Friday, February 3.

SECOND DIVISION.

[Sheriff Court at Glasgow.

GLASGOW CORPORATION *v.* MICKEL.

Landlord and Tenant—Process—Appeal to Court of Session—Competency—Increase of Rent—Application for Suspension at Instance of Sanitary Authority—Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 *and* 11 *Geo. V, cap.* 17), *sec.* 2 (2) *and* (6).

Statute — Construction — Repugnancy — Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 *and* 11 *Geo. V, cap.* 17), *sec.* 2 (2) *and* (6).

The Increase of Rent and Mortgage Interest (Restrictions) Act 1920 provides by section 2 (2), as applied to Scotland by section 18, that in the case of certain increases of rent permitted by the Act the tenant or the sanitary authority may apply to the Sheriff Court for an order suspending the increase. It further enacts—Section 2—"(6) Any question arising under sub-section (1), (2), or (3) of this section shall be determined on the application either of the landlord or the tenant by the [Sheriff Court] and the decision of the court shall be final and conclusive."

An application by a local sanitary authority in terms of the Act for an order suspending certain increases of rent was granted by the Sheriff, who granted leave to appeal. Objection having been taken to the competency of the appeal on the ground that by section 2 (6) of the Act the Sheriff's judgment was final, *held* that the appeal was incompetent.

Observed that if there was any repugnancy between sub-sections (2) and (6) owing to the omission of the words "or the sanitary authority" from the latter sub-section these words should be supplied.

The Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 and 11 Geo. V, cap. 17) enacts—Section 2—"(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (*d*) of the foregoing sub-section, the tenant or the sanitary authority may apply to the [Sheriff Court] for an order suspending such increase, and also any increase under paragraph (*c*) of that sub-section, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair. The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied."

Section 2 (6) is quoted *supra* in rubric.

The Corporation of the City of Glasgow, as the sanitary authority of the city under the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, and the local authority under the Public Health (Scotland) Act 1897, *pursuers*, presented an application in the Sheriff Court of Lanarkshire at Glasgow against Robert Mickel, Linlithgow, *defender*, in which they craved the Court to "issue an order suspending the increase of rent of the dwelling-house at 21 Lyon Street, Back Land, Glasgow, owned by the defender, and occupied by Joseph Gillespie as tenant, from 2s. 6d. to 3s. 5d. per week, permitted by paragraphs (*c*) and (*d*) of section (2) 1 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, until the Court is satisfied on the report of the pursuers as the sanitary authority of the city or otherwise that the necessary repairs on said dwelling-house have been executed, and to find the defender liable in expenses."

The pursuers pleaded, *inter alia*—"1. The said dwelling-house occupied by the said Joseph Gillespie, and of which the defender is landlord, not being in all respects reasonably fit for human habitation, and/or otherwise not in a reasonable state of repair, the said increase of rent of said house should be suspended in terms of section 2 (2) of said Increase of Rent and Mortgage Interest (Restrictions) Act 1920, until the Court is satisfied that the said house has been made in all respects reasonably fit for human habitation, and/or otherwise into a reasonable state of repair."

The defender pleaded, *inter alia*—"1. No title to sue."

On 25th May 1921 the Sheriff-Substitute (BLAIR) sustained the defender's plea-in-law of no title to sue and dismissed the application. The pursuers appealed to the Sheriff (A. O. M. MACKENZIE), who on 25th November 1921 sustained the appeal and repelled the defender's first plea-in-law.

Note.—"This is an action at the instance of the Corporation of the City of Glasgow as the sanitary authority within the city, in which the pursuers ask for an order suspending the increase in the rent of a dwelling-house in the city owned by the defender from the existing rent to the amount permitted by paragraphs (*c*) and (*d*) of section 2, sub-section 1, of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. The application is presented under sub-section 2 of section 2 of the Act referred to. This sub-section provides—'At any time or times, not being less than three months after the date of any increase permitted by paragraph (*d*) of the foregoing sub-section, the tenant or the sanitary authority may apply to the County Court for an order suspending such increase, and also any increase under paragraph (*c*) of that sub-section, on the ground that the house is not in all respects reasonably fit for human habitation or is otherwise not in a reasonable state of repair. The Court on being satisfied by the

production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the Court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the Court is so satisfied.' The defender, the owner of the subjects, pleads that the pursuers have no title to sue, and founds upon sub-section 6 of the same section of the Act referred to. This sub-section enacts—'Any question arising under sub-section (1), (2), or (3) of this section shall be determined on the application either of the landlord or the tenant by the County Court, and the decision of the Court shall be final and conclusive.' Now I think it is apparent from a comparison of the two sub-sections that the Legislature in approving of sub-section 6 had omitted to note the provisions of sub-section 2, for sub-section 6 does not appear to contemplate any applications being made under sub-sections 1, 2, and 3 of the section except at the instance of the landlord or the tenant, but at the same time it appears to me to be clear that the Legislature cannot have intended by sub-section 6 to deprive the sanitary authority of the right to apply to the Court expressly given by sub-section 2, for if that had been the intention of the Legislature it would have been effected by omitting from sub-section 2 the words 'or the sanitary authority' and not by a provision in the terms of sub-section 6. At the same time it is no doubt possible that the Legislature without intending it may have taken away by sub-section 6 the right to apply conferred upon the sanitary authority by sub-section 2, but this is not a conclusion to which one would readily come. It appears to me, therefore, that if it is possible to construe sub-section 6 in such a manner as to reconcile the apparent inconsistency between its terms and those of sub-section 2, and to preserve to the sanitary authority the right to apply expressly given to it by the earlier sub-section, such a construction is to be preferred. Now on a consideration of the terms of sub-section 6 I have come to the conclusion that it is possible to construe it in such a way as I have suggested without doing any great violence to its terms. The object of the section appears to me to be not to limit the right of application to the landlord and tenant but to provide that where questions arise under the section they shall be determined on application to the County Court, the decision of which shall be final. No doubt sub-section 6 says that any questions arising under sub-sections 1, 2, and 3 shall be determined on the application either of the landlord or the tenant, but this is because it wrongly assumes that the landlord and tenant are the only parties who have a right to apply. It is reasonable, I think, to read it as meaning that any questions arising between landlord and tenant under the sub-sections referred to shall be determined in the manner laid down in the sub-sections. To read it in this way is, I think, not to limit unduly its meaning and effect, and read in this way it appears to me that it does not impliedly revoke the right to apply given to the sanitary authority by sub-section 2. One peculiar result does however follow, namely, that there will be this distinction between applications at the instance of the sanitary authority on the one hand and the landlord or tenant on the other, that the decision of the County Court will be final in applications at the instance of the landlord or tenant and not necessarily final in applications at the instance of the sanitary authority. . . ."

The defender subsequently applied to the Sheriff for leave to appeal to the Court of Session, and leave having been granted, appealed.

Argued for the defender—The appeal was competent. Sub-section 6 of section 2 of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 (10 and 11 Geo. V, cap. 17) only made appeals incompetent in the case of applications of the landlord or the tenant. The sanitary authority was not mentioned in the finality clause, and therefore by implication appeals at his instance were not excluded. The present application was a summary cause—Act of Sederunt, 2nd December 1920—and a right of appeal existed unless it could be shown that by statutory enactment it was expressly excluded—*Harper* v. *Inspector of Rutherglen*, 1903, 6 F. 23, 41 S.L.R. 16; *Jeffray* v. *Angus*, 1909 S.C. 400, *per* L.J.-C. Macdonald at p. 402, 46 S.L.R. 388. In any event on a true construction of the Act the sanitary inspector had no title to sue. He had done so incompetently and therefore the appeal was competent. There was a definite repugnancy between sub-sections (2) and (6) of section 2, and that being so the general rule was that the later of the two prevailed — Maxwell's Interpretation of Statutes, 6th ed., p. 283; *Attorney General* v. *Governor & Company of Chelsea Waterworks*, 1731, Fitz.-G. Reps.; *Wood* v. *Riley*, 1867, L.R.; 3 C.P. 26. A further argument in favour of this construction could be drawn from the innovation on statute law which would otherwise be involved, viz., interference with private contract by a third party, the sanitary inspector. The present application was really one for repairs, and these were already provided for by the Housing and Town Planning &c. (Scotland) Act 1919 (9 and 10 Geo. V, cap. 60), section 25. It was not competent for the Court to supply the omission of the words "sanitary authority,' if omission there were, in sub-section 6; because the present was not a beneficial statute—Maxwell's Interpretation of Statutes, 6th ed., pp. 443 and 482—*Underhill* v. *Longridge*, 1859, 29 L.J.M.C. 65; *Crawford* v. *Spooner*, 1846, 6 Moo. P.C. 1, at p. 9. The present statute was restrictive and not meant to remedy a permanent grievance.

Argued for the pursuers—The appeal was incompetent. The finality clause applied to applications at the instance of the sanitary authority. The apparent ambiguity could

be explained by the facts that sub-section 6 dealt also with questions arising under the applications made under sub-section 2, and such questions could only arise between landlord and tenant. If, however, there was repugnancy the statute should be given a beneficial construction. It was a remedial statute and should be read liberally. If it was perfectly clear that the omission of the words "sanitary authority" in sub-section (6) was accidental, as it was here, it could be supplied — Maxwell's Interpretation of Statutes, 6th ed., p. 443; *in re Wainwright*, 1843, 1 Phillips 258. Literal construction was only entitled to *prima facie* acceptance —Maxwell, *supra*, pp. 39 and 143; *Cortis* v. *Kent Waterworks*, 1827, 7 Barn & Cress, 314.

At advising—

LORD JUSTICE-CLERK — Counsel for the parties practically admitted that there had been an error in the framing of this statute. Sub-section (2) of section 2 clearly and distinctly provides that proceedings may be initiated by the sanitary authority. Sub-section (6) is in these terms:—"Any question arising under sub-section (1), (2), or (3) of this section shall be determined on the application either of the landlord or the tenant by the County Court, and the decision of the Court shall be final and conclusive." Each of these sub-sections (2 and 6) is quite unambiguous in itself; the difficulty is to reconcile them. No suggestion was offered as to why an appeal should be allowed in the case of an application by the sanitary authority which was not allowed either to the landlord or the tenant, and no reason for any distinction occurs to me. It seems to me much more likely that Parliament intended that all these applications should be dealt with alike. The concluding words of sub-section (6) are without any qualification. In my judgment we will be treating the statute fairly and justly only if we read it as importing that equal treatment be given to these applications whoever is the applicant. I think it would be unfortunate if the present appeal was to be allowed. In my opinion, *tota re perspecta*, the fair interpretation of the statute is that it does not allow such an appeal as the present.

LORD ORMIDALE — This is an appeal against a judgment of the Sheriff of Lanarkshire in an application presented by the sanitary authority of the City of Glasgow under section 2, sub-section (2), of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. That sub-section provides as follows—"At any time or times, not being less than three months after the date of any increase permitted by paragraph (*d*) of the foregoing sub-section, the tenant or the sanitary authority may apply to the County Court for an order suspending such increase, and also any increase under paragraph (*c*) of that sub-section, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair." Taking the sub-section by itself it would appear that the application was indubitably in order, the crave of the application being to suspend an increase of rent permitted under paragraphs (*c*) and (*d*) of section 2, sub-section (1). Objection was, however, taken by the landlord that the applicant had no title to sue. This objection is founded on section 2, sub-section (6), which enacts—[*His Lordship quoted the sub-section*]. The Sheriff-Substitute gave effect to the objection, but his judgment was reversed by the Sheriff.

The first question we have to decide is whether the present appeal is competent. It was contended by the appellant that it was; that the provision as to the finality of the Sheriff Court under section 2, sub-section (6), applies to decisions on questions arising under the recited sub-sections only in the case of applications at the instance of the landlord and tenant, whereas here the application was at the instance of the sanitary authority; and further, that on a sound construction of section 2, sub-section (6), the questions raised by the present application can only be determined even in the Sheriff Court on an application by the landlord or tenant, and that therefore the sanitary authority has no title to sue. I am unable to give effect to this contention. The sub-section (6) contemplates, I think, the finality of the Sheriff Court on all questions arising under sub-sections (1), (2), and (3) of section 2. If, however, there is the repugnancy suggested between sub-section (6) and sub-section (2), then in my opinion the principle enunciated by Lord Lyndhurst in *Wainwright*, 1 Phillips, 258, should be applied, and the words "or the sanitary authority" should be read into sub-section (6), it being the clear and manifest intention of the Legislature to give the sanitary authority a right to make application to the Sheriff Court. If that be so, then the appeal is incompetent.

But I am not prepared to hold that there is any repugnancy.

I think the Sheriff has put a correct construction on sub-section (6), and that it is to be read as making provision only for the procedure to be adopted where an application is made by a landlord or tenant just as if the word "in" had been used instead of "on." If that be so, then I further think that the terms in the second clause of sub-section (2) are such as to confer on the Sheriff Court, and on no Court other than the Sheriff Court, the jurisdiction to entertain applications made by the sanitary authority. The sanitary authority is entitled only to make application for an order suspending an increase of rent where the increase is permitted under sub-section (1), paragraphs (*d*) and (*c*), whereas there are many other circumstances disclosed in sub-sections (1), (2), and (3) under which questions may arise falling to be determined on an application by the landlord or the tenant, and sub-section (6) declares that on these applications the Sheriff Court is to be final and conclusive. The second clause makes detailed provision for the procedure to be followed where an application is presented by a sanitary authority, and enacts that if the Court—that is, as I read the sub-section, the Court to which the application is made—

in other words the Sheriff Court—is satisfied either by the production of the certificate of the sanitary authority or otherwise as is provided, the Court, *i.e.*, the Sheriff Court, shall order that the increase be suspended, and on the making of such order the increase shall cease to have effect until the Court, *i.e.*, the Sheriff Court, is satisfied on the report of the sanitary authority or otherwise that the necessary repairs have been effected. It does not appear to me that there is room here for an appeal, except perhaps in the form of a suspension on appropriate grounds, and accordingly there is no necessity for calling in aid sub-section (6). The jurisdiction of the Court of Session is not expressly ousted by sub-section (2), but on the other hand no new jurisdiction, even by way of appeal, is thereby given to it.

The present appeal therefore is, in my judgment, incompetent and falls to be dismissed.

LORD ASHMORE—This is an appeal against the decision of the Sheriff in an application under the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. The application was presented at the instance of the Corporation of the City of Glasgow as the sanitary authority under the Act of 1920 against the owner of a dwelling-house in Glasgow craving an order by the Court suspending a proposed increase of rent on the ground that the house was not reasonably fit for human habitation, or was otherwise not in a reasonable state of repair. The Act of 1920, after authorising certain increases of rent by section 1 (*c*) and (*d*), proceeds in section 2 (2) to provide, *inter alia*, as follows:—[*His Lordship quoted the sub-section*]. The application in this case was based on section 2 (2). The owner against whom the application was directed lodged defences in which he pleaded, *inter alia*, that the pursuers had no title to sue in respect of the express provisions of section 2 (6) of the Act. Section 2 (6) reads as follows:—[*His Lordship quoted the sub-section*]. The Sheriff-Substitute sustained the plea of no title to sue and dismissed the application. On appeal the Sheriff recalled the Sheriff-Substitute's interlocutor, repelled the defender's objection to the pursuers' title to sue, and remitted to the Sheriff-Substitute to proceed. Thereupon, after obtaining leave to appeal, the defender (the owner) took the present appeal to the Court of Session. Counsel for the appellant stated that the appeal had been taken for the purpose of having the judgment of the Sheriff reviewed, but the preliminary question of the competency of the appeal was raised by the Court.

The argument in support of the competency was that section 2 (6) excluded appeals against a decision of the Sheriff Court on questions arising under sub-sections (1), (2), or (3) of section 2 only in applications at the instance of the landlord or the tenant, and that where, as in the present case, the application was not at the instance of either the landlord or the tenant there was no exclusion of the usual right of appeal.

In construing section 2 (6), however, it is competent and proper to have regard to the context, and in particular the provisions of section 2 (2), and if possible to reconcile the provisions of these two sub-sections, which are *prima facie* inconsistent, so as to give effect to both. In the words of Lord Davey—"Every clause of a statute should be construed with reference to the context and the other clauses of the Act so as, so far as possible, to make a consistent enactment of the whole statute"—*Canada Sugar Refining Company v. Reg.* [1898] A.C. 735, at p. 741. Now section 2 (2) of the Statute of 1920 enacts in terms precise and unambiguous that a sanitary authority may apply to the Sheriff Court for an order of the kind sought in the present application. Moreover, it appears that under the rules of procedure (applicable to the English County Courts) which have been made by the Lord Chancellor in virtue of the powers of the Act, the form of application for an order of suspension under section 2 (2) and the relative form of the order following thereon both expressly contemplate a sanitary authority being the applicant—Increase of Rent and Mortgage Interest (Restrictions) Rules 1920 (S.R. & O. 1261/L. 37), Appendix, forms 7 and 8. Nevertheless it is true that section 2 (6) read by itself indicates that the application under section 2 (2) is to be an application either by the landlord or the tenant, and makes no reference whatever to the sanitary authority being an applicant. On the face of the two sets of provisions there is a mutual repugnancy. To reconcile them it seems to be necessary either in effect to strike out of section 2 (2) the words empowering the sanitary authority to apply to the Sheriff Court, or else to insert or read into section 2 (6) a reference to the sanitary authority as an applicant. The question for determination therefore is which of these methods of solving the repugnancy ought to be adopted in this case.

I assume on the one hand that it is well settled that nothing ought either to be taken from or added to a statute unless clear reason for doing so can be found within the four corners of the Act itself—Lord Chancellor Loreburn in *Vickers, Son, & Maxim* v. *Evans*, (1910) 79 L.J., C.L. 954, at p. 955. On the other hand I take it to be equally well settled that when on the face of the provisions of a statute there is manifest repugnancy, then in order to prevent the clear words of the statute being deprived of meaning and effect it is permissible to have recourse to construction by implication, to draw obvious inferences or supply obvious omissions, or do both. In this case consideration of the conflicting statutory provisions referred to seems to me to lead to the conviction that there has been an accidental omission from section 2 (6) of any reference to the sanitary authority, and in my opinion the express provision of section 2 (2), that the sanitary authority may apply to the Sheriff Court for a suspending order, ought to receive effect by reading section 2 (6) as if it contained an express reference to the sanitary authority as an applicant.

When the alternative lies as it does in this case between supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives existing words of all meaning, the reasonable course seems to me to be to supply the omitted words. In such cases it has been said, I think rightly, that the Legislature "shows in one passage that it did not mean what its words signify in another; and a modification is therefore called for, and sanctioned beforehand as it were, by the author" — Maxwell on the Interpretation of Statute Law (6th ed.), p. 447. The opinion of Lord Chancellor Lyndhurst in the case of *Wainewright* ((1843) 1 Phillips 258, 65 R.R. 382) seems to me to be apposite and appropriate in this case. The Lord Chancellor when construing a section of the Fines and Recoveries Act of 1833 said — "There is, however, an omission in the 33rd section which it is proper to notice. The words are—'If any person, protector of a settlement, shall be convicted of treason or felony, or if any person not being the owner of a prior estate under a settlement shall be the protector of such settlement and shall be an infant, or if it shall be uncertain whether such last-mentioned person be living or dead, then His Majesty's High Court of Chancery shall be the protector of such settlement in lieu of the person who shall be an infant or whose existence cannot be ascertained,' omitting the case of a person convicted of treason or felony. But I think that the omission must be supplied by implication, otherwise no effect can be given to the previous words 'if any person, protector of a settlement, shall be convicted of treason or felony.' Now these words cannot be struck out of the Act, and it is much more natural to supply the words 'in lieu of the person who shall be convicted' than to adopt a construction which would deprive the preceding words of all meaning."

It is true that in the case of *Underhill* v. *Longridge* ((1859) 29 L.J., C.L. 67) the Court declined to supply by implication certain words which were necessary to establish an offence created by the statute, the commission of which offence would have involved liability for a penalty. Lord Chief-Justice Cockburn did not explain in giving judgment the grounds of his opinion, but merely stated that the Court could not insert the necessary words, and that that was a matter for the Legislature. It seems clear, however, that the grounds of the judgment were that the defective statutory provision under consideration was penal in its character, and that to interpolate the omitted words would have brought the accused within the penal enactment. In Maxwell's treatise the decision is so explained — Maxwell on the Interpretation of Statute Law (6th ed.), p. 482 *et seq*.

The present case seems to me to fall under the principle of the decision in *Wainewright's* case. The Statute of 1920, although in one aspect it restricts the ordinary rights of individuals, is intended in that way to remedy grievances on the part of tenants incident to undue increases of rents and oppressive removals consequent on the abnormal conditions prevailing during and since the war, and, moreover, the provision of section 2 (6) has reference merely to the civil remedy applicable to the substantive rights conferred by the statute.

For the reasons which I have given I have reached the conclusion that on the sound construction of the statutory provisions applicable to this case the judgment of the Sheriff is final and conclusive, and that the appeal taken to this Court is incompetent.

The Court dismissed the appeal.

Counsel for the Pursuers and Respondents — Macmillan, K.C. — Crawford. Agents— Campbell & Smith, S.S.C.

Counsel for the Defender and Appellant —C. H. Brown, K.C. — Cooper. Agents— Mackenzie & Fortune, K.C.

Wednesday, February 22.

SECOND DIVISION.

[Lord Hunter, Ordinary.

GOW *v.* GLASGOW EDUCATION AUTHORITY.

Reparation — Negligence — Education Authority—Duty of Supervising Children —Blind Child Injured by Another while at Play—Liability of Education Authority for Lack of Supervision,

The father of a blind boy brought an action of damages against an education authority for personal injuries caused to his son while under the care of the defenders in a hostel provided by them. The boy was playing in a recreation room in the hostel along with other children, some of whom had sight, when another boy unexpectedly jumped upon his back and causing him to fall and break his arm. The pursuer averred that the defenders were in fault in respect that they had not provided a servant in the room to watch over the conduct of the children. The Court *dismissed* the action as irrelevant, *holding* that (1) the precaution desiderated by the pursuer was unreasonable, and (2) the absence of the precaution was not the cause of the accident, which was one unlikely to occur.

Observed per Lord Sands—"I do not think that any higher standard of precaution is incumbent upon the defenders than would be observed by a reasonable parent."

Andrew Gow, Glasgow, as tutor and administrator-in-law for his pupil son Donald, *pursuer*, brought an action of damages for personal injuries for £500 against the Education Authority of Glasgow, *defenders*.

The pursuer and the defenders averred, *inter alia*—"(Cond. 1) The pursuer has raised the present action as tutor and administrator-in-law for his pupil son Donald, aged 7 years. The said Donald Gow is blind and was during the month of February 1921 and also prior to that date