in his judgment in that case says this—"This is not a case of a crime at common law, but an alleged contravention of a statute, and we must look at the statute to see the right of the person against whom the contravention has been committed. It is only where the address of the person alleged to have contravened the statute is unknown that his apprehension is authorised, and I think the pursuer is entitled to an issue of wrongful apprehension, because he avers that he, being a law-abiding citizen whose address was known to the officers of the steamer, was given into the custody of a police officer by the defender's servant." Accordingly precisely the same argument which prevailed in the First Division here was absolutely available in that case. I cannot think that that case can have been properly brought to the notice of the learned Judges.

As to the form of the issue, I notice that both in that case and in the case of *Wood* v. *North British Railway Company*, 1899, 1 Fraser 562, which was a case where a policeman had taken up a person who was committing a breach of the peace in the Waverley Station, the question whether in making the arrest he acted within the scope of his authority was put in the issue. The issue was "taken into custody by Walter Wilson and Thomas Hulse while acting in the course of their employment"; and the question as to the scope of the officers' authority was also put in issue in *MacBrayne's* case.

I should have proposed an alteration in the issue here as settled by the Lord Ordinary where there are no such words had it not been for this, that there is no denial by the Corporation that these officials were acting as officials in the course of their duty. On the contrary, the defences of the Corporation entirely approve of what the officials did, taking a different view, of course, of the facts from what the pursuer has said. They said the officials acted perfectly rightly. I think, therefore, there is no need to interfere with the issue as allowed by the Lord Ordinary.

LORD WRENBURY—I am of the same opinion and for the reasons already assigned by your Lordships.

Their Lordships ordered that the interlocutor appealed from be reversed, that the interlocutor of the Lord Ordinary be restored, and that the respondents do pay to the appellant his costs here and in the Inner House of the Court of Session, the costs of the appeal to this House to be taxed in the manner usual when an appellant sues *in forma pauperis.*

Counsel for Appellant—Mackay, K.C.—J. G. Burns. Agents—W. G. Leechman & Company, Glasgow and Edinburgh—D. Graham Pole, S.S.C., London.

Counsel for Respondents—Macmillan, K.C.—Crawford. Agents—Sir John Lindsay, Town Clerk, Glasgow—Simpson & Marwick, W.S., Edinburgh—Martin & Company, Westminster.

Monday, May 29.

(Before Viscount Haldane, Viscount Finlay, Viscount Cave, Lord Dunedin, and Lord Wrenbury.)

ROGER *v.* HUTCHESON AND OTHERS.

(In the Court of Session, June 25, 1921, S.C. 787, 58 S.L.R. 546.)

Landlord and Tenant—Compensation for Improvements—Arbitration—Agreement by Incoming Tenant to Relieve Landlord of Outgoing Tenant's Claims for Improvements—Reference of Question of Amount to Two Arbiters and Oversman—Competency—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 11 (1).

An incoming tenant under his lease agreed to relieve the proprietor of all claims which the outgoing tenant had against the landlord, including his claims under the Agricultural Holdings (Scotland) Act 1908, and by deed of submission the question of the amount of compensation payable for improvements under the Act was referred by the incoming and outgoing tenants to two arbiters and an oversman instead of to a single arbiter, as provided for in section 11 (1) of the Act of 1908. *Held* (*aff.* judgment of the Second Division) that as the reference was made neither under the Act of 1908 nor under the outgoing tenant's lease, but under the special agreement between the tenants, it was not prohibited by section 11 (1) of the Act, and that the form of arbitration was *competent.*

Landlord and Tenant—Compensation for Improvements—Claim—Whether Timeously Made—Form of Claim—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 6 (2).

The Agricultural Holdings (Scotland) Act 1908 enacts—Section 6 (2)—"A claim . . . for compensation under this Act . . . shall not be made after the determination of the tenancy. . . ."

By deed of submission entered into between an incoming and an outgoing tenant, and executed prior to the determination of the tenancy, the question as to what sum should be payable to the outgoing tenant as compensation for improvements under the Agricultural Holdings Act 1908 was referred to arbitration. No statement containing the particulars or amounts of the claim was, however, made until after the expiry of the tenancy. *Held* (*aff.* judgment of the Second Division) that the existence and nature of the claim had been sufficiently certiorated, and that accordingly it had been timeously made.

The case is reported *ante ut supra.*

Thomas Greenshields and Thomas Steel Greenshields, the incoming tenants, appealed to the House of Lords.

At delivering judgment—

VISCOUNT HALDANE—In this appeal I have had the advantage of reading the judgment about to be delivered by my noble and learned friend Lord Dunedin. That judgment so fully expresses my own view that I do not think it necessary to add anything.

VISCOUNT CAVE—I also entirely concur in the judgment about to be delivered by my noble and learned friend Lord Dunedin.

LORD DUNEDIN—In 1918 the respondent as residuary legatee of his brother was in right of the tenant's part of the lease of the farm of Manorhill, Kelso, which had still a currency to run, and was held of Macdougall of Makerstoun as landlord. Negotiations being entered into between him and the landlord, a renunciation was effected in November 1918, whereby the respondent renounced his right to the farm, as to the building, &c. at Whitsunday 1919, and as to the arable land at the separation of the crop ensuing, "on the footing of an ordinary waygoing at that term, including payment of any claim there may be for unexhausted manures and feeding stuffs," and this was subsequently embodied in a formal renunciation. The farm was thereafter let to the appellants with entry at Whitsunday 1919.

In his arrangement with the incoming tenants the landlord had stipulated that the incoming tenants should relieve him of the claim of the waygoing tenant, and accordingly in the lease which was arranged the following clause was inserted:—"The tenant shall be bound to free and relieve the proprietor of his obligations to the outgoing tenant with regard to the grain of the waygoing crop, in terms of the outgoing tenant's lease; further, the tenant shall be bound to free and relieve the proprietor of all claims competent to the outgoing tenant under the Agricultural Holdings (Scotland) Act Nineteen hundred and eight, and of any reference in connection therewith."

This arrangement was communicated to the respondent, and he and the appellants came together and agreed to refer to arbitration all claims which the respondent had against his landlord. These claims were of three characters—(1) Claims arising out of the terms of the respondent's lease; (2) claims not so arising but not dependent upon the Agricultural Holdings Act; (3) claims based on the provisions of the Agricultural Holdings Act. The deed of submission was framed so as to embrace all these claims. It was from time to time submitted to, and in its final form approved by, the landlord. In particular, one of the matters to be adjudicated upon was—"(*Sixth*) What sum shall be payable by the second party representing and undertaking responsibility for the said Hugh James Elibank Scott Macdougall, proprietor of the said farm of Manorhill, to the first party as compensation for improvements under the Agricultural Holdings (Scotland) Act 1908."

The submission referred all the matters to two arbiters named, and in the event of their non-agreement to an oversman to be chosen by them.

The submission ran its course. The arbiters appointed an oversman—the defender first called in the present action, but not a party to this appeal. Failing to agree on all matters they devolved these matters on the oversman. The oversman proceeded to dispose of all the heads of the claim other than the sixth; that he refused to deal with, as he said he had been advised that he was not competent to do so, as such a claim could only be disposed of by a single arbiter appointed in terms of the Agricultural Holdings Act and not by an oversman in a common law submission. The respondent thereupon raised the present action to have the oversman ordained to proceed with the submission. He called the appellants, the incoming tenants, for their interest. Both the oversman and the appellants entered appearance and lodged defences. The oversman pleaded that the action was premature. The appellants adopted the attitude which had been asserted by the oversman, and pleaded that it was incompetent for him to deal with the matter submitted as aforesaid. They also averred that the claim had not been timeously made, and being in consequence thereof inept as against the landlord, could not be given effect to as against them, they being liable only in respect of claims good against the landlord.

The Lord Ordinary before whom the cause depended gave effect to both of the appellants' pleas and dismissed the action as against them and as against the oversman. On a reclaiming note the Second Division recalled the Lord Ordinary's interlocutor and decerned in terms of the conclusions of the summons.

The two points argued before your Lordships are the same as those disposed of by the Lord Ordinary.

The right to compensation given by the Agricultural Holdings Act is set forth in section 1 (1)—"Where a tenant of a holding has made thereon any improvement comprised in the First Schedule to this Act, he shall, subject as in this Act mentioned, be entitled at the determination of a tenancy on quitting his holding to obtain from the landlord as compensation under this Act for the improvement such sum as fairly represents the value of the improvement to an incoming tenant."

The right given is a right to compensation, not a right to a decree in an arbitration. The provision of the Act which deals with arbitration is to be found in section 6 (1)—"If the tenant of a holding claims to be entitled to compensation, whether under this Act or under custom or agreement or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by arbitration." Section 11 (1) provides—"All questions which under this Act or under the lease are referred to arbitration shall, whether the matter to which the arbitra-

tion relates arose before or after the passing of this Act, be determined, notwithstanding any agreement under the lease or otherwise providing for a different method of arbitration, by a single arbiter in accordance with the provisions set out in the Second Schedule to this Act."

Now in the present case the landlord had taken the incoming tenant bound that he should relieve him of the claim for compensation. That agreement had been made known to the outgoing tenant and the position accepted by him. There was, therefore, no case of failure on the part of the landlord and his tenant to agree. They were content that the incoming tenant should pay, and that as to the amount the incoming and outgoing tenant should arrange between themselves that that amount should be fixed by arbitration. In effect the landlord had said I will agree to give, and the outgoing tenant had said I will agree to take, what the outgoing and incoming tenants would settle as between themselves as the proper sum to be paid. It would have been imperative on the landlord and the outgoing tenant if they had wished to go to arbitration to keep within the express provisions of the Act, but there was nothing illegal in the outgoing and the incoming tenant, who is not brought on the field by the provisions of the Act but only by the agreement of all parties concerned, to agree that the sum as between them should be fixed by a common law arbitration. The first point therefore fails.

As to the second point, it is quite true that the claim for compensation which the incoming tenant has to pay must be a claim which the outgoing tenant could have made directly against the lendlord under the Act, and I have no doubt, therefore, that the claim in order to be valid must have been made timeously, and therefore must be judged by section 6 (2) of the Act, which is as follows—"A claim by the tenant of a holding for compensation under this Act in respect of any improvement comprised in the First Schedule to this Act shall not be be made after the determination of the tenancy."

But in the circumstances which we have here I think it is impossible for the incoming tenant to maintain that the claim was not timeously made. That it was to be insisted on as against the landlord was clearly expressed in a letter written to the landlord's agent before the arrangement with the outgoing tenant was concluded. That after the arrangement the incoming tenant knew it is necessarily shown by the fact that the determination of such claim is one of the heads of the submission. All these things had been done before the expiry of the tenancy. The appellants are therefore driven to argue that a claim must give particulars, and they laid stress on the fact that in the English Act the expression is "Notice of Claim," while the expression in the Scotch Act is only "Claim." This is a double-edged argument. It is extremely improbable when hitherto the two countries had been dealt with in one Act and it was deemed expedient to provide for the new legislation in separate Acts, that the Legislature should wish to make a difference between the two countries in such a matter. It is much more likely to suppose that the expressions were regarded as synonymous. I am of the opinion that fair notice is all that is needed to be given. The same argument as to the necessity of giving particulars when the same word "claim" alone is used was put forward and rejected in the Workmen's Compensation Act. When the matter comes to arbitration of course particulars must be given, but that is a mere matter of procedure.

I am therefore of opinion that the appeal should be dismissed with costs, and I move accordingly.

LORD WRENBURY—I also concur in the judgment that has just been delivered.

VISCOUNT HALDANE—I have been asked to say that my noble and learned friend VISCOUNT FINLAY concurs in the judgment that has just been delivered.

Their Lordships ordered that the interlocutor appealed from be affirmed and the appeal dismissed with costs.

Counsel for Appellants—Macphail, K.C.—Guild. Agents—Guild & Guild, W.S., Edinburgh—Thomas Priest, Solicitor, London.

Counsel for Respondent—D. P. Fleming, K.C.—James Macdonald. Agents—M'Leod & Rose, S.S.C., Edinburgh—Charles G. Bradshaw & Waterson, Solicitors, London.

COURT OF SESSION.

Thursday, March 2.

FIRST DIVISION.

[Lord Hunter, Ordinary.

SMITH-SHAND'S TRUSTEES *v.* FORBES.

(*Reported ante*, July 2, 1921, 58 S.L.R 554.)

Superior and Vassal—Casualties—Redemption—Composition—Separate Feus Subfeued in Combination by Single Feu-Disposition in Favour of a Sub-feuar—Measure of Composition — Interest of Grassum — Mature Growing Timber — Feudal Casualties (Scotland) Act 1914 (4 *and* 5 *Geo. V, cap.* 48).

A vassal holding adjacent lands of two immediate superiors sub-feued the lands to a sub-feuar as one feu for payment of a grassum and a nominal feu-duty. One of the superiors sued the vassal for redemption of casualties, the redemption money claimed being based on a composition of five per cent. on an apportionment of the grassum agreed on by both superiors. The composition thus assessed was greater than the annual value of the lands of which the pursuers were superiors. It was averred by the vassal that the grassum in question was greater than could have been