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

of one rent, a smithy and a dwelling-house, both built and maintained by the proprietor, along with five and a half acres of land near but not actually contiguous to either the house or smithy. The smithy had been built prior to 1863, and had always been used as such, but the tenant was under no obligation to continue it as such, nor to work for the estate, nor were the estate tenantry bound to employ him, and only the slightly larger portion of his custom came from them. An ordinary rent was paid, and it was found that "the value of the smithy to the tenant is less than the dwelling-house and land." In an application by the tenant to the Land Court to fix a first equitable rent, *held* (1) (*rev.* the Land Court), following *Yool* v. *Shepherd* (1914 S.C. 689, 51 S.L.R. 639), that the subjects in question did not comprise a "holding" in the sense of the Agricultural Holdings (Scotland) Act 1908, sec. 35 (1), not being "either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral"; (2) that they were a "holding or building let to . . . any tradesman placed in the district by the landlord for the benefit of the neighbourhood" within the terms of the Crofters Holdings (Scotland) Act 1886, sec. 33; and accordingly (3) that they were excluded from the operation of the Small Landholders (Scotland) Act 1911 by section 26 (3) (f), (7), and (10) thereof.

The Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. cap. 29), sec. 33, enacts—"Nothing in this Act shall apply to any holding or building let to a person during his continuance in any office, appointment, or employment of the landlord, or of any tenant of the landlord, nor to any holding or building let at a nominal rent, or without rent, as a pension for former service, or on account of old age or poverty, nor to any holding or building let to a person during his tenure of any office such as that of minister of religion or schoolmaster, [*or*] to any innkeeper or tradesman placed in the district by the landlord for the benefit of the neighbourhood."

The Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), sec. 35, enacts—"In this Act, unless the context otherwise requires . . . 'holding' means any piece of land held by a tenant which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral. . . . ."

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49), sec. 26, enacts—"(3) A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of— . . . (*f*) Any land that is not a holding within the meaning of the Agricultural Holdings (Scotland) Act 1908. (7) A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of a holding referred to in section 33 of the Act of 1886. . . . (10) A person shall not be subject to the provisions of this Act regarding statutory small tenants who in terms of this section would be disqualified from being an existing yearly tenant or a qualified leaseholder."

This was a Special Case stated by the Scottish Land Court for the opinion of the Second Division of the Court of Session at the request of Patrick Stormonth Darling of Lednathie, residing at Eden Bank, Kelso, *curator bonis* of the Most Honourable Robert Schomberg Kerr, Marquess of Lothian, *appellant*, in an application at the instance of James Young, Mossburnford, Jedburgh, *respondent*, to fix a first equitable rent.

The Case stated—"1. Under the Small Landholders (Scotland) Acts 1886 to 1911 the respondent applied as a statutory small tenant to the Scottish Land Court for an order fixing a first equitable rent to be paid for the holding possessed by him at Mossburnford aforesaid, or, alternatively, to fix a rent for the land alone, and replies thereto were lodged by the appellant.

"2. The respondent was at the commencement of the Small Landholders (Scotland) Act 1911, and is, a tenant from year to year of a blacksmith's shop, dwelling-house, and about 5½ acres of land, which are all let together at a rent of £17, 9s. 6d. The blacksmith's shop was built by the proprietor of the estate prior to 1863, and has always been used as a smithy. The respondent's father Walter Young became tenant of the smithy in 1863. Prior to that year it had been occupied by one Morrison as a smithy. In 1871 a house was built on the opposite side of the road and let to Walter Young. In 1873 about three acres of land were also let to Walter Young. Neither the landlord nor any of the tenants on the estate were under any obligation to come to the smithy or employ Walter Young as a blacksmith. Walter Young was under no obligation to work for the estate or any tenant of the estate. There was no proof that Walter Young was placed in the district by the landlord for the benefit of the neighbourhood. He paid an ordinary rent for the subjects let to him. There were and are two other smithies on the estate, one about two miles and the other three miles distant.

"3. In 1888, on the death of his said father, the respondent, who had previously worked as his father's assistant, succeeded him as tenant of the smithy, house, and land. There was no change made in the terms and conditions of tenancy when he succeeded or since he succeeded, with the exception that additional ground was let to him eight years thereafter. He also paid an ordinary rent for the subjects let to him, was under no obligation to work for the estate or any tenants, nor was the estate nor any tenant bound to come to this smithy or employ him as a blacksmith. Neither orally nor by writing was James Young ever put under any obligation to work as a blacksmith. He might have closed the smithy or put it to some other use. There was no proof that he was placed in the district by the landlord for the benefit of the neighbourhood. In 1896 additional ground of about 2½ acres in extent was let to the applicant, in terms