It is clear that that depends upon the number of years which the Commissioners are entitled to take in order to fix an average. If they had taken the recent years only the sum brought out would no doubt have been very small. But they have fixed an average by taking all the years together since the institution of the fund. Having done so, it is not said that they have taken more than the average to which they were entitled. Now, what they did was entirely within their discretion, and accordingly we cannot interfere. As to the fourth objection I entirely agree with your Lordship.

The Court answered the question in the affirmative.

Counsel for First Parties—D.-F. Mackintosh, Q.C.—Dundas. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for Second Parties—Comrie Thomson—Guthrie—MacWatt. Agents—Millar, Robson, & Innes, S.S.C.—Cowan & Dalmahoy, W.S.—Mack & Grant, S.S.C.

Counsel for Third Parties—Darling—Gillespie. Agent—Donald Beith, W.S.

Tuesday, March 16.

FIRST DIVISION.

HALDEN AND OTHERS, PETITIONERS.

Company—Companies Act 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 156—*Expense of Meetings in Reference to a Proposed Reconstruction of the Company.*

Creditors of a company in liquidation obtained an order under section 156 of the Companies Act 1832 for access to the books and papers, the object being to consider as to a proposed reconstruction of the company. The scheme proved abortive. *Held* that the expense of the attempted reconstruction could not be paid by the liquidator out of the funds of the company as part of the expense of the liquidation.

On the 7th January 1886 James Halden and others, creditors of the Scottish Heritable Security Company (Limited), in liquidation, presented a petition under the 156th section of the Companies Act 1862, praying the Court to appoint James Romanes, chartered accountant, Edinburgh, liquidator of the said company, to furnish to the petitioners or their agents a list of the creditors of the company, in order that they might convene a meeting of creditors to consider a proposal for reconstruction of the company, and to ordain the liquidator to give to the petitioners, or to such committee as might be appointed by a meeting of creditors, access to the books and papers of the company, and to find the expenses of the petition, procedure thereon of said meetings, and relative procedure, to be expenses in the liquidation; and to authorise the liquidator to pay said expenses out of the funds in his hands, as said expenses might be taxed by the Auditor of Court.

The petition was intimated and served, and answers were lodged for the liquidator, who expressed his readiness to meet the petitioners' views, subject to the approval of the Court. On 20th January 1886 the Court pronounced this interlocutor:—"The Lords having resumed consideration of the petition, with the answers for the liquidator, reserve the question of expenses craved; *quoad ultra* grant the prayer of the petition, and decern."

The 156th section of the Companies Act 1856 provides that "Where an order has been made for winding-up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with this order of the Court, but not further or otherwise."

The liquidator furnished a list of the creditors of the company, and at a meeting of the creditors held on February 26, 1886, a committee was appointed to meet the committee engaged in the proposed reconstruction of the company, and the liquidator, and to report as to the proposal. The committee so appointed issued a report containing certain recommendations as to the future management and realisation of the company's estate, but recommended that the proposed reconstruction be not approved. This report was approved at the adjourned meeting of the depositors held on 26th March 1886, at which the liquidator was present. At that meeting a motion was made to allow £100 to cover expenses incurred by the reconstruction committee, and £10 as outlays for the committee appointed on 26th February, and there being no counter motion it was agreed to remit these motions to the committee of advice now appointed to settle the matter with the liquidator. The liquidator, although not opposed to the payment of these expenses, was of opinion that he was unable to pay them without the authority of the Court, and accordingly James Halden and certain other creditors of the company presented a note to the Court, in which they craved the Court to find the expenses of the petition and procedure thereon, and of said meetings and relative procedure, to be expenses in the said liquidation; and to authorise the liquidator to pay these expenses out of the funds in his hands as liquidator foresaid, as such expenses might be taxed by the Auditor of Court.

At advising—

Lord President—The original petition here was presented under section 156 of the Companies Act 1862, which empowers the Court to make an order "for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise." Now, that is of course intended to give creditors the means of ascertaining anything they might want to know from the books of the company; but it was certainly not intended to be used for the purpose of enabling creditors to consider whether they should put an

end to the liquidation and take means to reconstruct the company. That is what was done here. The scheme however proved abortive, and was abandoned. The proposal now is that out of the funds in the liquidation shall be paid the expenses of that abortive attempt. I think that is altogether incompetent and out of the question, and I am therefore for refusing the prayer of the note.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

Counsel for Applicants—Jameson — Forsyth Grant. Agents—Ronald & Ritchie, S.S.C.

Wednesday, March 16.

SECOND DIVISION.

[Sheriff of Lanarkshire.

STRANG *v.* STIRLING STUART.

Lease — Landlord and Tenant — Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 7—*Compensation for Unexhausted Improvements—"Determination of Tenancy."*

The Agricultural Holdings Act 1883 provides that a claim for unexhausted improvements must be intimated four months at least before the "determination of the tenancy," which is defined by the Act as "the termination of the lease by effluxion of time or from any other cause." A tenant by agreement with the landlord renounced his lease and undertook to remove from the arable lands and grass at Martinmas 1885 and from the houses at Whitsunday 1886. *Held* that the tenancy did not "determine" till Whitsunday 1886, being the date when all right of possession under the lease ceased, and that a notice of claim under the Act given four months prior thereto was good. *Held* further, that though the renunciation contained no reference to a claim for compensation for unexhausted improvements, the claim was not excluded.

The Agricultural Holdings (Scotland) Act 1883 (47 and 48 Vict. c. 62), sec. 1, provides—"Subject as in this Act mentioned, a tenant who has made on his holding any improvement specified in the schedule hereto, shall, from and after the commencement of this Act, be entitled on quitting his holding at the termination of a tenancy to obtain from the landlord as compensation under this Act for such improvement, such sum as fairly represents the value of the improvement to an incoming tenant." Section 7 provides—"Notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy, he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act." In the interpretation clause (sec. 42) "determination of tenancy" is defined as meaning "the termination of a lease by reason of effluxion of time or from any other cause."

William Strang was tenant of the farm of Parklee on the estate of Castlemilk, belonging to Captain James Stirling Stuart, conform to lease entered into in 1871 between the proprietor and Mrs Janet Rankine or Strang, whereby the farm was let to her for nineteen years from and after the term of Martinmas 1871 as to the arable lands, and Whitsunday thereafter as to the houses and grass. The rent was £125. William Strang had acquired right to the lease by assignation from Mrs Strang, with Captain Stirling Stuart's consent, in December 1883.

By renunciation dated 7th and 9th November 1885, William Sarang bound himself to pay the landlord £88, 19s. 8d. (whereof £25, 5s. 9d. was a balance of rent due at Whitsunday 1885, and £63, 13s. 11d. was the half year's rent due at Martinmas 1885), and also to pay £62, 10s. as the half year's rent due at Whitsunday 1886, before the stock and crop should be removed, and bound himself to remove from the whole subjects at the term of Martinmas 1885 as to the lands and grass, and at the term of Whitsunday 1886 as to the houses. This renunciation was accepted by the landlord Captain Stirling Stuart.

On 14th January 1886 Strange sent to the landlord a notice of claim for the sum of £48, 5s. 9d. in virtue of the Agricultural Holdings (Scotland) Act 1883, for unexhausted improvements, consisting of seeds, manure, and feeding stuffs. The landlord repudiated the claim as (1) not well founded, and (2) not intimated when the renunciation was arranged, and (3) not given timeously, *i.e.*, "four months before the determination of the tenancy," and refused on his part to appoint a referee. Strang raised this action, praying the Court to appoint a competent and impartial person to be a referee for the landlord along with William Fleming, his own nominee, to settle the difference between them as regards the claim.

The defender pleaded—"(1) The pursuer having abandoned any claim he might have for compensation under the Agricultural Holdings (Scotland) Act 1883, the petition is unnecessary, and should be dismissed. (2) The pursuer having failed to give notice of claim in conformity with the provisions of the said Act the petition should be dismissed."

The Sheriff-Substitute (GUTHRIE) pronounced this interlocutor:—"Finds that the pursuer William Strang was tenant of the farm of Parklee, on the estate of Castlemilk, belonging to the defender, conform to lease: Finds that the said lease was terminated by renunciation by the said pursuer, accepted by the defender, annexed thereto, and dated 7th and 9th November 1885, whereby the said pursuer renounced and gave up the said lease for all crops and years thereof yet to run from and after the term of Martinmas 1885 as to the arable lands, and Whitsunday 1886 as to the houses and grass: Finds that on 14th January thereafter the pursuer duly intimated to the defender, and to his factor and commissioner, a claim for compensation for improvements under the Agricultural Holdings (Scotland) Act 1883: Finds that the said claim is not excluded by the foresaid renunciation: Therefore repels the defender's pleas, and in respect that the defender has failed, for seven days after notice from the pursuer, to appoint a referee for settling the amount and mode and time of payment of compensation under the said Act, appoints Allan Kirkwood, Esq., land-agent, Glasgow, to be referee, to act along with the referee appointed by the pursuer in the premises, and decerns.