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

of the following letter by the proprietor's factor:— 'Jedneuk, Jedburgh, 14*th Feby.* 1896.

'Dear Sir—I have now staked off the piece of ground at the upper end of field No. 322 on Ordnance Survey plan for an additional piece of ground for you, the entry to be at Whitsunday 1896; you can, however, have occupation at once. The rent to be at the rate of 30s. (one pound ten shillings) per annum per imp. acre. I think there is 2½ acres of it. This, however, will be correctly ascertained afterwards. The first half-year's rent to be payable at Marts. 1896. The occupation to be from Whits. to Whits., along with the house, shop, and ground already occupied by you. Your signing your name at the foot of this, below mine, will complete the agreement, and on your returning this letter to me I will send you a copy of same.—I am, yours faithfully,

'JOHN CAVERHILL.

'JAMES YOUNG.'

Beyond said letter the respondent has never had any writing setting forth the conditions of his tenancy, and neither of the previous tenants had any written lease.

"4. Both the smithy and the house have throughout been maintained by the proprietor. Since the respondent became tenant he has erected a stable and cart-shed for the working of the land, mainly at his own expense. The value of the smithy to the tenant is less than the value of the dwelling-house and land. While the respondent has always had customers from outside the estate, the slightly larger portion of his custom has usually come from the Lothian estate.

"5. Parties were heard on the application, and proof led on 27th May 1913. The proprietor objected to the competency of the application under section 26 (7) and (10) of the Act of 1911 and section 33 of the Act of 1886, on the ground that the applicant was a tradesman placed in the district by the landlord for the benefit of the neighbourhood. On 14th October 1913 the following final order was pronounced by the Land Court:—

"'*Edinburgh*, 14*th October* 1913.—The Land Court having heard parties and considered the evidence adduced, Find, with reference to the objection taken by the respondent under section 33 of the Act of 1886, that the respondent has failed to prove that the applicant or his father was placed in the district by the landlord for the benefit of the neighbourhood: Therefore repel the objection: Find that the applicant is a statutory small tenant in and of the holding described in the application, and that no ground of objection to him as tenant has been stated: Therefore find that he is entitled, in virtue of the 32nd section of the Small Landholders Act 1911, to a renewal of his tenancy in and of the said holding, and to have an equitable rent fixed therefor; and having considered all the circumstances of the case, holding, and district, fix and determine the period of renewal at seven years, and the equitable annual rent payable by the applicant at £13, 5s. sterling, each to run from the term of Whitsunday 1912: Find no expenses due to or by either party. 'ALEX. DEWAR.

'E. E. MORRISON.'

"6. The appellant objects to the final order of the Land Court, (1) that the subjects of the application are not a holding within the meaning of the Small Landholders (Scotland) Acts in respect that on the facts stated the subjects were at the commencement of the Act of 1911 held as one for the purpose of carrying on the business of a smith; (2) that the said subjects are a holding let to a tradesman placed in the district by the landlord for the benefit of the neighbourhood, and are therefore excluded from the operation of the Small Landholders Acts, under section 26, sub-sections (7) and (10), of the Smallholders (Scotland) Act 1911, and in any event (3) in respect that the said blacksmith's shop does not form part of the holding for the purposes of the Small Landholders (Scotland) Acts, and therefore falls to be excluded from the subjects held by the respondent as a statutory small tenant under said Acts.

"7. The respondent maintains (1) that the matters in dispute are truly questions of fact, and that no proper question of law arises on the facts stated, and respectfully refers to section 32, sub-section 13, of the Small Landholders Act 1911, and (2) alternatively that the decision of the Court was right."

Appended to the final order of the Land Court was the following

"*Note.*—There is no sufficient evidence that either applicant's father or the applicant himself was placed in the district by the landlord for the benefit of the neighbourhood. There was no obligation placed on either his father or on him to give a preference to tenants on the estate, either as regards time or charges. Indeed there was no obligation to work for the tenants on the estate at all, and part of the applicant's work has regularly come from tenants situated at some distance on other estates. According to Mr Caverhill's evidence, applicant attended to the shoeing of seventeen pair of horses from the Lothian estate and twelve pairs of horses from elsewhere.

"In the next place, it is clear that neither the applicant's father nor the applicant received any special benefit or inducement to pursue the occupation of blacksmith. On the contrary, the applicant and his father appear to have paid quite as full a rent as other persons in the neighbourhood for an ordinary agricultural holding or for houses and offices.

"The applicant appears in the valuation roll as tenant and occupier of cottage, smithy, and land at a rent of £17, 9s. 6d. The holding has been always regarded as one subject at one rent. The agricultural value is there stated at £10, leaving £7, 17s. 6d. as rent for the buildings.

"The burden lies on the proprietor to prove that the applicant comes within the exception enacted by section 33 of the Act of 1886 and incorporated in the Act of 1911.

"This section is intended to exclude persons whose occupation of holdings is mainly in the nature of remuneration for present

or for former services, or as part of official emoluments. This was held to be the construction of the Act in cases decided before the Crofters Commission—for example, Duncan Macinnes (mason) 1891-2, App. p. 127; Hector Ross (blacksmith) 1891-2, App. p. 117, affirmed 1898-99, App. p. 91; John Campbell (boat builder) 1893-4, App. p. 46. If the subjects or part of them should come to be required for an estate smithy, the landlord can apply for resumption under sections 19 and 32 (15) of the Act of 1911."

"*Minute of Dissent.*

"*Edinburgh, 14th October* 1913.—I am of opinion that the objection taken by the respondent is well founded, and that the application ought to be dismissed.

"The applicant's father Walter Young became tenant of the smithy at Mossburnford in 1862. Prior to that year a man Morrison occupied the place also as smith.

"Walter Young died in 1888 and was succeeded by the applicant.

"When the applicant's father entered there was no land attached to the smithy. In 1873 three acres of land were given him, and in 1896 about two and a half acres were taken off the farm of Mossburnford and added to the applicant's holding. The present rent of the smithy, house, and land is £17, 9s. 6d.

"From the evidence led I am quite satisfied that the smithy was erected for the convenience of the tenants of the estate and the district, and that the applicant's father was placed there by the landlord for that purpose.

"Mr Caverhill, the factor, depones that there were no written conditions of let when the applicant's father became tenant, but that he was put there for the convenience or benefit of the district as 'the estate blacksmith,' and that if he had at any time ceased to perform the work of a blacksmith the estate would warn him out.

"When the applicant succeeded his father in 1888 there were again no written conditions of let. When examined he stated that if he was unable to perform the duties of blacksmith he would expect to be removed from the subjects.

"I am accordingly of opinion that the landlord has satisfactorily proved that the applicant is a tradesman placed in the district by him for the benefit of the neighbourhood, and that the objection stated by him under section 33 of the Act of 1886 ought to have been sustained and the application dismissed as incompetent.

"ROB. F. DUDGEON."

The *questions of law* were—"1. [*Added of consent by amendment*] Whether on the facts as stated the subjects of the application constitute a holding to which the provisions of the Act apply? 2. Whether on the facts stated the Court were entitled to hold that the whole subjects of the application were not excluded from the operation of the Small Landholders (Scotland) Acts under and in terms of section 26, sub-sections (7) and (10), of the Small Landholders (Scotland) Act 1911?"

Argued for the appellant—Both questions should be answered in the negative. (1) The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) by 26 (3) (*f*) and (10) excluded from its operation any land that was not a holding within the meaning of the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), and by sec. 35 (1) of that Act a "holding" was defined to mean any piece of land which was "either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral." But none of these descriptions fitted the subjects in question. The fact that the Act of 1911 by sec. (26) (1) specially included in a "holding" for the purposes of the Landholders Acts a dwelling-house and its offices showed that it intended to exclude such buildings as a smithy, especially where, as in the present case, the value of the land was less than that of the smithy —*cf. Mackintosh* v. *Lord Lovat*, December 18, 1886, 14 R. 282, 24 S.L.R. 202. The buildings which the Act of 1911 intended to include were only those appropriated to an agricultural purpose. This view of the meaning of the Act of 1911 was not inconsistent with sec. 10 (1) or sec. 26 (3) (*g*) and (*h*) thereof. The Act of 1911 must apply to the whole holding or to none of it. The holding could not be split up—*Yool* v. *Shepherd*, 1914 S.C. 689, 51 S.L.R. 639. (2) The Act of 1911 by sec. 26 (7) incorporated the provisions of sec. 33 of the Act of 1886, and the latter Act by that section excluded from its operation "any holding or building let to . . . any . . . tradesman placed in the district by the landlord for the benefit of the neighbourhood," and the evidence in the present case showed that the subjects in question were of that nature—*Marquess of Breadalbane* v. *Orr*, 3rd July 1896, 4 S.L.T. 75.

Argued for the respondent—Both questions should be answered in the affirmative. (1) It was admitted that the subjects must be dealt with as a *unum quid*. Sec. 26 (3) (*f*) of the Act of 1911 should not be read too literally. Otherwise (*g*), (*h*), and (*i*) would be superfluous. If the carrying on of a subsidiary trade were inconsistent with the holding being "wholly agricultural or wholly pastoral," sec. 26 (7) of the Act of 1911 was superfluous, but the carrying on of a subsidiary trade was not inconsistent—*Howatson* v. *M'Clymont*, 1914 S.C. 159, 57 S.L.R. 153. Sec. 10 (1) of the Act of 1911 showed that. The smithy business as such was a subsidiary trade, for the tenant was under no obligation to keep it up, and it was of less value than the house and land. The value of the house and land respectively was a factor which bulked largely in all the reported cases in determining whether a holding fell within the Act. *Yool* v. *Shepherd*, *cit.*, was different, for there the original lease mentioned the mill primarily as the principal subject, and the rental of the mill was of greater value than the land and dwelling-house. (2) Sec. 33 of the Act of 1886 did not apply to the present holding, because there was no proof of any inducement offered to the tenant to take up the business. The subjects were not let expressly as a smithy and it might have been turned into another kind of shop.

At advising—

LORD DUNDAS—In this case the respondent James Young applied to the Land Court as a statutory small tenant for an order fixing a first equitable rent to be paid for subjects possessed by him at Mossburnford.

Section 26 of the Small Landholders (Scotland) Act 1911 provides, *inter alia*, (1) that "for the purposes of the Landholders Acts a holding shall be deemed to include any right in pasture or grazing land held or to be held by the tenant or landholder whether alone or in common with others, and the site of any dwelling-house erected or to be erected on the holding or held or to be held therewith, and of any offices or other conveniences connected with such dwelling-house. . . . (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. . . . (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."

The first question (added to the Case by consent of parties at our bar) which we have to decide is "whether, on the facts as stated, the subjects of the application constitute a holding to which the Small Landholders (Scotland) Acts apply?"

Looking to the statutory provisions above quoted, it appears that the answer to this question must depend upon whether or not the subjects of the application constitute a holding within the meaning of section 35 of the Agricultural Holdings (Scotland) Act 1908. That section provides that "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 facts stated in the Case disclose that the subjects of which the applicant was at the commencement of the Act of 1911 a tenant from year to year at a *cumulo* rent of £17, 9s. 6d. consist partly of a blacksmith's shop. This shop was built by the proprietor of the estate prior to 1863, and has ever since been used by the public as a smithy. The applicant has so occupied and used it since 1888; his father similarly possessed it from 1863 to 1888; and before 1863 a man named Morrison had possession of it in the same way. The remainder of the subjects consist of (1) a dwelling-house built by the proprietor in 1871 on the opposite side of the road from the blacksmith's shop, which has, since its erection, been occupied by the applicant's father and by himself successively; and (2) two small portions of land near, but not (as I understand) actually contiguous to, either the smithy or the dwelling-house, viz., (*a*) 3 acres or thereby let in 1873 by the landlord to the applicant's father, and since then possessed on yearly tenancy by him and the applicant successively; and (*b*) 2½ acres or thereby let by the landlord in 1896 to the applicant, and thereafter possessed by him as tenant from year to year. Both smithy and dwelling-house have throughout been maintained by the proprietor.

Such being the character of the subjects, I am unable to understand how they can, upon any reasonable construction, be held to constitute a holding within the meaning of section 35 of the Act of 1908. They are neither wholly agricultural nor wholly pastoral, nor in part agricultural and as to the residue pastoral. I should hold this to be clear apart from any authority, but I think the present case is ruled by the recent decision of the First Division in *Yool* v. *Shepherd*, 1914 S.C. 689, 51 S.L.R. 639, which seems to me to be indistinguishable from it, at all events in any particular favourable to the present applicant. The subjects in *Yool's* case consisted of a carding, spinning, and weaving mill, and a house and steading, and some acres of agricultural and pastoral land, and it was decided that they did not constitute a holding as defined by section 35 of the Act of 1908. Counsel for the present applicant argued strenuously that the smithy is truly a mere pertinent of or subsidiary to the house and land, in respect that its yearly value is stated to be less than that of the purely agricultural part of the subjects, and that the entire subjects must therefore be held to be wholly agricultural. I am not prepared to say that the smithy is a pertinent (whatever that may mean in such a connection) of the house and land, or subsidiary to these, but even assuming this to be so, I do not think that that is the true question. I observe that in *Yool's* case the Land Court found that "this industry" (*i.e.*, the mill) "is an auxiliary or subsidiary occupation of the tenant, and that, taken as a whole, the subjects are principally agricultural in character." The Lord President in the course of his opinion pointed out the inconclusive nature of a position based upon the relative values of the constituent portions of the subjects, and that the matter "must be decided entirely upon a consideration of the question whether the definition of the Statute of 1908 applies to the subjects in question." It is fair to note that *Yool's* case is subsequent in date to the interlocutor of the Land Court now under consideration. If *Yool's* case had been before them, I think the Land Court must have held that the subjects of this application are not a holding within the meaning of section 35 of the Act of 1908, and are therefore outwith the purview of the Small Landholders Acts. The language of section 35 seems to me to be quite clear and unambiguous, and I am not at all convinced that to read its words in accordance with their ordinary and natural meaning involves any contradiction of or discrepancy from any of the other statutory provisions to which we were referred at the debate. I am therefore for answering the first question in the negative.

If this conclusion is correct it is sufficient for the determination of the whole matter. But the second question raises a point of importance in regard to which it is right that we should express an opinion. The

question is "whether on the facts stated the Court were entitled to hold that the whole subjects of the application were not excluded from the operation of the Small Landholders (Scotland) Acts under and in terms of section 26, sub-sections 7 and 10, of the Small Landholders (Scotland) Act 1911?' The language of section 26 (7) takes one back to that of section 33 of the Act of 1886; and what we have to decide is whether or not the subjects in question constitute "a holding or building let to . . ." a "tradesman placed in the district by the landlord for the benefit of the neighbourhood." I do not agree with the contention that this is a pure question of fact, and as such excluded from our consideration. We are, of course, bound absolutely by the findings in fact of the Land Court, and must look at the facts so found, and at no others. But I do not regard as a finding or statement of fact what is said in the case to the effect that "there was no proof that he" (*i.e.*, the applicant, or, in another passage, his father) "was placed in the district by the landlord for the benefit of the neighbourhood." These words can, in my judgment, amount to no more than an inference in law —erroneous, as I consider—from the immediately preceding statement of facts, and must, I think, be read as equivalent to "there was *therefore*, no proof," &c. Taking the actual facts as found by the Land Court, we have, in my judgment, a typically clear case for the application of section 33 of the Act of 1886, and the consequent exclusion of the subjects from the scope of the Act of 1911. This blacksmith's shop was built as such by the landlord at least fifty years ago, and has ever since been maintained by him and used and occupied as a smithy. *Prima facie* one would surely infer that the smithy and the smith must have been placed in the district by the landlord for the benefit of the neighbourhood. Against this strong presumption it seems to me idle and irrelevant to state that the successive blacksmiths paid no more than an ordinary rent; that they were under no obligation to work for the estate; that the estate tenants were not bound to come to or employ the smithy; and that the blacksmith for the time being —a yearly tenant—might have closed the smithy or put it to some other use. It appears to me from the way in which the case is stated that the Land Court have proceeded upon an erroneous construction of section 33, and that upon the facts found by them, in so far as they are relevant and material, the Land Court ought to have held that section to be applicable. I think, therefore, that the second question should be answered in the negative.

If this view is correct it will be unnecessary to answer the remaining question, which is framed upon the contrary hypothesis.

LORD SALVESEN—The subjects with which the Land Court has dealt as a small holding consist of a blacksmith's shop built by the proprietor of the estate prior to 1863, a dwelling-house built on the opposite side of the road for the use of the blacksmith and let along with the shop, and 5½ acres of land in two lots let along with the other subjects. All the subjects have been held on a yearly lease which has been renewed from time to time. The question for our decision, in the first instance, is whether these subjects fall within the definition contained in section 35 of the Agricultural Holdings (Scotland) Act 1908. I quite keep in view that such a holding may have buildings upon it, which if they are devoted to agricultural purposes or pastoral will not derogate from its character as such. But a blacksmith's shop is in no sense an adjunct to an agricultural or pastoral holding, but constitutes a subject of an industrial nature, and not the less so because its annual value may be less than that of the other heritable subjects. It does not follow that the practice of his trade as a blacksmith may not afford the tenant the greater portion of his livelihood; but altogether apart from this circumstance, with regard to which we have no findings in fact, I am quite unable to reach the conclusion that such a composite holding as I have already described can be regarded as wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral. The present case appears to me to be ruled by the decision in *Yool* v. *Shepherd*, 1914 S.C. 689, which was not decided when the present case was before the Land Court. I am therefore for answering the first question in the negative.

Even if I had reached an opposite conclusion I should have agreed with the dissenting judgment in the Land Court, which is to the effect that this holding comes within the scope of section 33 of the Crofters Holdings (Scotland) Act 1886, which is incorporated in the Small Landholders (Scotland) Act. By that section there is excepted from the operation of the Act a holding let to a tradesman placed in the district by the landlord for the benefit of the neighbourhood. I cannot imagine a case which is more typical of the class which the Legislature presumably had in view than that of a blacksmith in an agricultural district. It has been found by the Land Court that the blacksmith who has been the tenant of the shop in question was under no obligation to work as such; nor to work for the estate or any tenant of the estate; nor was any tenant bound to employ him as a blacksmith; and that he might have closed the smithy or put it to some other use. All this appears to me to be irrelevant to the question whether he was placed in the district by the landlord for the benefit of the neighbourhood. The word "placed" is perhaps open to construction; but in my opinion a tradesman is "placed" within the meaning of the section by the landlord when the landlord builds premises adapted for the particular purpose of the trade and lets them to the tradesman who carries on his business there. It is nowhere suggested that the landlord must pay him for going there. It is obvious that if the business which he carries on in such premises is sufficiently lucrative to afford him a livelihood no pecuniary inducement is required; and the

fact that he is so constantly employed by the neighbouring farmers that he can earn a living at his trade is proof presumptive of the benefit which his activities confer on the neighbourhood. There is no tradesman on whose proximity to their farms the farmers of a district are more dependent than a blacksmith, at whose establishment they can have their horses shod and their farm carts and farm implements repaired. If his services were of no benefit to them they would cease to employ him; and it does not matter that some of his customers—in this case the slightly smaller number—come from outside the estate; for it is not the estate but the neighbourhood to which the section of the Act refers. Nor can it be assumed that the landlord would have acquiesced in the building which he had constructed and fitted up as a blacksmith's shop being devoted to some other use. On the contrary, I should infer, as the applicant himself admitted, that if he was unable to perform the duties of a blacksmith he would expect to be removed from the whole subjects.

I would only add that I think it would have been most unfortunate in the interests of tradesmen of the same class if we had been constrained to affirm the judgment appealed from. The history of the leases shows that the blacksmith's shop was the first erected, that afterwards he was provided with a house conveniently near to his shop, and was later given the privilege of occupying two small portions of land. These subsequent lets were presumably made so as to improve the position of the tenant and enable him to employ his own spare time or the time of his family in agricultural pursuits, thereby no doubt adding substantially to his income. It would be a serious discouragement to landlords in the future to lease land to a tradesman who had been placed in the district for the benefit of the neighbourhood if the tenant could by taking advantage of the Small Landholders Act frustrate the purpose of the original tenancy.

LORD GUTHRIE—In regard to the first question the only point of difficulty arises from the concluding words of section 33 of the Crofters Holdings (Scotland) Act 1886.

If the subjects in question in this case are to form a "holding" under the Act of 1911, they must consist of a holding within the meaning of the Agricultural Holdings (Scotland) Act 1908, which is defined by section 35 (1) of that Act to mean a "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." It is admitted by the appellant that the subjects are not taken out of this category because part of the land is occupied by a dwelling-house and by buildings connected with the agricultural or pastoral use of the land. The facts do not raise any such question as was decided under the Agricultural Holdings (Scotland) Act 1883 in the case of *Taylor* v. *Earl of Moray*, 19 R. 399, 29 S.L.R. 336, where it was held that the house and garden in that case being the principal subjects and not accessories to the land the subjects as a whole could not be regarded as either agricultural or pastoral. But in this case a substantial part of the land let to the respondent as one subject and for payment of one rent is occupied by a shop in which the respondent carries on an ordinary blacksmith's business, open for payment to all members of the public. I cannot hold that subjects so occupied and let can be brought within the scope of a statute which requires that the land shall be "either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral." This blacksmith's forge is sharply distinguished from a forge for the private use of the particular holder of the land, which would probably not deprive the subjects of the statutory character of a holding.

It was conceded that, supposing the law had stood then as it stands now, the premises could not have been held to be a "holding" in the sense of the Acts now under consideration at the time when they consisted only of the blacksmith's shop, or even after the smith was furnished with a dwelling-house without agricultural or pastoral land. I do not see how the subsequent addition, first of 3 and then of 2½ acres, to the smith's tenancy converted the premises into land wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral. No doubt it is stated in the case that "the value of the smithy to the tenant is less than the value of the dwelling-house and land"; and it was argued that the dwelling-house and uncovered land must be regarded as the primary and the smithy as the subsidiary occupation, so subsidiary as not to take the premises out of the statutory category. This conclusion is not warranted by the above statement, nor by the figures quoted to us from the valuation roll. But suppose the disproportion were so great as to justify the application of the term "subsidiary" to the smithy, I do not think this would avail the appellant. Premises consisting to any substantial extent of land occupied, directly or indirectly, for purposes neither wholly agricultural nor wholly pastoral, nor in part agricultural and as to the residue pastoral, must I think be excluded from the statutory category of a "holding." The result might be different if the non-agricultural and non-pastoral occupation was so insignificant as to be reasonably negligible.

I cannot distinguish the present case from *Fool* v. *Shepherd*, 1914 S.C. 689. It is true that in that case the value of the mill was slightly larger than the value of the rest of the subjects, while in the present case the value of the smithy is slightly less than the value of the rest of the subjects. But in the Case it was stated that "the Court was satisfied that this industry" (the mill) "is an auxiliary or subsidiary occupation of the tenant, and that, taken as a whole, the subjects are principally agricultural in character." In reference to the argument founded on this statement the Lord President said —"Whether that be so or not, however, it is not decisive of the question before us.

That question, I repeat, must be decided entirely upon a consideration of the question whether the definition of the statute of 1908 applies to the subjects in question." I should be disposed to go further and to hold that unless in the case where the non-agricultural or non-pastoral use is negligible, the extent of the use if it is substantial is not only not decisive of the question but is irrelevant.

The only difficulty, as I have said, arises from the use of the words at the end of section 33 of the 1886 Act. Read short, the clause runs thus—Nothing in this Act shall apply to any holding or building let to any innkeeper or tradesman placed in the district by the landlord for the benefit of the neighbourhood. The point does not appear to have been taken in the case of *Yool* v. *Shepherd*, but it was put to us with great force by Mr Morton. He argued that the clause implied that land is not excluded from the category of a "holding" even if it contains an inn or tradesman's premises, provided only the innkeeper or the tradesman has not been placed there by the landlord for the benefit of the neighbourhood. Therefore, he said, the existence of tradesmen's premises on land cannot prevent that land being entitled to the privileges of a "holding." But this argument implies that Acts of Parliament never contain superfluous provisions. Such provisions are no doubt not to be presumed. But in this case I cannot hold the clear language of section 35 (1) of the 1908 Act to be cut down by an inference from a clause in section 33 of the 1886 Act, when that inference proceeds on an assumption which is often found to be unwarranted.

The respondent maintained that the second question turned entirely on fact, that the Land Court are final on fact, and therefore that we cannot disturb the result arrived at by them, namely—"There was no proof that he (the respondent) was placed in the district by the landlord for the benefit of the neighbourhood." But, as I read the case, this is a result in law arrived at from a consideration of the facts stated in the Special Case. If so, it is open to us to reach from the same facts a different result in law, and I am constrained to do so. This case is *a fortiori* of *Yool* v. *Shepherd*, where the mill was constructed by the tenant. The blacksmith's shop at Mossburnford was built by the proprietor. Placing the shop there, he also placed the blacksmith there. The tradesman being obviously placed where he is by the landlord, the presumption must be that he was so placed for the benefit of the neighbourhood. If the fact were otherwise this was not for the appellant to disprove, but for the respondent to prove, and there is no such proof in the case.

I am therefore of opinion that the respondent is not entitled to the statutory benefit claimed by him—first, because his holding is neither wholly agricultural nor wholly pastoral, nor in part agricultural and as to the residue pastoral; and second, because if his holding falls within any of these categories he is excluded from the benefit of the Act as a tradesman placed in the district by the landlord for the benefit of the neighbourhood.

LORD JUSTICE-CLERK — Your Lordships' opinions have expressed very clearly my view of this case. I think the whole case centres upon the meaning to be put on the words "placed in the district for the benefit of the neighbourhood." If these words be taken by themselves it seems to me that there cannot be any doubt as to what our decision must be. The only plausible argument urged against it was one which was referred to by Lord Guthrie and also by your Lordships. It was said that in this case the piece of land included in the holding is represented by a larger rent than the smithy which forms part of the holding, and that therefore there is here a small holding coming within the operation of the Acts. I cannot accede to any such argument. I think it is absolutely illegitimate to enter into any such question. The question is whether the land is held as part of a subject which the landlord placed in the district for the benefit of the neighbourhood. On that question I concur entirely with your Lordships in the opinions you have expressed, and especially in the opinion of Lord Dundas, which I have had an opportunity of perusing.

I desire to add for my own part that I deprecate the introduction in special cases of the opinions of those who sit in the Court below. It has often been attempted in proceedings under certain statutes where appeals are to be brought in the form of stated cases and has been disallowed by the Court, and I see no reason why the practice should be different in the Land Court. This case forms a strong illustration of the inexpediency of establishing a different rule. There was a very sharp difference of opinion in the Court below, and the opinions expressed are argumentative in a high degree. I think the Court should have before it only a statement of the facts and the questions of law, and that the arguments should be left to be stated to the Court at the Bar.

The Court answered both questions in the negative.

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