struction. It is clearly proved that there was delay on the 27th of March and 25th July 1883 in opening the bridge, attributable, as the Lord Ordinary thinks, to the watchman being off his post, or of his having been asleep. The delay on the 13th August is admitted, but an excuse is tendered for it, in the fact that a wheel connected with the mechanism by which the bridge is opened broke in the working. The Lord Ordinary thinks this is proved to have been the cause of delay on that day, but it affords no defence in law. It is the defenders' business to have proper machinary for their works; and if in consequence of a defect therein damage has been caused to an innocent third party, the latter cannot be made to bear the loss.

"The sum found due is only £14. The sum concluded for is £50; but there was no tender, and the defence set up was an absolute denial of all liability. The action concluding for £50 was competent in the Supreme Court; and as there was no tender, the pursuer must get his expenses."

The defenders reclaimed, and argued—(1) The Lord Ordinary was wrong on the merits. (2) The amount of damage sustained by the pursuer was capable of being ascertained from his own books, which he had produced at the proof, and amounted to under £12. It was incompetent to bring an action for that amount in the Court of Session. He ought to have gone to the Small Debt Court. He was simply endeavouring to evade the Small Debt Act. Knowing in his own mind that his action was in substance one for £12, he concluded for £50, and by so doing endeavoured to sue in the higher Court.

The pursuer replied—The question of expenses was one largely in the discretion of the Lord Ordinary, and the Court were slow to interfere with that discretion unless very special cause were shown. The reason the case was brought to the Court of Session was that it raised a question of great importance as to the railway company's liability for latent defects in their engine on the bridge. Besides, the action was competently raised there, the conclusion being for a sum of £50.

At advising—

Lord Justice-Clerk—I think your Lordships are all agreed that this is a case which should never have come here. It is said an important question is raised in it as to the general liability of persons in the position of the defenders for a latent defect in the mechanism of their machinery. In so far as that ground of judgment is concerned, although the evidence is contradictory, I see no reason to alter the decision of the Lord Ordinary. But the amount at stake in the case is hardly above the Small Debt Court limit, and that a case for so small an amount should run the gauntlet of all the stages in this Court is, I think, contrary to the spirit of the Act; and I am so far from thinking this view a denial of justice that my hope is that it will be seen to be so consistent with justice that we shall not have to give expression again to it in a similar case.

Lord Young—That is my opinion also. There is no case made to interfere with the judgment of the Lord Ordinary. The tug was detained, and the owner must be compensated; and I agree further that no case is made to interfere with the amount found due to him by the Lord Ordinary, except to the extent of £2, which Mr MacWatt admitted was erroneously awarded by the Lord Ordinary, and that reduces the amount to £12. Then the question is one of expense. I quite sympathise with Mr M'Kechnie's argument. We may well give expenses here, notwithstanding the sum at stake is small, if the question involves principles worthy of the consideration of the Court, but I see no such reason here. I agree with your Lordship that the case ought never to have been brought here, but in the Small Debt Court, for I proceed on the assumption that the pursuer, knowing that his damage only amounted to £12, came here stating that it amounted to £50. We might have altered the interlocutor to the effect of giving the pursuer his expenses at the Small Debt rate, and then as the defender, on the assumption I am now making, ought not to have been brought into the Court of Session, he, although partially unsuccessful, would be entitled to set off the excess of his costs in the more expensive Court. That is, perhaps, the logical result, but I think justice will be done by simply affirming the interlocutor of the Lord Ordinary, with the qualification of reducing the damages by £2 and awarding no expenses on either side.

Lords Craighill and Rutherfurd Clark concurred.

The Court pronounced this interlocutor—

"Alter the Lord Ordinary's interlocutor in so far as it finds that the pursuer has suffered loss and damage to the extent of £14, and decerns therefor, and finds him entitled to expenses: Find that he has sustained loss and damage to the amount of £12, and ordain the defenders to make payment to him of that sum: *Quoad ultra* adhere to said interlocutor; find no expenses due by either party to the other; and decern."

Counsel for Pursuer — M'Kechnie — MacWatt. Agent—James Wilson, Solicitor.

Counsel for Defender — D.-F. Macdonald, Q.C.—Ure. Agents—Maconochie & Hare, W.S.

Saturday, December 6.

FIRST DIVISION.

[Sheriff of Inverness-shire.

LORD MACDONALD *v* MACLEOD.

Lease—Removing Notice—A.S., 14th Dec. 1756 *—Sheriff Courts (Scotland) Act* 1853 (16 *and* 17 *Vict. cap.* 80)*—Agricultural Holdings (Scotland) Act* 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 28.

Held that the 28th section of the Agricultural Holdings (Scotland) Act 1883 applied to a yearly lease expiring at Whitsunday 1884.

By section 28 of the Agricultural Holdings (Scotland) Act 1883 it is enacted—"Notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention

to bring the tenancy to an end: (*a*) In the case of leases for three years and upwards, not less than one year nor more than two years before the termination of the lease; (*b*) In the case of leases from year to year, or for any other period less than three years, not less than six months before the termination of the lease. Failing such notice by either party, the lease shall be held to be renewed by tacit relocation for another year, and thereafter from year to year." "Notice by the landlord to the tenant under this section shall be given in the form and manner prescribed by the Sheriff Courts (Scotland) Act 1853, and shall come in place of the notice required by the said Act."

The Act received the royal assent on 25th August 1883; but by sec. 34 it was provided—"This Act shall come into force on the first day of January One thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act."

Section 40 of the Act provides:—"Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him in virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a lease or other contract, or of any improvements, deteriorations, away-going crops, fixtures, tax, rate, teind, rent, or other thing."

The interpretation clause of the Act (sec. 42) provides:—"A tenancy from year to year under a lease current at the commencement of this Act shall for the purposes of this Act be deemed to continue to be a tenancy under a lease current at the commencement of this Act until the first day after the commencement of this Act on which either the landlord or tenant of such tenancy could, the one by giving notice to the other, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act."

On 28th March 1884, Lord Macdonald, residing at Armadale Lodge, Portree, presented a petition in the Sheriff Court of Inverness, Elgin, and Nairn, at Portree, to have Neil Macleod ordained to remove from the farm, lands, and grazings at Breakish Moss, in the parish of Strath and county of Inverness, possessed by him under the pursuer, and that at the term of Whitsunday 1884 as regarded the houses and offices, and at the separation of the crop from the ground as regarded the arable lands under crop.

It was admitted that the defender was a yearly tenant, his tenancy being from Whitsunday to Whitsunday.

The action was founded on the Act of Sederunt 14th December 1756, which provides:—"Where a tenant hath not obliged himself to remove without warning, in such a case it shall be lawful to the heritor, or other setter of the tack, in his option, either to use the order prescribed by the Act of Parliament made in the year 1555, entituled 'Act anent the Warning of Tenants,' and thereupon pursue a warning and ejection, or to bring his action of removing against the tenant before the Judge Ordinary, and such action being called before the Judge Ordinary, at least forty days before the term of Whitsunday, shall be held as equal to a warning executed in terms of the foresaid Act; and the Judge shall thereupon proceed to determine in the removing in terms of that Act, in the same manner as if a warning had been executed in terms of the foresaid Act of Parliament;" Also on the Sheriff Courts (Scotland) Act 1853 (16 and 17 Vict. cap. 80), section 29 of which provides that "it shall be competent to raise a summons of removing at any time, provided there be an interval of at least forty days between the date of the execution of the summons and the term of removal, or where there is a separate ish as regards land and houses, or otherwise, between the date of the execution of the summons and the ish which is first in date."

The defence was that the notice given was not that required by section 28 of the Agricultural Holdings (Scotland) Act 1883 above quoted, and was not a sufficient legal notice entitling the pursuer to decree of removal against the defender as at the term of Whitsunday 1884.

The defender pleaded—"(6) The pursuer not having given the defender notice to remove, in terms of the Act of Parliament above quoted, the defender is entitled to absolvitor, with expenses."

The Sheriff-Substitute (SPIERS) on 19th June 1884 ordained the defender to find caution for violent profits, and on 17th July, "in respect the defender has not found caution for violent profits, in terms of the appointment upon him, and of the Act of Sederunt, decerns against him in the removing as prayed for, in default."

On 29th September 1884 the Sheriff (IVORY) sustained the defender's sixth plea-in-law, and assoilzied him.

"*Note.*—The pursuer admits that six months' notice was not given to the defender in terms of the Act, but maintains that the provisions of the 28th section do not apply to the present case, as the Act only came into force on 1st January 1884, and after that date six months' notice prior to Whitsunday could not be given.

"There seems, however, to be no good reason for holding that the six months' notice must be given after 1st January 1884, the date when the Act came into force. All that the Act requires is that the notice should be given not less than six months before the termination of the lease. The Act received the royal assent on 25th August 1883, and after that date the notice required by the statute could easily have been given to the defender.

"But even assuming it to be necessary that the six months' notice should be given after the Act came into force, and that such notice could not be given to the defender before Whitsunday, the Sheriff is of opinion that the provisions of the 28th section apply to the present case. These provisions specially refer to the case of leases from year to year, the greater number of which expire at Whitsunday, and the Act expressly provides that in the case of such leases the tenancy shall not come to an end unless six months' notice has been given. The Act makes no exception in the case of yearly leases expiring at Whitsunday 1884, and the Sheriff cannot, in the face of the clear and distinct provisions of the 28th section, requiring six months' notice to be given in the case of all yearly leases, hold that the Act does not apply to leases expiring at that term.

"On these grounds the Sheriff is of opinion that as six months' notice prior to Whitsunday 1884 was not given to the defender in terms of the Act, the pursuer is not entitled to remove the defender from the lands in question at that term.

"Further, it appears to the Sheriff that the defender was not bound to find caution for violent profits. It was admitted from the first that six months' notice was not given to him, and that he was not in arrear of rent. In these circumstances the Sheriff thinks that the defender instantly verified a defence excluding the action, and was therefore under no obligation to find caution."

The pursuer appealed, and argued—The effect of the construction put upon section 28 by the Sheriff would be to constitute a compulsory renewal for a year against landlord and tenant alike of all leases terminating at Whitsunday 1884. That result was so startling that it could not be supposed to be the intention of the Legislature, and, moreover, it was quite inconsistent with the saving clause of the statute, viz., sec. 40. It was necessary to construe sec. 28 with reference to the fact that the Act was not to come "into force" until 1st January 1884, and that in this case it was impossible to give six months' notice after that date before Whitsunday 1884. The Legislature could not have intended that a lease was to be renewed by "tacit relocation," failing a notice which could not be given. The statute should be construed as a whole, so as to give a consistent meaning to all its provisions, not merely so as to give sec. 28 a strictly literal interpretation. The interpretation clause left the argument as it stood on sec 28, or otherwise there would be in what was merely an interpretation clause a substantial enactment. The words "the one by giving notice to the other" might be held to refer to a notice under the old law. There was no obligation on the lieges to consider a statute before the date specified in the statute itself as the date when it should come into force, and therefore the fortuitous circumstance that there was a period of more than six months between the passing of the Act and the ensuing Whitsunday term did not affect the question. If an action under the old law had been raised prior to 1st January 1884, though within the period of six months, the pursuer would have acquired a right which the supervening statute could not have deprived him of. A notice given before the Act came into force would not have been a notice under the Act. Notice could not be given in the manner prescribed by the Sheriff Courts (Scotland) Act 1853, secs. 30 and 31, because there was here no probative lease or letter of removal. In the case of leases for more than three years, expiring at Whitsunday 1884, notice would require to have been given at Whitsunday 1883, before the Act was passed. If there was a doubt about the meaning of the Act the former law must be held to subsist, as the presumption was against a statute being retrospective or retroactive.

The defender replied—The words of section 28 admitted of no doubt, and as this was so they must receive effect—Ersk. Inst., i. 1, 50. The interpretation clause showed that leases terminating at Whitsunday 1884 were to continue for another year. It was expressly so provided by the English Act, 46 and 47 Vict. cap. 61, secs. 33-61. When the Legislature intended to except existing rights it was done by express enactment, as in the Ground Game Act 1880 (43 and 44 Vict. cap. 47), sec. 5. There was nothing to have prevented the pursuer from giving six months' notice after the passing of the Act.

At advising—

Lord Mure—This is undoubtedly an important question under the Agricultural Holdings Act of 1883, but I cannot say that I have much difficulty in arriving at the same conclusion as the Sheriff. The provision of the 34th section is very distinct, viz., "This Act shall come into force on the first day of January One thousand eight hundred and eighty four, which day is in this Act referred to as the commencement of this Act." That lays down very distinctly the point from which the provisions of the Act are to begin to take effect.

By the other sections of the Act various provisions are made which affect the relative rights of landlord and tenant, as these stood at the date of the Act, and particularly with reference to the termination of leases and the period of notice required before a tenancy can be terminated. On this latter point a very material alteration is made. By the 28th section it is provided—"Notwithstanding the expiration of the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice has been given by either party to the other of his intention to bring the tenancy to an end . . . . (*b*) in the case of leases from year to year, or for any other period less than three years, not less than six months before the termination of the lease. Failing such notice by either party the lease, shall be held to be renewed by tacit relocation for another year, and thereafter from year to year."

The old period of forty days, the term of notice current at the date of the passing of the Act, is thus put an end to, and six months' notice is required in all leases for a year. In this case no notice was given till March, and plainly therefore the period of notice was short of the period of six months required by the Act which had come into force in January. The 28th section of the Act had not been complied with, and I concur with the Sheriff in thinking that there is an imperative provision. There is nothing that I can see to be said against this, and on the short ground I have stated I think we should refuse the appeal.

But it has been argued—and quite properly argued—that in this case it was impossible to give six months' notice under the Act, because the Act was not in force for six months before Whitsunday 1884. But any landlord who raised a summons of removing under the Act of 1853 after August 1883, when the Agricultural Holdings Act received the royal assent, must have seen that a longer period of notice would be required when that Act came into force. There would be nothing to prevent him from using the form of notice contained in Schedule I. of the Act of 1853, but no tenant could be removed after January 1884 unless he had received six months' notice. I find nothing in the Act requiring the notice to be given after the Act has come into force. The provisions of the 28th and 36th sections of the Act were clear, and I can find nothing in any of the other clauses to provide by implication that

the old law continued to regulate the matter until the time arrived when you could find the whole period of notice within the limits of the Act.

Lord Shand—Whether a lease was for a year or for a longer period, the landlord or tenant undoubtedly had power before the Act to terminate it by giving forty days' notice; and undoubtedly also the judgment of the Sheriff finds, that although that right existed up to the time this Act came into force, yet after it did come into force, that right was abrogated, and the periods of notice mentioned in the Act came into play.

It must be conceded that this is a clear interference with existing rights, for whereas before 1st January 1884 landlord and tenant might both rely upon being able to terminate the tenancy on forty days' notice, the Act swept these rights away. I agree that it is not to be presumed that such an interference with existing rights was intended by the Legislature, and if the statute is ambiguous the Court should lean to the interpretation which would support existing rights. But assuming that the language of the statute is in this view to be strictly construed, that construction can only take effect if there is some ambiguity in the language. Now, I am of opinion that there is no ambiguity in the language used.

The question that arises when the tenancy is said to have come to an end is, "Has the notice required by law been given?" If it has not, the lease must be held to be renewed. Now, can the appellant say that such notice has been given? It has not. The argument of the appellant really comes to this, that you must read in a saving clause to the effect that the notice required by this section shall not be required in the case of yearly leases until the Act has been in operation for six months.

Now, it is not unimportant to observe that this is a statute in which the Legislature—deliberately, as we must assume—interferes with existing rights. We find a very clear case of such interference in the 2d section, in the case of compensation for improvements. The provisions of that section, which gave a tenant right to demand compensation for improvements executed before the Act comes into force, directly interfere with existing rights, for the tenant had no right at the date of the Act to demand any such compensation from his landlord. Again, in the 29th section we find certain powers given to the tenant of bequeathing his lease which he did not enjoy before the date of the Act.

Section 40, to which the appellant referred, seems therefore, in view of the provisions of the clauses to which I have referred, rather to militate against his argument. That section provides—"Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person," &c. The question is just this—has the right with which we are dealing been expressly abrogated by this Act? I think it has been.

Some observation has been made on that passage in the Sheriff's note, in which he remarks that the appellant might have saved himself the inconvenience to which he has been put by giving notice in October of last year. The Sheriff does not make that observation by way of interpreting the scope of the statute, but it seems to me to be a just observation. The alleged hardship I do not think is substantial, for if when Whitsunday came the tenant had pleaded, "You must give me six months' notice after the statute has come into operation, *i.e.*, six months' notice under the Act," he would have been well met by the reply, that in point of fact six months' notice had been given, and that he could ask nothing more.

Lord Adam—There is, of course, no doubt that in the case of a yearly lease terminating at Whitsunday 1884 neither landlord nor tenant had time to give six months' notice after the Act had come into effect. The result of that is, that in certain cases the Act makes compulsory a bargain for a new lease for a year. That would appear to be the result of the Act.

Now, that and similar considerations lead one to give very close attention to the clauses of the Act, for that result is a little startling; but it appears to me, after very careful consideration of the various clauses, that the result is undoubtedly what I have stated. The simple question is—has the landlord, in terms of the 28th section, "given written notice of his intention to bring the tenancy to an end not less than six months before the termination of the lease." It is impossible to say that he has. The words of the statute are clear and distinct, and we must give effect to them. As Lord Shand has pointed out, the effect of the appellant's contention is to read in a proviso that the Act shall not apply to cases occurring before it has been six months in force; but I can see no ground for supplying any such proviso.

Again, I see no reason to suppose that notice given before the Act would not have been a valid notice, as it might quite well have been that a notice of forty days given before this Act came into operation would have been sufficient. I see no reason to suppose that it would have been otherwise than perfectly good. Either of these courses would have been open to the landlord so far as I can see, and therefore there is no case of hardship on the landlord.

The Lord President was absent.

Lord Deas was absent.

The Court refused the appeal and affirmed the judgment of the Sheriff.

Counsel for Pursuer and Appellant—Pearson—C. K. Mackenzie. Agents—John Clerk Brodie & Sons, W.S.

Counsel for Defender and Respondent—Strachan—Rhind. Agent—William Officer, S.S.C.