In regard to the other questions I have seen your Lordship's opinion. I concur in it, and have nothing to add.

The LORD JUSTICE-CLERK was absent.

The Court answered the first question in the negative and the third question branch (*a*) in the negative, and branch (*b*) in the affirmative.

Counsel for the First and Fourth Parties — J. A. Christie. Agents — Steedman, Ramage & Co., W.S.

Counsel for the Second Party—Macphail, K.C.—R. C. Henderson. Agent—Jas. Scott, S.S.C.

Counsel for the Fifth and Sixth Parties—W. T. Watson. Agents—Guild & Guild, W.S.

Counsel for the Third Parties—MacRobert. Agent—A. C. D. Vert, S.S.C.

Wednesday, June 4.

SECOND DIVISION

[Sheriff Court at Wigtown.

THOMSON *v.* EARL OF GALLOWAY.

Landlord and Tenant — Compensation — Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 9

A tenant claimed compensation from his landlord under section 9 of the Agricultural Holdings (Scotland) Act 1908 in respect of damage done to his crops by winged game which came over from a neighbouring proprietor's land during the close season. *Held* that under the Act the landlord was liable to pay compensation to the tenant for the damage thus done.

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), enacts—section 9—"(1) Where a tenant of a holding has sustained damage to his crops from game, the right to kill and take which is vested neither in him nor in anyone claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall . . . be entitled to compensation from his landlord for such damage . . ; (2) The amount of compensation payable under this section shall, in default of agreement made after the damage has been suffered, be determined by arbitration . . ; (4) Where the right to kill and take the game is vested in some person other than the landlord, the landlord shall be entitled to be indemnified by such other person against all claims for compensation under this section."

In an arbitration arising out of a claim for compensation lodged by William Thomson, tenant of the farm of Polwhilly, Wigtownshire, against the landlord, the Earl of Galloway, in respect of damage done to his crops by winged game coming over from a neighbouring proprietor's land, the arbiter, who had been appointed by the Board of Agriculture, proposed certain findings, and the landlord asked the arbiter to state a case for the opinion of the Court.

The Case stated—"2. By lease herewith produced, dated the 2nd and 5th days of March 1900, entered into between the said Earl of Galloway and John Thomson and William Thomson, his son, there was let to the said John Thomson and William Thomson all and whole the lands and farm of Polwhilly and Inks (excluding certain mosses and moorland) lying in the parish of Penninghame and county of Wigtown, and that for the space of nineteen years from and after the term of Whitsunday 1900, but with a break in favour of either the proprietor or tenants at the term of Whitsunday 1907. Under the said lease there is reserved to the proprietor, the said Earl of Galloway, the game on the said farm and the fish in the river and streams, with the exclusive privilege to the proprietor, and such persons as may be authorised by him, of shooting, sporting, and fishing, subject to the tenant's rights under the Ground Game Act 1880. The rent stipulated under the lease was £180. 3. On 11th August 1918 the said William Thomson, now the surviving tenant, lodged a claim under section 9 of the said Act against the said proprietor for compensation in respect of damage sustained by him to his crops on said farm from game, the right to kill and take which is vested neither in him nor in any one claiming under him other than the landlord, and which he has not permission in writing to kill. The said claim, which is produced herewith, amounted to £110. 4. The arbiter accepted his appointment, inspected the holding in presence of the parties or their representatives, and on 31st October 1918 heard proof and parties' arguments thereon. On 8th November 1918 the arbiter issued proposed findings, under which he estimated the damage to the tenant's crop by winged game to be £84, and proposed to find the proprietor liable therefor. 5. The arbiter finds the following *facts* established by the proof—(1) that due notice in terms of the said Act was given by the tenant to the landlord of the damage being done, and reasonable opportunity given to the landlord to inspect the damage, and that due notice of the tenant's claim for compensation for said damage was timeously given to the landlord; (2) that substantial damage was done by winged game, the right to kill and take which was not vested in the tenant, and which he had not permission in writing to kill; (3) that the game principally came upon the said farm from a neighbouring proprietor's land; and (4) that the damage was done almost entirely during the spring months, and during the close season for killing such game, when the crop was brairding. 6. The tenant was prepared to accept the arbiter's proposed findings, except that he lodged representations on the question of expenses of the arbitration. The landlord, however, maintains in law that the proprietor cannot be held liable under the said Act for damage done during the close season by game coming from a neighbouring proprietor's land. The tenant, on the other hand, maintains that the landlord's liability to his tenant

under the Act is absolute, and does not depend on any such question. The proprietor has now asked the arbiter to state a case for the opinion of the Court on the point."

The following *question of law* was submitted for the opinion of the Court—"Is a proprietor liable to his tenant under section 9 of the said Act for damage done to the tenant's crops by game coming from a neighbouring proprietor's land, and during the close season for killing such game?"

On 6th March 1919 the Sheriff-Substitute (WATSON) answered the question of law in the affirmative.

Note—"The question relates to the construction of section 9 of the Agricultural Holdings Act 1908, the main provision of which is, that where the tenant of a holding has sustained damage to his crops from game, he shall be entitled to compensation from his landlord for such damage (if it exceeds 1s. per acre), provided neither he nor anyone claiming under him had right or written permission to kill such game. The section further enacts that any agreement to the contrary or in limitation of such compensation shall be void. It was argued however, on behalf of the Earl of Galloway, that the section should be construed as if it restricted the right of compensation given to the tenant by two further limitations not expressed in the enactment, viz.—that if the damage done to the crops was caused (1) by game coming not from the land belonging to the tenant's landlord, but from a neighbouring proprietor's land, or (2) by game coming during close time, no compensation should be due by the landlord. I am unable to imagine any ground which could justify a court of law in interpolating into a statutory enactment two such important restrictions which are altogether absent from its terms. It cannot be suggested that these restrictions were omitted by the Legislature *per incuriam*, and even if that were the case the Court has no authority to improve a statute. The objects of the Act were to benefit the tenant and to protect the crops in the general interest of agriculture."

The landlord appealed, and argued—The appellant ought not to be found liable in compensation as most of the damage to the tenant's crops had been caused by a neighbouring proprietor's game. There being no duty on the part of the appellant to protect his neighbours from damage done by game coming from his own estate, the appellant could not operate relief from his neighbours when the position was reversed. It had been thus held by Lord Ardwall when Sheriff of Perth in a case of *Taylor* v. *Fraser*, heard on 12th April 1904 (unreported), and accordingly the decision of the Sheriff-Substitute was inequitable. The damage had, moreover, been inflicted during the close season when the game could not have been shot. It was only when the damage was due to an excessive stock of game, which the owner failed to keep within a reasonable limit, that the Act provided for compensation being given. Here there had been no allegation of such an excessive stock.

Argued for the respondent—The terms of the Act were perfectly plain and provided for compensation being paid in the event of damage being done to the crops by game. The Act did not differentiate between close and open seasons. Had that been the intention of the Act, it would have expressly said so. The Act left no room for the consideration of arguments based on equity. Counsel cited Rankine on Leases, p. 96, notes.

LORD JUSTICE-CLERK—It may be that the determination of the arbiter and the learned Sheriff-Substitute in this matter imports a hardship upon the proprietor, although I am not quite clear that that necessarily is so. But the question we have to consider is whether on a proper construction of the Act the arbiter did right in awarding compensation and the Sheriff-Substitute did right in answering the question as he did.

The point is a very sharp one, but I do not see any sufficient reason to warrant us in interfering with the conclusions arrived at. I think the answer to the question ought to be that given by the Sheriff-Substitute, namely, the affirmative.

It does occur to me that the landlord, if he is anxious to avoid liability for such claims, apart from other courses open to him, can easily get people to scare the game away during the close season. But, however that may be, I do not think that the construction of the Act leaves it open to us to differ from the conclusion arrived at by the Sheriff-Substitute, whose views I approve of and adopt.

LORD DUNDAS—I agree. Our duty is to construe and give effect to section 9 of the Act. It seems to me that the contention of the appellant—the landlord—involves reading into that section words which are not there. I do not think we are entitled to do that. The question, to my thinking, is one entirely of legal construction, and not of equity. Accordingly I agree with your Lordship that the affirmative answer given to the question by the learned Sheriff-Substitute is correct, and that this appeal must fail.

LORD SALVESEN—I quite see the difficulty involved in reading an implication into the Act, but for my own part I think such implication ought to be read in here in view of what was pointed out by Mr Fenton, viz., that the liability of the landlord can be elided by giving his tenant permission to shoot game, and yet the tenant will not be then protected against the very injury of which he complains here.

It seems to me that what the Legislature had in view was that the person to be made responsible for the injury to the tenant was the person who had, either by omission or commission, created the cause of the injury.

In this particular case I cannot see how consistently with elementary justice the landlord can be held responsible. The case is that the winged game, which we are told were pheasants, came during close time from the lands of a neighbouring proprietor. Now we were referred to a decision of a

learned Sheriff that the neighbouring proprietor is not liable for damage done by game bred on his lands to crops growing on lands which he does not own, and that he has no duty towards his neighbours in the matter of keeping only a reasonable stock of game upon his lands. It would, therefore, seem to follow that the landlord, who is to be made responsible in this case, would have no right of relief against the person who was the real author of the mischief.

If it is possible to read an Act in a sense which is consistent with elementary justice I am always in favour of doing so. I cannot attribute to the Legislature an intention to violate those principles. I think it is possible in this case thus to read the Act in view of the fact that by the landlord giving permission to the tenant he can evade his own responsibility, although the tenant would be in no better case than he was under the circumstances that are disclosed here. In short, the tenant would be as helpless to prevent the injury to his crops by birds coming from neighbouring land as the landlord in this case was. The two things must be co-existent, namely, that the damage is done in close time and done by birds coming from neighbouring proprietors, because if the damage were being done during the shooting season the landlord would have a right, and in a question with his tenant a duty, to destroy the game so as to prevent them doing injury to his tenant's crops. When, however, the birds come on the land only in close time, when neither the landlord nor his tenant can shoot them, it seems to me that it is inequitable that the former should be held responsible for damage which he could not have prevented. It is beside the point to suggest that he might have employed people to scare the game away, because as I read the case the tenant only intimated his claim after the damage had been completely effected.

LORD GUTHRIE—I agree with your Lordship in the chair. It is not at all singular that a statute expressed in general terms should do injustice in individual cases; individuals often suffer in the interests of the majority. We are told, and I think it is very probable, that this very question was considered by the Legislature. But I do not go on that. Even although the matter was not in view of Parliament, language has been used which is so general that there is no room for construction.

Looking to the situation as a whole, and to what is practical in the way of business, I do not think that the tenant's contention is at all inconsistent with elementary justice, although as I have said an individual case may be figured where the result would be inequitable.

The Court dismissed the appeal.

Counsel for the Appellant — Fenton. Agents—Cowan & Stewart, W.S.

Counsel for the Respondent — Scott. Agents—Carmichael & Miller, W.S.

Thursday, May 22.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

ROBERTSON AND ANOTHER *v.* TAYLOR AND OTHERS.

Public-House—Licensing Authorities—Procedure—Renewal of Certificate—Failure to Hear Applicant—Licensing (Scotland) Act 1903 (3 *Edw. VII, cap.* 25), *sec.* 11.

The Licensing (Scotland) Act 1903 enacts—Section 11—". . . It shall not be competent to refuse the renewal of any certificate without hearing the party in support of the application for renewal in open court, if such party shall think fit to attend, and any certificate granted otherwise than at such meetings shall be void and of no effect."

A public-house trust company ran several public-houses. Its constitution provided that its profit, beyond a certain dividend, should be applied by trustees to such objects of public utility or well-being, either local or general, as the trustees should determine. It brought an action for declarator that the licensing court was not entitled to impose as a condition-precedent to consideration of an application for renewal of a certificate for one of the houses on its merits, that the company should produce balance sheets showing how the surplus profits from that house were applied, and that it was *ultra vires* to refuse to renew the certificate on the sole ground of the non-production of such balance sheets. In the licensing court the bench asked for production of the balance sheets showing how the profits of the house in question were applied. The company maintained that it could not competently be asked to disclose how the surplus profits of any particular house were applied, and refused to furnish the information demanded. In addressing the bench the company's representative did not otherwise support the application. The licensing court refused the application, and the appeal court sustained their decision. *Held* (*rev.* Lord Ormidale, Ordinary) that, on the evidence, (1) the company had been heard as required by section 11 of the Act of 1903, and (2) the production of the accounts had been asked and their non-production considered as bearing on public feeling in the district with regard to there being a licensed house there; and the defenders *assoilzied.*

William Robertson, writer, Dumbarton, and The Public-House Trust (Dumbarton County District), Limited, *pursuers*, brought an action against (1) John Taylor and others, the Licensing Court of the Burgh of Clydebank, and (2) Henry Melville Napier and others, the Licensing Appeal Court of the Burgh of Clydebank, *defenders*, concluding for (*firstly*) reduction of a deliverance or deliverances of the defenders first called,