Tuesday, January 21.

SECOND DIVISION.

[Scottish Land Court.

CAMPBELL *v.* SINCLAIR.

(*Vide supra* at p. 3.)

Landlord and Tenant — Process — Small Holdings—Stated Case—Competency of Evidence—Remit to Land Court—Small Landholders (*Scotland*) *Act* 1911 (1 *and* 2 *Geo. V, cap.* 49).

In an application under the Small Landholders (Scotland) Act 1911 the Land Court disallowed evidence which it was proposed to lead on behalf of the landlord as to a practice of sub-letting on the part of the landholder, and which it was claimed affected his status as a small landholder under the Act. *Held* that the evidence was competent, and remit made to the Land Court to receive the evidence.

Observations per curiam on the duty of the Land Court in stating cases for appeal.

Sir Archibald Spencer Lindsey Campbell, Bart., *appellant*, being dissatisfied with an order of the Scottish Land Court in an application by Andrew Sinclair, *respondent*, craving the Court to find and declare that the respondent was and had been a landholder from 1st April 1912 as an existing crofter or otherwise as a yearly tenant in a holding of which the appellant was proprietor, requested the Land Court to state a Case.

The Case stated, *inter alia*—"3. The subjects held and possessed by the said Andrew Sinclair from the proprietor at the commencement of the Act of 1911 (1st April 1912) at the said rent of £3, 7s. 6d. consisted of (1) a house and offices connected therewith, and the sites thereof surrounded by a garden, (2) agricultural land extending to a quarter of an acre situated at a distance of about a hundred yards from the house on the other side of the public road leading from Lochgilphead to Inverary. . . . 6. The proprietor maintains that the said Order of 16th October 1916 is erroneous in point of law, on the ground that the subjects held by the said Andrew Sinclair are not a holding within the meaning of the Small Landholders (Scotland) Act 1911, and that in respect that the garden and small plot of ground held by the applicant form merely a pertinent to the house in which he resides, and therefore that the whole subjects occupied by him do not constitute a holding within the meaning of the definition in the Agricultural Holdings (Scotland) Act 1908."

In the course of the hearing in the Second Division counsel for the defender stated that questions which it was desired to put to the applicant as to an alleged practice on his part of sub-letting his house, and which affected his status as a small landholder under the Small Landholders (Scotland) Act 1911, had been disallowed by the Land Court, and he craved that a remit should be made to the Land Court to take evidence on the point.

A minute stating the terms of the proposed remit was lodged in process by the defender and answers thereto were lodged by the respondent.

Argued for the defender—If the Land Court refused to state a case the Court of Session could compel them to do so, and if they omitted certain questions while stating others the Court of Session could make a remit. This was an inherent power of the Court of Session—*Rogerson* v. *Chilston*, 1917 S.C. 453, *per* Lord Skerrington at p. 459, 54 S.L.R. 366; *M'Neill* v. *Duke of Hamilton's Trustees*, 1918 S.C. 221, at p. 231, and *per* the Lord President at p. 237, Lord Mackenzie at p. 245, and Lord Skerrington at p. 247, 55 S.L.R. 329; Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), section 25 (2). The evidence as to sub-letting was competent and should have been allowed, and a remit should be ordered.

Argued for the applicant—In the abstract a remit might be competent, but there was nothing in the circumstances of the present case to justify a remit. The defender was barred by his actings from raising the question now. He should have raised it as a question of law in the Case. The minute should have contained a statement of facts which if inserted in the Case would have led to a conclusion different from that reached by the Land Court—*Walker* v. *Murray*, 1911 S.C. 825, 48 S.L.R. 575. That was not the case, and the remit should not be allowed.

Lord Justice-Clerk—This case, along with the minute and answers now before us, raises a point of some nicety. It was complained by the appellant that evidence as to the sub-letting of the house and as to the amount of rent derived therefrom, which it is quite plain from the statements now made the appellant desired to lead before the Land Court, was excluded; and while in the case as presented to us no question was raised as to whether that exclusion was right in point of law or not, it is manifest from the statements made that the appellant was prepared to lead evidence and desired to lead evidence. He asked the applicant questions on the subject, but these were disallowed, it being stated that the Court informed the applicant that he need not answer any questions with reference to the revenue which he received from the letting of the house. Accordingly that line of evidence was closed altogether. From that time onwards the appellant was not allowed to cross-examine the applicant on this point, and consequently he was precluded from leading independent evidence on his own behalf.

I agree that it would have been a great deal better if in the revisal of the Case the appellant had stated a specific question such as he now proposes in the minute which he has put before us, and if further cases of this kind are raised it should be noted that the proper course for the person objecting to the exclusion of evidence or to the inclusion of evidence is to ask that a specific question (on the point) should be put in the Case as submitted to the court of appeal. On the other hand, the final statement of

the terms of the Case and of the questions to be submitted lie with the Land Court, and in that view, which I think is the correct view, I think the answer to the question in this case may depend upon the findings which the Land Court may make on this question of fact, viz., was there sub-letting in the relevant years, and, if so, what was the amount of the rent derived therefrom?

We have had the question of relevancy argued to some extent. I do not think it has been fully argued, at least not sufficiently argued to enable the Court to give a final judgment upon it, and I think the question is capable of further argument. I am of opinion that the facts as to the sub-letting of the house and the rent derived therefrom may have a material bearing upon the answer to the question presented to us in the Case. Therefore, if it be competent, I am of opinion that a remit should be made to the Land Court to take evidence on this subject, and to state the facts which the Land Court hold proved upon the evidence adduced on both sides, and that a statement of fact to that effect should be inserted in the Case. It is quite plain that if we allow further evidence we are not the Judges as to what that evidence may establish, that being a duty entirely left to the Land Court. After the Land Court have found the facts which they think proved the case will then be ready for further discussion and consideration upon its merits.

On the question of the competency of this remit I entertain no doubt. By the statute an appeal is allowed only upon points of law, but if an appellant desires to raise a point of law and is not allowed to do so, and if the point of law is a proper subject of appeal, it is quite plain in my judgment that the point should not be excluded from the questions of law submitted to us, and as the facts relating to the point of law may be material to the determination of the question we ought to have before us these facts as found proved by the Land Court. We cannot, however, accept the proposals which are made in Mr Watson's minute, and I suggest to your Lordships that the proper interlocutor would be to find that the evidence rejected should have been allowed, and to remit to the Land Court to take evidence as to the subletting of the house and the rents derived from such subletting, and to state what are the facts which the Land Court hold proved by such evidence.

LORD DUNDAS—I concur.

LORD SALVESEN—I agree with your Lordship on all points. The question of competency is, I think, foreclosed by decision. If the Land Court has finally to decide what questions of law are to be submitted to this Court it is obvious that the Land Court might evade the duty of stating the question of law which the appellant desires to raise. No doubt the adjustment of the Case is left in the hands of the Land Court, but they must state the Case with reference to the question of law which the appellant desires to bring under the notice of the court of review.

With regard to the exclusion of the evidence in question, we are not at this moment deciding whether the decision of the Land Court may not have been right. All that we are deciding is that the evidence should have been allowed in order that the question of law which the appellant desired to raise might be duly put before the Court. He may be wrong upon that question after the facts are ascertained, but I must say that I cannot hold that the Land Court were entitled to say *ab ante* that however the questions as to the letting of the house were answered, and however much the appellant derived by way of rent from the letting of his house, these facts could have no bearing upon his application. It may be that if Mr Christie is well founded in his ultimate contention that the applicant only comes under the provisions of the Crofters Act in so far as these have been embodied in the Small Landholders Act, then subletting for some purposes during the summer months may not constitute a contravention of the Crofters Act. But until we have ascertained the fact whether there was subletting there can be no question upon which the Court can pronounce an opinion.

I agree with your Lordship that we ought to remit the case for further evidence. It would be futile to give effect to the literal crave of the minuter, because that would only result in the case coming back here again, and the course which your Lordship suggests seems to me to be the only practical course in the circumstances. Let us get this evidence, and then the appellant will be able to raise the question of law on which he desires our decision.

LORD GUTHRIE—I agree. Mr Christie scarcely disputed that if the Chairman of the Land Court (Lord Kennedy) refused to allow any questions to be put in reference to the letting of the house he was not justified in so refusing. He put it that the refusal merely applied to the amount which was got from the letting of the house. I think it is quite plain, looking to the view of the law which the Chairman then held, that he would have disallowed any question as to the letting of the house.

Mr Christie's only plausible point was that the appellant acquiesced in the course taken by the Chairman, and that he had abandoned his case under that head. I cannot so read the averments, and I think there is no course open to us except that which your Lordship has proposed.

The Court found that the evidence rejected by the Land Court should have been allowed, and remitted to the Land Court to take evidence as to the subletting of the house occupied by the applicant from 1896 to 1912, and the rents derived from such subletting, and to state what were the facts which the Land Court held proved by such evidence.

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