workman was employed; (2) that he should sue the employer who last employed him in that industry. The contention that the disablement, to infer liability on the last employer, must be wholly due to the employment within the previous twelve months was not supported by authority.

At advising—

LORD PRESIDENT—This case, in my opinion, raises a pure question of fact upon which the judgment of the arbitrator is final. But a question of law of some importance to the construction of the 8th section of the Statute of 1906 was raised, and on that question I am not unwilling to offer an opinion.

The workman here was employed at a colliery belonging to the appellants as a miner. He entered their employment on the 27th January 1914, left it the following day, and never returned. Subsequently he obtained a certificate from a properly qualified surgeon to the effect that he was suffering from miner's nystagmus and that his disablement commenced on the 28th January 1914.

Now inasmuch as at the date of the disablement he was employed in the process of mining, inasmuch as the disease which disabled him is set out in the first column of Schedule 3 appended to the Act, and inasmuch as the process of mining is set opposite that disease in the second column of the Third Schedule to the Act, it is to be deemed that his disease was due to the nature of the process in which he was engaged at the date of his disablement, to wit, the process of mining. All that appears to me to be extremely plain upon the unambiguous language of the second sub-section of the 8th section of the statute. And if that be so, then this workman, armed with the proper certificate and with a finding in his favour, to wit, the presumption of the statute that the disease which disabled him was due to the nature of the process in which he was working at the time, is to be entitled to have compensation exactly as if on the 28th January 1914, the date of the disablement, he had been the victim of personal injury due to accident arising out of and in the course of the employment to which the disablement was due, to wit, the process of mining.

But from whom is he to obtain that compensation? The statute says in language quite free from ambiguity that he is to obtain the compensation from the employer who last employed him during the twelve months—that is, the twelve months preceding the date of disablement—in the employment to the nature of which the disease was due, to wit, mining. Now the last employer who gave this man work in mining was the appellants' company, and accordingly from them compensation is recoverable. But inasmuch as the disease to which the disablement was due is, as is found by the arbitrator, an occupational disease which develops gradually owing to the cumulative effects of working in safety lamp pits for a long period on constitutions susceptible to the disease, it is open to the appellants to demand that the compensation be shared, and a contribution be offered to it, by every person who during the twelve months preceding 28th January 1914 employed this man in the process of mining. No such demand has been made by the appellants. It is still open to them, so far as I can see, to make the demand; but until it is made and acceded to, they and they alone must, as the arbitrator has found, pay the compensation in terms of the statute.

We were urged, however, to absolve the appellants from all liability to pay compensation on the ground that the arbitrator had not found that the disablement was due to anything done to or suffered by the workman in No. 1 pit of the Auchenraith Colliery. To this argument I think there are two complete and decisive answers. The first answer is that *de facto* the arbitrator, who is the final judge of the fact, has found by his tenth finding that the attack of miner's nystagmus from which the respondent suffers was due in part to the nature of his employment on the 27th and 28th January. That is a finding in fact that the disease was due in part, at all events, to the work which he was actually doing in the appellants' colliery on the two days on which he was employed there, and that, in my opinion, is sufficient for the decision of the case. But there is a second answer as I think equally conclusive, to wit, that by a statutory presumption the disease which he was found to be suffering from at the date of the disablement on 28th January was due to the process of mining in which he was then engaged, and inasmuch as he was engaged at that date in the service of the appellants, they and they alone, in the first instance at all events, must pay the compensation.

It remains only to notice an argument which was advanced by the Lord Advocate, although not by his junior, to the effect that it was not sufficient to infer liability against the appellants merely to find, as the arbitrator has done, that the disease which disabled the workman was due in part to the nature of his employment, to wit, mining, during the twelve months preceding 28th January 1914, and that, unless it was due exclusively to employment during the period I have mentioned, no liability attached. I think Mr Moncrieff was able to satisfy us that this point is completely covered by authority. But even if it were not so, in my opinion the disablement was none the less due to the nature of the employment, to wit, mining, in which the workman was engaged because it can be alleged that it was not solely and exclusively due to the employment in question. If it was in part due, that is sufficient to satisfy the words of the Act of Parliament. And accordingly I am of opinion, and move your Lordships, that we should answer the question put to us in the affirmative.

LORD JOHNSTON—I agree in the judgment which your Lordship proposes to pronounce. This 8th section of the Workmen's Compen-

sation Act 1906 makes the contracting of an industrial disease the equivalent of a personal injury from accident, and treats the disablement following upon such disease as the occurrence of the accident. Now the whole section and its provisions are artificial to a degree, and as pointed out by Sir Samuel Evans in *Dean's* case ([1914] 2 K.B. 213), to think of considerations of hardship or injustice in a particular case would lead to misconstruction of the section. In fact the scheme of the whole enactment provides, as I think, for the general and recks not of the particular. Now in this particular case we may really say that, judging apart from the statute, there is great hardship upon the employers, who only had the man in their employment for two days, to be called upon to pay compensation as if he had met with an accident in their employment. But notwithstanding that hardship, if the statute has in providing for the general situation introduced a wholly artificial scheme of operation, which renders the appellants liable, that must have its effect.

Now in considering that 8th section I think there are several things to be noted, because certain of the expressions are double-edged, particularly the expression "employment." But in the first place I would note that the proviso appended to the modification (*c*) in section 8 provides for two different circumstances. It contemplates first of all the case of contracting of an industrial disease at a point of time ascertainable—that is to say, there are industrial diseases, such as (to take an example from the schedule to the statute itself) anthrax, which are contracted by contagion; there may be others which are so contracted, but it is quite clear that one branch of this proviso provides for such a disease as anthrax, which is undoubtedly contracted by contagion. The sub-section provides in the second place for a disease contracted by a progressive or gradual process, such as the lead poisoning of which we had an instance in the case of *Dean* to which I have just referred, or the nystagmus with which we are concerned here. Now there is provided for this second class of diseases, as I think, a special code, differing somewhat from that which will apply to the first class of disease, and the effect of it is this—to bring in as primarily liable for compensation to the workman the employer who has last employed him, subject to the following conditions or limitations —first, that that employer cannot avoid liability altogether, and second, that his relief is limited to those who have employed the workman during the twelve months. It will be found, I think, that with regard to disease of the first class the employer is not subject to these conditions or limitations. The case that we have to deal with is wholly that of industrial disease contracted by a gradual process.

The next thing one looks to is the question of disablement. That is equally artificial. The disablement is to be treated as the happening of an accident; but as far as I can judge from a consideration of the statute disablement can be nothing else than the arrival of a point of time at which the man is no longer able to earn his full wages. He may be medically disabled already, but the disablement to which the statute looks as equivalent to the occurring of the accident seems to me to be merely that point of time at which he is obliged to give in and say that although he has had this disease for years it may be he is now for the first time unable to earn his full wages, possibly unable to earn any wages at all. That point of time has been definitely ascertained here, by an award of the referee which is final, to have been the last day on which he worked for the present appellants.

Now the real difficulty arises from the use of the term "employment," and I think it will be found that the term "employment" is used in two senses in this section, and that it is this double meaning of the word which has introduced a good deal of difficulty into the interpretation of the clause. "Employment" as used in one paragraph means the occupation or the industry or the industrial process looked at quite independently of the engagement between master and servant. In the second place, you will find instances in which it is used as descriptive simply of that relation between master and servant—in fact the contract of service. To take one instance, you have at modification (*b*) "If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself." There the word "employment" can mean nothing else than the entering the service of the master. And I think it will be found that there are other cases in which it is used in the same sense. On the other hand, you have the word "employment" frequently used, as I think, to denote the industrial process in which the man was employed. And where you have it provided, as in the main provision of the section it is provided, that where the certifying surgeon certifies that the workman is suffering from an industrial disease and is thereby disabled, and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he shall be entitled to compensation, "the nature of any employment" means, as I am satisfied from a consideration of the whole section, the nature of the employment looked at in the general sense I have mentioned and not in the specific meaning of the relation between him and the particular employer. It is, in fact, when one looks to the section which brings in the schedule that one finds the employment is the general employment of mining. In the case of anthrax it is a general employment of handling wool, hair, bristles, hides, and skins. It has no reference to the special detail of the manner in which a particular employer conducts that general business, and therefore it seems to me what we have to consider is simply a disease due to the nature of the employment.

If that be so, then there is liability imposed by this artificial scheme upon the last employer, with no remedy except to bring in any other employers who have employed the workman in the same class of employment during the previous period of twelve months. It was in the power of the employers here to bring in any such, for it is provided that where a disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as may be determined by the arbitrator. They have not thought fit to bring in another set of employers who might have largely relieved them, and therefore we are not called upon to consider that proviso.

Then you come to sub-section (2) of the 8th section—"If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the Third Schedule to this Act"—that exactly fits the case in question and deals with it as a process mentioned in the second column, and says nothing about the specialties of the particular employer's works—then "the disease"—and that is the disease in the first column of the schedule set opposite the description of the process—"shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary." Therefore there is placed upon the employer the *onus* of contrary proof, and that *onus* may be accepted, as it was accepted in the case of *M'Ginn*, 1912 S.C. 668. Probably all these diseases are diseases which may be contracted outside an employment. Anthrax, for example, is a malignant carbuncle which may be contracted by contagion quite outside the employment, even by a man in the employment. In the case of *M'Ginn* v. *Udston Coal Company*, although the man was suffering from nystagmus, it was certified—I do not say that it arose from, because the Court held that the certifying doctor was not final upon this point—but it was certified that the nystagmus arose from natural causes and not from the employment. This, therefore, was a case in which the employer might have "proved the contrary" in the sense of section 8 (2).

If I am right in my reading of this section, it seems clear that the arbitrator has come to a right conclusion here, because he has found, in the absence of any proof to the contrary, that the statute, however artificial it may be, imposes a liability upon the last employer within the class of employment which is specified in the schedule.

I think it right to say that there was a case quoted to us—the case of *Dean* in England, which I have referred to—which may indicate that the learned Judges there might have come to a different conclusion. That case is no authority here, because it was one which raised a totally different question. I have considered the case, and while I have the utmost respect for the Judges who decided it, I cannot see my way to adopt some of the expressions of opinion there used, which might have led me to a different conclusion.

LORD MACKENZIE—I regard the question decided by the arbitrator here as a question of fact, and I think the sixth and tenth findings establish the fact that he has reached a right couclusion.

The only question of law which was argued by the Lord Advocate was whether the arbitrator was justified in taking the view that if the disease which disabled the workman was in part due to the nature of his employment, that is sufficient to bring the case within the statute, and it was argued that the arbitrator was wrong, and that unless you were in a position to aver that the disease was solely due to the nature of his employment the statute did not apply. That argument appears to me to be hopeless in view of the series of cases, of which *Clover, Clayton, & Co.* [1910] A.C. 242, 47 S.L.R. 885, is an example, in which it has been decided that even although a hale man would not have been affected by the accident, yet compensation is due although the man may have been injured before.

That appears to me to be the only question of law properly raised in this case. Upon that I think the arbitrator was right, and accordingly I am of opinion that the question ought to be answered in the affirmative.

LORD SKERRINGTON—The question of law put by the learned arbitrator is not happily expressed, because he asks whether upon certain facts he was right in coming to a certain decision. I assume, however, that the question which he meant to ask was whether upon those facts he was entitled to arrive at that decision, and putting that interpretation upon his question I agree that it ought to be answered in the affirmative.

When I first read the case it seemed to me that the appeal was perfectly hopeless, in respect that there was an express finding by the arbitrator to the effect that the nystagmus from which the respondent suffered was due in part to his employment with the appellants. As your Lordships have indicated, it is hopeless to maintain that a workman will have no remedy unless the accident, or the disease equivalent to an accident, was the sole cause of his disablement. There is ample authority to the effect that it is sufficient for him to establish that the accident or the disease was one of the causes of his disablement.

The junior counsel for the appellants further proceeded to argue a very interesting question which really does not arise in the present case, and in regard to which I reserve my opinion. It was in regard to the meaning of an expression which occurs seven times in the course of the 8th section. That section gives a remedy to a workman in cases where the disease is due to the nature of any employment in which he was employed. It is a condition of the remedy that the workman shall prove affirmatively

that the disease answers this description, and he may do this either by evidence in the ordinary way or by proving facts and circumstances which bring him within the second sub-section and create a statutory presumption in his favour. But whether he proves his facts in the ordinary way or by appealing to a presumption, the thing to be proved must be the one and the same.

Now I confess that, comparing the different occasions on which this phrase occurs, I have great difficulty in arriving at a clear opinion as to what it is which the statute means by that phrase, and what is the state of matters which the workman must either prove by evidence or which is presumed in his favour in certain cases. The junior counsel for the appellants referred to the decision of the Court of Appeal in the case of *Dean*, [1914] 2 K.B. 213. The decision and the dicta in that case illustrate the difficulty which I have felt and still feel as to the meaning of the expression which I have quoted. Along with that case I would refer to another English case, *Malinder* v. *Moores*, [1912] 2 K.B. 124. Whether the views of the learned Judges in these two cases are wholly reconcileable is a point upon which I do not express any opinion. The construction of the expression to which I have referred will have to be carefully considered when it arises for decision.

The Court answered the question of law in the affirmative.

Counsel for Appellants—The Lord Advocate (Munro, K.C.)—Carmont. Agents—W. & J. Burness, W.S.

Counsel for Respondent—Moncrieff, K.C. —Fenton. Agents—Simpson & Marwick, W.S.

COURT OF TEINDS.

Friday, October 30.

(Before the Lord President, Lord Johnston, Lord Mackenzie, and Lord Hunter.)

BRYDEN, PETITIONER.

Church—Glebe—Revenue—Power to Feu—Increment Value Duty a Permanent Burden on Glebe—Glebe Lands (Scotland) Act 1866 (29 *and* 30 *Vict. cap.* 71), *secs.* 18 *and* 19—*Finance* (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8).

The Glebe Lands (Scotland) Act 1866 provides (sec. 18) that on the Court granting an application to feu a glebe, the amount of the expenses incidental thereto shall be decerned as "a permanent burden upon the glebe"; and (sec. 19) that any casualties of superiority which shall become payable under any feu-charter to be granted shall be accumulated as a sinking fund for the purpose of paying off the said burden.

In a petition for authority to feu a glebe, the petitioner sought to have the amount of any increment duty which might become exigible under the Finance (1909-10) Act 1910 in consequence of the feuing decerned to be a permanent burden on the glebe. The Court *granted* the prayer of the petition.

This was a petition by the Reverend James Henderson Bryden, B.D., minister of the parish of Markinch, for authority to feu the glebe, and, *inter alia*, to decern the amount of the increment value duty, if any, which might be payable as the result of the feuing of the glebe, a permanent burden on the said glebe in terms of the Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71).

Argued for the minister—If glebes which came to be feued were liable for increment value duty in terms of the Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8) the sum involved might be considerable. Such duty was a capital sum payable once and for all, and it seemed fair that it should form a burden on the glebe, to be gradually paid off in the same way as hitherto other incidental expenses had been dealt with in terms of the Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71), sections 18 and 19. A minister's tenure of a glebe was precarious, and unless this power were granted, for which it was true there was no statutory authority, the minister for the time being, as the granter of the feu-charter, would make himself liable for payment of the duty, although his tenure might cease at any moment.

The Court, by interlocutor dated 30th October 1914, authorised the petitioner to feu the glebe, and further authorised "the amount of the increment value duty, if any, which may be payable as a result of the feuing of the said glebe or any parts thereof, as the same shall be ascertained, to form a permanent burden on the said glebe. . . ."

Counsel for the Minister—Milne. Agents —Kinmont & Maxwell, W.S.

COURT OF SESSION.

Friday, October 30.

SECOND DIVISION.

[Scottish Land Court.

STORMONTH DARLING *v.* YOUNG.

Landlord and Tenant—Small Holdings—"Holding"—"Wholly Agricultural or Wholly Pastoral, or in Part Agricultural and as to the Residue Pastoral"—"Holding or Building Let to . . . Tradesman Placed in the District by the Landlord for the Benefit of the Neighbourhood"—Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. cap.* 29), *sec.* 33—*Agricultural Holdings (Scotland) Act* 1908 (8 *Edw. VII, cap.* 64), *sec.* 35 (1)—*Small Landholders (Scotland) Act* 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 26 (3) (*f*), (7), *and* (10).

A landlord let to a tenant on yearly lease, as one subject and for payment