Compliments

THE

AGRICULTURAL HOLDINGS

(ENGLAND) ACTS, 1883 to 1900

With Explanatory NOTES and General FORMS,

ALSO THE

BOARD OF AGRICULTURE AND COUNTY COURT

RULES AND FORMS,

TOGETHER WITH THE

ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

BY

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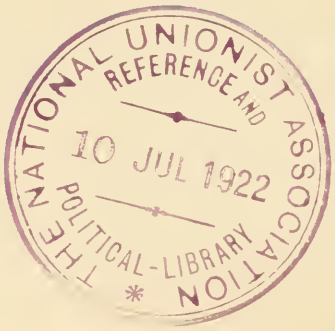

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PREFACE.

The passing of the Agricultural Holdings Act, 1900, which repealed considerable portions of the Agricultural Holdings (England) Act, 1883, and substituted other provisions for those repealed, seemed to call for a New Edition of the Author's Work on the latter Act, the original edition, which was published as a supplement to Dixon's "Law of the Farm," having been exhausted some years ago.

The Act of 1900 has created a code of statute law dealing with the rights of tenants to compensation for improvements on agricultural holdings (including market gardens), and other matters affecting the relations of landlord and tenant on such holdings. The whole of this code, consisting of the Agricultural Holdings (England) Act, 1883, the Tenants' Compensation Act, 1890, the Market Gardeners' Compensation Act, 1895, and the Agricultural Holdings Act, 1900, has been included in the present Work, together with the Allotments and Cottage Gardens Compensation for Crops Act, 1887, which, though not a portion of the code, it was thought useful to add as being *in pari materiâ*.

The code is not a wholly satisfactory specimen of law making, being but a patchwork of statutes, the complete effect of which is not on all points very clear. It has been

the Author's endeavour to assist in its elucidation by such notes and comments as seemed called for, and he has added the Rules and Forms of the Board of Agriculture, the County Court Rules and Forms under the Acts, and some Forms for general use which it was thought might be useful to landlords, tenants, and others affected by the Acts.

The references to "Dixon" throughout the book are to the fifth edition of Dixon's "Law of the Farm."

It is the Author's sincere wish that these Acts may conduce towards that much to be desired result,—the prosperity of agriculture in this country.

AUBREY J. SPENCER.

19, Old Buildings, Lincoln's Inn,
January, 1901.

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INTRODUCTION.

The collection of statutes known as the Agricultural Holdings (England) Acts, 1883 to 1900, deals with the subject of compensation for improvements effected on agricultural holdings and market gardens, and with certain other matters affecting the relations of landlord and tenant on such holdings. The statutes included under this heading are the Agricultural Holdings (England) Act, 1883, the Tenants' Compensation Act, 1890, the Market Gardeners' Compensation Act, 1895, and the Agricultural Holdings Act, 1900. They may be cited together under the above heading, and the three later statutes are to be construed as one with the Agricultural Holdings (England) Act, 1883. Sect. 14 (1900).

The Agricultural Holdings (England) Act, 1883, effected important changes in the law relating to holdings of whatever size, either wholly agricultural or pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden. Sect. 54.

Previously to the passing of this Act the tenant was not necessarily entitled to any compensation for improvements executed during his tenancy. On his

quitting his holding, the landlord reaped the sole benefit of the improvements (if any) effected by the tenant, in accordance with the legal maxim: "*Quicquid plantatur solo, solo cedit.*" The exception to this rule was, that in several counties, notably Lincolnshire, Leicestershire, and Glamorganshire, compensation for improvements was to some extent provided by the custom of the country. The Agricultural Holdings (England) Act, 1875, had also provided compensation for the improvements therein mentioned, but as it was competent for either landlord or tenant to exclude its operation, and the common practice was to exclude it, it had very little effect. The operation of the Act of
Sect. 55. 1883, however, could not, so far as it provided compensation to tenants for improvements, be excluded.

The Agricultural Holdings Act, 1900, was passed in consequence of the recommendations made in their Report in 1897 by the Royal Commission on Agricultural Depression (Parliamentary Paper C. 8540). The recommendations of the Commission for the amendment of the Act of 1883 were as follows:—

1. That notice to the landlord, but not his consent, be required in respect of the following improvements:—

   The improving of roads.
   The improving of watercourses.
   Making of gardens not exceeding one acre.
   Planting of orchards or fruit bushes not exceeding one acre.
   Making and planting of orchards not exceeding one acre.

2. That sect. 1 of the Agricultural Holdings Act, 1883, be amended by the omission of the proviso recognising the inherent capabilities of the soil.
3. That it be made clear that power is given to referees to award compensation for long-continued use of manures.
4. That the consumption by cattle, sheep, and pigs of corn produced on the holding should be the subject of compensation. Also that compensation be allowed in respect of corn consumed by horses other than those regularly employed on the farm.
5. That the principles of the Arbitration Acts of 1889 be adopted, by which, unless the parties otherwise determine, the case is referred to a single arbitrator.
6. That in all cases under the Acts the umpire should be chosen from a list approved by the Board of Agriculture, and that "referees" should be styled "valuers."
7. That power be given to umpires and valuers to include in one award compensation for claims by either party under custom or agreement in respect of matters and things not included in the Acts, as well as those which are under the Acts.
8. That notices of claim be done away with, due provision being made for either party putting the Acts into operation, and for written statements of claim being laid before the referees; and that if neither party claim within three months from the determination of the tenancy, all right to claim shall be barred.

If, however, the notice of claim be retained, we recommend that the determination of a tenancy, for the purpose of sect. 7 of the Acts, should be deemed to be the period when rent ceases to accrue.

9. That the dilapidations for which a landlord may claim compensation should be scheduled.
10. That no sum be recoverable as a penal rent or in respect of any breach of covenant in excess of the amount of actual damage sustained by the landlord.
11. That the period in respect of which a landlord may claim waste or breach under sect. 6 of the Acts be limited in the case of all tenancies from year to year to a period of two years.
12. That except on points of law there be no appeal from the award under the Acts.
13. That distress for rent be limited to such rent as has accrued within, and in respect of, a period of twelve months expiring at the date of such distress.

Many of these recommendations, though not all, have been included in the Act of 1900, which comes into force on January 1, 1901.

The general effect of the law contained in the Agricultural Holdings (England) Acts, 1883 to 1900, may be considered under five heads:—

1. Compensation for improvements.
2. Notice to quit.
3. Fixtures.
4. Distress.
5. Other matters.

1. *Compensation for Improvements.*

The tenant at the determination of his tenancy is entitled to compensation for the improvements mentioned in the 1st Schedule to the Act of 1900, and such compensation is to be measured by their value to an incoming tenant, not by their cost to the outgoing tenant. In estimating the improvement, the "inherent capabilities of the soil" are not to be taken into account as part of the improvement. If the tenant chooses, he may claim compensation under the custom of the country or under any agreement in lieu of claiming under the Acts for any improvement which is covered by the Acts. This option was excluded by the Act of 1883, but is now given by the Act of 1900. Sect. 1 (1900).

The 1st Schedule is divided into three parts. Improvements in the first part are of a permanent nature, such as the erection of buildings, the laying down of permanent pasture, the formation of silos, &c. The tenant is not entitled to compensation for any improvements mentioned in this part of the Schedule, unless the landlord has previously to the execution of the improvement given his consent in writing. The consent may be given on any terms as to compensation or otherwise. Schedule 1, part 1.

The second part of the 1st Schedule includes only one improvement, viz., Drainage. A tenant intending to drain must give notice to the landlord, not more than three or less than two months before beginning the improvement, of his intention, and of the manner in which he proposes to execute the improvement. The landlord may agree with him as to the compensation Schedule 1, part 2. Sect. 4.

payable, or may undertake to execute the improvement himself, and after executing the same in any "reasonable and proper manner which he thinks fit," may charge the tenant 5 per cent. on his outlay or an annual sum which will repay the outlay in twenty-five years with interest at the rate of 3 per cent. The landlord and tenant may dispense with notice and come to an agreement in a lease or otherwise with regard to drainage. If the tenant executes the improvement himself, and does not make any agreement with his landlord, he becomes entitled to compensation under the Act.

Sched. 1, part 3.

Improvements mentioned in the third part of the 1st Schedule are improvements which tend directly to increase the fertility of the soil, and consist in the application of some external substance, such as artificial manure, lime, &c., to the land, or the consumption on the holding by cattle, sheep, pigs, or horses, other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding, or of corn proved to have been produced and consumed on the holding. This part also includes laying down temporary pasture with clover, grass, &c., sown more than two years prior to the determination of the tenancy. It further includes, in the case of holdings to which the Market Gardeners' Compensation Act, 1895, applies (that is, any holding or part of a holding agreed in writing to be let or treated as a market garden), the planting of fruit trees or fruit bushes permanently set out, the planting of strawberry plants and asparagus, rhubarb, and other vegetable crops which continue productive for two or more years, and the erection or enlargement of buildings for the trade or business of a

market gardener. The tenant is entitled to compensation for any improvements mentioned in the third part of the 1st Schedule, whether the landlord has consented to them or not. The only case in which the operation of the Act is excluded is when "fair and reasonable" compensation is provided by a "particular agreement" in writing for improvements of this kind. Sect. 5.

The compensation due to the tenant may be diminished (a) by any benefit allowed to him by the landlord in consideration of his executing the improvement, (b) by an allowance for the value of the manure required by the tenancy or custom to be returned in respect of crops sold off or removed within the last two years of his tenancy, not exceeding the value of the manure which would in fact have been produced by the consumption on the holding of the crops so sold off or removed. No claim can be made by a tenant for compensation for any improvements, other than manures, begun within a year of the expiration of his tenancy, unless he holds under a yearly tenancy and less than one year's notice to quit be required (in which case the improvement must not be begun after the final notice to quit), or unless the landlord has assented or failed to object to the making of the improvement. Sect. 1 (1900). Sect. 59.

A tenant desiring to claim compensation under the Acts is not required to give any formal or specific notice, but must make his claim before the determination of the tenancy, and it would be prudent that he should make it in writing to the landlord stating the general nature of the claim, though a statement of the actual amount claimed would seem unnecessary. Sect. 2 (1900).

An agreement may be concluded between the parties

as to the compensation payable, or failing an agreement the matter will be decided by arbitration. The tenant may, not later than seven days after the appointment of the arbitrator or arbitrators, by written notice to the landlord, require the arbitration to extend to any claim he has against the landlord for breach of contract or any other matter, such as tillages, unconsumed hay or straw, &c., and the landlord may, by a similar notice to the tenant, require the arbitration to extend to any claim he may have against the tenant for breach of contract, waste, &c. The arbitration may thus be made to include all claims on either side, such as usually arise on the determination of a tenancy, instead of, as under the Act of 1883, being confined to claims under the Act. The balance awarded on either side may be recovered by order of the County Court. If the tenant lawfully remains in occupation of part of the holding after the determination of his tenancy as to the whole, he may claim for an improvement executed on that part after such determination at any time before he quits that part, and the arbitrator may make a separate award as to such part.

Sect. 2, sub-s. 3 (1900).

Sect. 24.

Sect. 2, sub-s. 2 (1900).

Any arbitration after January 1, 1901, will, unless both parties otherwise agree in writing, be before a single arbitrator agreed upon by the parties or in default of agreement to be appointed by the Board of Agriculture on the application in writing of either party. He must make and sign his award within twenty-eight days of his appointment, or within such longer period as the Board of Agriculture may determine. If the parties agree in writing that there be not a single arbitrator, each will appoint an arbitrator,

Sched. 2 (1900).

and the arbitrators will appoint an umpire. If default is made either in the appointment of an arbitrator for fourteen days after notice from one party to the other, or of an umpire for seven days after request from either party, the appointment will be made by the Board of Agriculture. The award is final and binding on the parties without any right to appeal, unless the arbitrator has misconducted himself, or the arbitration or award has been improperly procured, in which case the County Court may set the award aside; but the arbitrator may correct any clerical mistake or error arising from any accidental slip or omission. He is bound on the application of either party to specify in his award the amount awarded in respect of any particular improvement. The arbitrator may at any stage of the proceedings, and shall, if so directed by the County Court, state a case for the opinion of the County Court on any question of law arising, and there is an appeal from the County Court to the Court of Appeal, whose decision is final.

If compensation is paid by an incoming to an outgoing tenant with the consent of the landlord, or even without such consent in the case of a market garden, he has the same right as against the landlord on quitting his holding as the outgoing tenant would have had, if he had remained on. A charge upon the holding may be obtained by the landlord for any compensation paid by him, and if the landlord is a trustee or mortgagee he will not be liable personally for compensation, but it may be charged upon the holding by an order of the Board of Agriculture, and the charge so made will be a "land charge" within the Land Charges Registration and Searches Act, 1888.

Sect. 56.

Sect. 29.

Sect. 3 (1900).

Sect. 55. As before stated, compensation by agreement between the parties may be substituted for compensation under the Acts in respect of any improvements mentioned in the first or second parts of the 1st Schedule, and in respect of improvements in the third part of the same Schedule by a "particular" agreement for "fair and reasonable" compensation. But save as above mentioned any agreement, whereby a tenant is deprived of his right to claim compensation under the Acts, is void. The landlord and tenant may, however, it would seem, contract themselves out of the other portions of the Acts, and a tenant may, if he choose, claim under custom or agreement in lieu of claiming under the Act, though the landlord cannot compel him to do so.

2. *Notice to Quit.*

Sect. 33. The law before the Act of 1883 was that a half-year's notice to quit was sufficient to determine a yearly tenancy. Now, where a half-year's notice was "by law" necessary and sufficient, in all cases to which the Act applies—that is, all holdings of an agricultural, pastoral, or market garden nature as provided in sect. 54 of the Act of 1883—a year's notice expiring with a year of tenancy is necessary and sufficient.

The landlord and tenant may exclude this section by agreement.

Sect. 41. A landlord may under this Act give a good notice to the tenant to quit part of his holding in order to resume the land for certain improvements, such as the erection of labourers' cottages, the providing of allotments, the planting of trees, &c., specified in sect. 41;

but the tenant may treat such a partial notice as a notice to quit his entire holding.

In the case of a tenancy not binding on the mortgagee of the land, it is enacted that the mortgagee must give the occupier six months' notice to quit before he deprives him of the land, and if he so deprives him the occupier will be entitled to compensation for his crops and for expenditure made by him in the expectation of holding his land for the full term of his contract of tenancy. Sect. 2 (1890).

3. *Fixtures.*

Fixtures formerly became the property of the landlord on the determination of the tenancy. An exception was however introduced in the case of what are called "tenant's fixtures" and "trade fixtures." The latter, it was decided by the well-known case of *Elwes* v. *Maw* (2 Sm. L. C. 183), do not include fixtures put up for the purpose of agriculture. By 14 & 15 Vict. c. 25, s. 3, an agricultural tenant was enabled to remove fixtures put up by him with the consent of his landlord for agricultural purposes. Now all fixtures, whether erected by the tenant or purchased from a former tenant, are the property of and removable by the tenant before or within a reasonable time after the determination of his tenancy. The landlord has however a right to one month's notice of removal, and may elect to purchase the fixtures. Sect. 34.

It is to be observed that an absolute property in the fixtures (subject to the landlord's option of purchase) is thus vested in the tenant. The value of the fixtures may, if necessary, be ascertained in the same way as compensation under the Acts.

The provisions of sect. 34 extend to any fixture or building affixed or erected by a tenant for the purposes of his trade or business of a market gardener, and a tenant of a market garden may remove fruit trees and fruit bushes planted by him and not permanently set out.

4. *Distress.*

Sect. 44. Six years' arrears of rent could at the time of the passing of the Act of 1883 be levied by distress. In the case of arrears arising subsequently, a landlord may not distrain for rent which has become due more than one year before the making of the distress. In cases however, where in the "ordinary course of dealing" payment of rent is habitually deferred until a quarter or half-year after the day when it becomes due, the rent is only deemed to become due at the expiration of such quarter or half-year. The amount of rent actually leviable by distress may, if payment is deferred habitually, exceed one year's rent, for the landlord may distrain for rent due but not yet payable according to the "ordinary course of dealing," and also for the rent which has become payable during the previous year according to "the ordinary course of dealing." (*Re Bew, Ex parte Bull*, 56 L. J. Q. B. 270; 18 Q. B. D. 642.)

Sect. 45. Live stock agisted at a fair price is exempted from distress, except to the extent of the price agreed to be paid for feeding. The exemption extends to machinery, the *bonâ fide* property of a person other than the tenant, on his premises under an agreement for hire, and live stock belonging to such other person on the farm solely

for breeding purposes. Disputes as to ownership or in respect of other matters relating to the distress may be heard by the County Court or a Court of Summary Jurisdiction, and where compensation is due to the tenant and the amount has been ascertained the landlord may not distrain for more than the balance of the rent. Sect. 46. Sect. 47.

5. *Other Matters.*

The landlord of a holding to which the Acts apply may at all reasonable times enter on the holding to view the state of the holding, whether or not the right of entry is expressly given him by his tenancy agreement. Sect. 5 (1900).

Penal rents are abolished, and the landlord cannot recover by distress or otherwise any sum for breach of covenant beyond the actual damage suffered, except in cases of covenants or conditions against breaking up permanent pasture, grubbing underwoods, felling, cutting, lopping or injuring trees, or regulating the burning of heather, in which cases penal rents may be recovered and will be enforceable as before. Sect. 6 (1900).

THE AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

(46 & 47 Vict. c. 61.)

§ 1. *An Act for Amending the Law relating to Agricultural Holdings in England.*

[25th August, 1883.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (*a*) :

PART I.

Improvements.

Compensation for Improvements.

General right of tenant to compensation.

1. *Subject as in this Act mentioned, where a tenant has made on his holding any improvement comprised in the 1st Schedule hereto, he shall, on and after the commencement of this Act, be entitled on quitting his holding at the determination of a tenancy to obtain from the landlord as compensation under this Act for such improvement such sum as fairly represents the value of the improvement to an incoming tenant : Provided always, that in estimating the value of any improvement in the 1st Schedule hereto there*

(*a*) All parts of this Act which have been repealed are printed in italics.

shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.[1] §§ 1, 2.

(1) Sect. 1, sub-sect. 1, of the Agricultural Holdings Act, 1900, is substituted for this section.

As to Improvements executed before the Commencement of Act.

2. Compensation under this Act shall not be payable in respect of improvements executed before the commencement of this Act, with the exceptions following, that— Restriction as to improvements before Act.

(1.) Where a tenant has within ten years before the commencement of this Act made an improvement mentioned in the third part of the 1st Schedule hereto,[1] and he is not entitled under any contract, or custom,[2] or under the Agricultural Holdings (England) Act, 1875,[3] to compensation in respect of such improvement; or 38 & 39 Vict. c. 92.

(2.) Where a tenant has executed an improvement mentioned in the first and second part of the said 1st Schedule within ten years previous to the commencement of this Act, and he is not entitled under any contract, or custom, or under the Agricultural Holdings (England) Act, 1875,[3] to compensation in respect of such improvement, and the landlord within one year after the commencement of this Act declares in writing his consent to the making of such improvement, then such tenant on quitting his holding at the determination of a tenancy after the commencement of this Act may claim compensation under this Act in respect of such improvement in the same

§§ 2, 3.

manner as if this Act had been in force at the time of the execution of such improvement.

Improvements mentioned in Schedule I. Part 3.

(1) The improvements in the third part of the 1st Schedule are improvements which increase the productive quality of the soil, such as the application of artificial or other purchased manure, chalking and liming the land, &c. They came within the second and third classes of the Agricultural Holdings Act, 1875, and under that Act were deemed to be exhausted at the end of seven or two years according to their nature. The maximum period is ten years under this section.

(2) For a summary of the various customs which prevail in different counties as to compensation, &c., see Dixon, App. II.

(3) It is unlikely that any claim could now be made under the Agricultural Holdings Act, 1875. That Act applied to all tenancies beginning after its commencement (Feb. 14th, 1876); but it is repealed by the Act of 1883 (sect. 62). The only possible claim would be in the case of a long lease beginning between Feb. 14th, 1876, and the commencement of the Act of 1883 (Jan. 1st, 1884), but agricultural leases exceeding twenty-one years in duration are practically unknown.

As to Improvements executed after the Commencement of Act.

Consent of landlord as to improvement in 1st Schedule, Part I.

3. Compensation under this Act shall not be payable in respect of any improvement mentioned in the first part of the 1st Schedule hereto, and executed after the commencement of this Act, unless the landlord, or his agent duly authorized in that behalf,[1] has, previously to[2] the execution of the improvement and after the passing of this Act, consented in writing to the making of such improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation, or otherwise, as may be agreed upon between the landlord and the tenant, and in the event of any agreement being made between the landlord and the tenant, any compensation[3] payable thereunder shall be deemed to be substituted for compensation under this Act.

(1) An ordinary authority to an agent would not enable him to consent to improvements on behalf of the landlord. A special authority to consent would seem to be required: see *Turner* v. *Hutchinson* (2 F. & F. 185); though in *Re Pearson and I'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618), it was held that it was within the scope of an agent entrusted with the management of a farm to consent to its alteration to a market garden.

Authority to agent to consent.

(2) It is to be noticed that the consent must be given before the improvement is executed. A subsequent consent will not enable the tenant to claim compensation in respect of an improvement made after the commencement of the Act.

When the consent must be given.

(3) As in the last section, nothing is said in this section as to the adequacy of the compensation under any agreement to exclude a claim for compensation under the Act. It differs in this respect from sect. 5, which says that in the case of improvements in the third part of the 1st Schedule the compensation agreed upon must be "fair and reasonable" to oust the operation of the Act. It is presumed that in analogy to the rule which precludes it from weighing the adequacy of the consideration for a contract the Court would not enter into the adequacy of the compensation under this section, and that any compensation not being so small as to be illusory would be sufficient.

See Forms 1, 2, 3 for consent and agreements.

4. Compensation under this Act shall not be payable in respect of any improvement mentioned in the second part[1] of the 1st Schedule hereto, and executed after the commencement of this Act, unless the tenant has, not more than three months[2] and not less than two months[2] before beginning to execute such improvement, given to the landlord, or his agent duly authorized in that behalf, notice in writing of his intention so to do, and of the manner[3] in which he proposes to do the intended work, and upon such notice being given, the landlord and tenant may agree on the terms as to compensation[4] or otherwise on which the improvement is to be executed, and in the event of any such agreement being made, any compensation payable thereunder shall be deemed to be substituted for compensation under this Act, or the landlord may, unless the notice of the tenant is previously withdrawn,[5] undertake[6] to

Notice to landlord as to improvement in Schedule I. Part 2.

§ 4. execute the improvement himself, and may execute the same in any reasonable and proper manner[7] which he thinks fit, and charge the tenant with a sum not exceeding five pounds per centum per annum on the outlay incurred in executing the improvement, or not exceeding such annual sum payable for a period of twenty-five years as will repay such outlay in the said period, with interest at the rate of three per centum per annum, such annual sum to be recoverable as rent.[8] In default of any such agreement or undertaking, and also in the event of the landlord failing to comply with his undertaking within a reasonable time,[9] the tenant may execute the improvement himself, and shall in respect thereof be entitled to compensation under this Act.

The landlord and tenant may, if they think fit, dispense with any notice under this section, and come to an agreement in a lease or otherwise between themselves in the same manner and of the same validity as if such notice had been given.[10]

(1) The second part of the 1st Schedule mentions only one improvement—viz., drainage.

Meaning of "month."

(2) "Month" in an Act of Parliament means calendar month: see Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 3.

The "manner" of executing the proposed work.

(3) "The manner" would include such particulars as the diameter of pipes, depth, direction, &c., of proposed drainage works.

See Form 4.

(4) See note (3) to sect. 3.

Tenant may withdraw his notice.

(5) It is to be noticed that the tenant may, before the landlord undertakes to execute the improvements, withdraw his notice, so as to take away from the landlord the power of executing the improvement and charging the tenant with interest on any outlay incurred by him in the work.

(6) It is not expressly stated that the undertaking by the landlord to execute the improvement must be in writing, but it would be advisable that it should be so.

See Form 5.

(7) The landlord is not, by the words of the section, bound to

§ 4.

execute the drainage works in the "manner" proposed by the tenant, but must do so in a "reasonable and proper manner."

Capital money under the Settled Land Act, 1882.

(s) Capital money under the Settled Land Act, 1882, may, under sect. 25 of that Act, on a certificate of the Board of Agriculture, or of a competent engineer, or an order of the Court, be applied in drainage. A tenant for life of settled land is thus enabled to sell a portion of his estate for the purpose of executing drainage works.

Under sect. 29 of this Act, capital money arising under the Settled Land Act, 1882, may be applied in payment of any moneys expended and costs incurred by a landlord in or about the execution of any improvement mentioned in the 1st or 2nd parts of the Schedule hereto.

Facilities given by the legislature for the raising of money for drainage.

Under the Land Drainage Act, 1845 (8 & 9 Vict. c. 56), tenants for life are empowered to apply to the Court of Chancery for leave to make permanent improvements by draining; and if in the opinion of the Court such improvements would be beneficial to all persons interested, the money expended in making such improvements may be charged on the inheritance of the land with interest at a rate not exceeding 5 per cent. per annum, payable half-yearly; the principal is to be repaid in equal annual instalments, not less than twelve nor more than eighteen in number.

Under certain Acts, called the Public Money Drainage Acts, 1846 to 1856 (9 & 10 Vict. c. 101; 10 & 11 Vict. c. 11; 11 & 12 Vict. c. 119; 13 & 14 Vict. c. 31; 19 & 20 Vict. c. 9), any owner of land (including a tenant for life) may obtain advances from the public funds for works of drainage to be executed upon a certificate of the Inclosure Commissioners (now the Board of Agriculture). The works must be executed within five years, and the amount is to be repaid by means of a rent-charge of 6*l.* 10*s.* for twenty-two years for every 100*l.* advanced.

Under the Improvement of Land Act, 1864 (27 & 28 Vict. c. 114), "improvements of land" include drainage, and provision is made facilitating the borrowing of money by landowners from land improvement companies and others for that purpose. The rate of interest to be charged is not to exceed 5*l.* per cent. per annum, repayment is by instalments, and the term for repayment is, under the Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), such period not exceeding forty years as the Board of Agriculture, having regard in each case to the character and probable duration of the improvement, determine. These loans are under the superintendence of the Board of Agriculture.

§§ 4, 5.

What would be a "reasonable" time for the execution of the improvement.

(9) What would be a "reasonable time" within which the landlord should execute the improvement must be determined according to the circumstances in each particular case in which the question arises. As drainage works are generally executed in the winter or early spring, it is suggested that the improvement should be executed not later than the winter or spring next following the undertaking.

(10) See Forms 6 and 7.

Reservation as to existing and future contracts of tenancy.

5. Where, in the case of a tenancy under a contract of tenancy current[1] at the commencement of this Act, any agreement in writing or custom, or the Agricultural Holdings (England) Act, 1875,[2] provides specific compensation for any improvement comprised in the 1st Schedule hereto, compensation in respect of such improvement, although executed after the commencement of this Act, shall be payable in pursuance of such agreement, custom, or Act of Parliament, and shall be deemed to be substituted for compensation under this Act.

Where in the case of a tenancy under a contract of tenancy beginning after the commencement of this Act, any particular agreement[3] in writing secures to the tenant for any improvement mentioned in the third part of the 1st Schedule hereto, and executed after the commencement of this Act, fair and reasonable[4] compensation, having regard to the circumstances existing at the time of making such agreement,[5] then in such case the compensation in respect of such improvement shall be payable in pursuance of the particular agreement, and shall be deemed to be substituted[6] for compensation under this Act.

The last preceding provision of this section relating to a particular agreement shall apply in the case of a tenancy under a contract of tenancy current at the commencement of this Act in respect of an improvement mentioned in the third part of the 1st Schedule hereto, specific compensation for which is not provided

by any agreement in writing, or custom, or the Agricultural Holdings Act, 1875. § 5.

(1) A tenancy from year to year under a contract of tenancy current at the commencement of the Act is deemed a tenancy under a contract current at the commencement of the Act until the first day on which either the landlord or tenant could, by giving notice immediately after the commencement of the Act, cause the tenancy to determine. See the Interpretation Clause (sect. 61).

Creation of a new tenancy.

A new tenancy is not necessarily created by raising the rent of a tenant from year to year: *Doe* d. *Monk* v. *Geeckie* (1 C. & K. 307); Dixon, p. 401.

The surrender of a field forming part of a holding with a proportionate reduction of the rent does not create a new tenancy: *Holme* v. *Brunskill* (47 L. J. Q. B. 610; 3 Q. B. D. 495); *Baynton* v. *Morgan* (57 L. J. Q. B. 465; 21 Q. B. D. 101).

(2) It has been held that a notice, by a tenant holding under a tenancy current at the commencement of the Act of 1883, of a claim for compensation for improvements executed after the commencement of the Act is good if given under the Act of 1883, though the compensation was to be based upon the principle of the Act of 1875: *Smith* v. *Acock* (53 L. T. 230).

"Particular" agreement.

(3) The agreement must be a "particular" agreement. The meaning of this expression is doubtful. It is presumed that the agreement should contain particulars of the improvements and of the compensation to be paid. This agreement only relates to improvements in the third part of the 1st Schedule. There is, however, nothing in the Act to prohibit a landlord and tenant from making an agreement altogether outside the Act as to the terms on which the tenant will quit in respect of matters for which compensation can be obtained under the Act, and the tenant can sue upon such an agreement: *Newby* v. *Eckersley* (68 L. J. Q. B. 261; (1899) 1 Q. B. 465).

"Fair and reasonable" compensation.

(4) The words "fair and reasonable" distinguish the compensation, which excludes the operation of the Act, in this paragraph from that mentioned in sections 2 and 3, and in the earlier paragraph of this section (see note (3) to sect. 3).

"Having regard to the circumstances existing at the time."

(5) These words show that in estimating the fairness of an agreement, the state of the farm, &c. at the time of the making of the agreement must be considered, not its value at the time of its application. An increase in the value of the farm may have been caused meanwhile by extraneous circumstances,

§§ 5, 6. and the improvement may thereby have become far more valuable.

Mode of setting up "substituted" compensation.

See Forms 8 and 9.

(6) As to the way in which *substituted* compensation can be set up as an answer to a claim for compensation under the Act, see note to sect. 17.

Regulations as to Compensation for Improvements.

Regulations as to compensation for improvements.

6. *In the ascertainment of the amount of the compensation under this Act payable to the tenant in respect of any improvement there shall be taken into account in reduction thereof:*

(*a.*) *Any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; and*

(*b.*) *In the case of compensation for manures the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, except as far as a proper return of manure to the holding has been made in respect of such produce so sold off or removed therefrom; and*

(*c.*) *Any sums due to the landlord in respect of rent or in respect of any waste committed or permitted by the tenant, or in respect of any breach of covenant or other agreement connected with the contract of tenancy committed by the tenant, also any taxes, rates, and tithe rent-charge due or becoming due in respect of the holding to which the tenant is liable as between him and the landlord.*

There shall be taken into account in augmentation of the tenant's compensation—

(*d.*) *Any sum due to the tenant for compensation in respect of a breach of covenant or other agree-*

ment connected with a contract of tenancy and committed by the landlord.

Nothing in this section shall enable a landlord to obtain under this Act compensation in respect of waste by the tenant or of breach by the tenant committed or permitted in relation to a matter of husbandry more than four years before the determination of the tenancy.[1]

(1) The matters originally provided for in this section are dealt with in sects. 1 & 2 of the Agricultural Holdings Act, 1900.

Procedure.

Notice of intended claim.

7. *A tenant claiming compensation under this Act shall, two months at least before the determination of the tenancy, give notice in writing to the landlord of his intention to make such claim.*

Where a tenant gives such notice, the landlord may, before the determination of the tenancy, or within fourteen days thereafter, give a counter-notice in writing to the tenant of his intention to make a claim in respect of any waste or any breach of covenant or other agreement.

Every such notice and counter-notice shall state, as far as reasonably may be, the particulars and amount of the intended claim.[1]

(1) It was held that if the amount awarded on the landlord's counterclaim under this section overtopped the tenant's claim, the landlord could not recover the balance under the procedure given by the Act: *Re Holmes and Formby* (64 L. J. Q. B. 391; (1895) 1 Q. B. 174). See now sect. 2, sub-sect. 3, of the Agricultural Holdings Act, 1900.

The 2nd Schedule to the Agricultural Holdings Act, 1900, takes the place of this and the following repealed sections. See *post*, p. 102.

Compensation agreed or settled by reference.

8. *The landlord and the tenant may agree on the amount and mode and time of payment of compensation to be paid under this Act.*

If in any case they do not so agree the difference shall be settled by a reference.

§ 9.

Appointment of referee or referees and umpire.

9. *Where there is a reference under this Act, a referee, or two referees and an umpire, shall be appointed as follows :—*

(1.) *If the parties concur, there may be a single referee appointed by them jointly :*

(2.) *If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed.*

(3.) *If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee :*

(4.) *If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act, fails to act, the party appointing him shall appoint another referee :*

(5.) *Notice of every appointment of a referee by either party shall be given to the other party :*

(6.) *If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the County Court shall within fourteen days appoint a competent and impartial person to be a referee :*[1]

(7.) *Where two referees are appointed, then (subject to the provisions of this Act) they shall before they enter on the reference appoint an umpire :*

(8.) *If before award an umpire dies or becomes incapable of acting, the referees shall appoint another umpire :*

(9.) *If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the County Court shall within fourteen days*

appoint a competent and impartial person to be the umpire.

(10.) *Every appointment, notice, and request under this section shall be in writing.*

Who may be referee.

(1) It was held in *Re Griffiths and Morris* (64 L. J. Q. B. 386; (1895) 1 Q. B. 866), that the appointment by the County Court of a referee under this section must be made by the County Court judge, and could not lawfully be made by his registrar, except with the consent of both parties.

Requisition for appointment of umpire by Land Commissioners, &c.

10. *Provided that, where two referees are appointed, an umpire may be appointed as follows :*

(1.) *If either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the Land Commissioners for England, then the umpire, and any successor to him, shall be appointed, on the application of either party, by those commissioners.*

(2.) *In every other case, if either party on appointing a referee requires, by notice in writing to the other, that the umpire shall be appointed by the County Court, then, unless the other party dissents by notice in writing therefrom, the umpire, and any successor to him, shall on the application of either party be so appointed, and in case of such dissent the umpire, and any successor to him, shall be appointed, on the application of either party, by the Land Commissioners for England.*

Exercise of powers of County Court.

11. *The powers of the County Court under this Act relative to the appointment of a referee or umpire shall be exercisable by the judge of the Court having jurisdiction, whether he is without or within his district, and may, by consent of the parties, be exercised by the registrar of the Court.*

Mode of submission to reference.

12. *The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a sub-*

§§ 13, 14, 15, 16, 17.

mission, or the appointment of a referee, without the consent of the other.

Power for referee, &c., to require production of documents, administer oaths, &c.

13. *The referee or referees or umpire may call for the production of any sample, or voucher, or other document, or other evidence which is in the possession or power of either party, or which either party can produce, and which to the referee or referees or umpire seems necessary for determination of the matters referred, and may take the examination of the parties and witnesses on oath, and may administer oaths and take affirmations; and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.*

Power to proceed in absence.

14. *The referee or referees or umpire may proceed in the absence of either party where the same appears to him or them expedient, after notice given to the parties.*

Form of award.

15. *The award shall be in writing, signed by the referee or referees or umpire.*

Time for award of referee or referees.

16. *A single referee shall make his award ready for delivery within twenty-eight days after his appointment.*

Two referees shall make their award ready for delivery within twenty-eight days after the appointment of the last appointed of them, or within such extended time (if any) as they from time to time jointly fix by writing under their hands, so that they make their award ready for delivery within a time not exceeding in the whole forty-nine days after the appointment of the last appointed of them.

Award in respect of compensation under sects. 3, 4 and 5.

17. In any case provided for by sections three, four, or five, if compensation is claimed under this Act,[1] such compensation as under any of those sections is to be deemed to be substituted for compensation under this Act, if and so far as the same can, consistently with the terms of the agreement,[2] if any, be ascertained by the referees or the umpire, shall be awarded in respect of any improvements thereby provided for, *and the award shall, when necessary, distinguish such improvements and the amount awarded in respect thereof;*

and an award given under this section shall be subject to the appeal provided by this Act. §§ 17,18.

"If compensation is claimed under this Act."

(1) It would seem that the operation of this section is restricted to cases where a claim has been made in the first place for compensation under the Act; and that it does not admit of an award being made by the arbitrators of compensation substituted under sects. 3, 4, and 5, unless a general claim in respect of the improvement in question has first been made. The arbitrators apparently have the power, when a claim is made for compensation, to decide that compensation is not payable under the Act, but under an agreement, or custom, or the Act of 1875, and of awarding the "substituted" compensation instead of compensation under the Act. But see below as to the powers of arbitrators under the Act of 1900.

"Consistently with the terms of the agreement."

(2) The referees or umpire can only estimate compensation under this section, in the case of an agreement, if it is compensation which is under the agreement ascertainable on a reference. Under an agreement for the payment of a specific sum, or which provided some other means than a reference for the settlement of the amount to be paid, there would be nothing to be ascertained. In *Farquharson* v. *Morgan* (63 L. J. Q. B. 474; (1894) 1 Q. B. 552), it was held that an award including compensation for matters not within the Act was bad. In *Shrubb* v. *Lee* (59 L. T. 376), the Court considered that there was evidence which warranted it in holding that an award dealing with matters within and outside the Act was intended to be an award outside the Act altogether, and therefore good as being made in what was in fact a common law reference. Under the Agricultural Holdings Act, 1900, it will henceforth be the duty of the arbitrator to deal with any claim for compensation, whether under the Agricultural Holdings Acts, or under custom, agreement, or otherwise, in respect of any improvement in the 1st Schedule, and either party may by notice in writing require that the arbitration shall extend to other claims by either party against the others. See sect. 2, sub-sects. 1 and 3, *post*, p. 90. The arbitrator would probably also have power to consider whether an agreement providing substituted compensation for compensation under the Act is "fair and reasonable," as provided by sect. 5 of this Act.

Duty of arbitrator under Act of 1900.

18. *Where two referees are appointed and act, if they fail to make their award ready for delivery within the time*

Reference to and award by umpire.

§§ 18, 19, 20.

aforesaid, then, on the expiration of that time, their authority shall cease, and thereupon the matters referred to them shall stand referred to the umpire.

The umpire shall make his award ready for delivery within twenty-eight days after notice in writing given to him by either party or referee of the reference to him, or within such extended time (if any) as the registrar of the County Court from time to time appoints, on the application of the umpire or of either party, made before the expiration of the time appointed by or extended under this section.

Award to give particulars.

19. *The award shall not award a sum generally for compensation, but shall, so far as possible, specify—*

(*a.*) *The several improvements, acts, and things in respect whereof compensation is awarded, and the several matters and things taken into account under the provisions of this Act in reduction or augmentation of such compensation;*

(*b.*) *The time at which each improvement, act, or thing was executed, done, committed, or permitted;*

(*c.*) *The sum awarded in respect of each improvement, act, matter, and thing; and*

(*d.*) *Where the landlord desires to charge his estate with the amount of compensation found due to the tenant, the time at which, for the purposes of such charge, each improvement, act, or thing in respect of which compensation is awarded is to be deemed to be exhausted.*

Costs of reference.

20. *The costs of and attending the reference, including the remuneration of the referee or referees and umpire, where the umpire has been required to act, and including other proper expenses, shall be borne and paid by the parties in such proportion as to the referee or referees or umpire appears just, regard being had to the reasonableness or unreasonableness of the claim of either party in respect of amount, or otherwise, and to all the circumstances of the case.*

The award may direct the payment of the whole or any part of the costs aforesaid by the one party to the other.

The costs aforesaid shall be subject to taxation by the registrar of the County Court, on the application of either party, but that taxation shall be subject to review by the judge of the County Court.[1]

(1) Under this section it was held that there was no power for a referee or umpire making an award under this Act to order costs to be paid as between solicitor and client: *Re Griffiths and Morris* (64 L. J. Q. B. 386; (1895) 1 Q. B. 866).

Day for payment.

21. *The award shall fix a day, not sooner than one month after the delivery of the award, for the payment of money awarded for compensation, costs, or otherwise.*

Submission not to be removable, &c.

22. *A submission or award shall not be made a rule of any Court, or be removable by any process into any Court, and an award shall not be questioned otherwise than as provided by this Act.*

Appeal to County Court.

23. *Where the sum claimed for compensation exceeds one hundred pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the County Court, on all or any of the following grounds :*

1. *That the award is invalid ;*
2. *That the award proceeds wholly or in part upon an improper application of or upon the omission properly to apply the special provisions of sections three, four, or five of this Act ;*
3. *That compensation has been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was not entitled to compensation ;*
4. *That compensation has not been awarded for improvements, acts, or things, breaches of covenants or agreements, or for committing or permitting waste, in respect of which the party claiming was entitled to compensation ;*

and the judge shall hear and determine the appeal, and

§§ 23,24. *may, in his discretion, remit the case to be reheard as to the whole or any part thereof by the referee or referees or umpire, with such directions as he may think fit.*

If no appeal is so brought, the award shall be final.

The decision of the judge of the County Court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice, and the decision of the High Court on the case, and respecting costs and any other matter connected therewith, shall be final, and the judge of the County Court shall act thereon.[1]

(1) There is now no appeal from the decision of the arbitrator on a question of fact, but he may state a case for an opinion of the County Court on a question of law arising. See Agricultural Holdings Act, 1900, sect. 2, sub-sect. 5.

Recovery of compensation.

24. Where any money agreed[1] or awarded *or ordered on appeal* to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded *or ordered* to be paid, it shall be recoverable,[2] upon order made by the judge of the County Court, as money ordered by a County Court under its ordinary jurisdiction to be paid is recoverable.[3]

Agreement as to compensation.

(1) An agreement may be made between the landlord and tenant as to the amount of compensation payable by the former to the latter (see Agricultural Holdings Act, 1900, sect. 2, sub-sect. 1), and if so made may be enforced under this section. Such agreement should be in writing.

Enforcement of payment of balance found due.

(2) This section was held in *Re Holmes and Formby* (64 L. J. Q. B. 391; (1895) 1 Q. B. 174) not to extend to the enforcement of payment of the balance due on the landlord's counterclaim if it overtopped the sum awarded to the tenant; but in *Re Lloyd and Tooth* (68 L. J. Q. B. 376; (1899) 1 Q. B. 559), where all matters in difference had been by agreement in writing referred to referees and an umpire appointed under the Act, and a balance was found due to the landlord, it was held that leave might be given to enforce the award in the same

manner as a judgment or order to the same effect under sect. 12 of the Arbitration Act, 1889.

The section must now be read in connection with sect. 2 of the Agricultural Holdings Act, 1900, which extends the reference upon notice in writing from either party to the determination of any claim between the landlord and tenant.

How money ordered to be paid by a County Court is recoverable.

([3]) Money ordered to be paid by a County Court under its ordinary jurisdiction is recoverable by execution against the goods of the debtor, by the attachment of debts in the hands of third parties called garnishees, or by the imprisonment of the debtor under the Debtors Act, 1869 (32 & 33 Vict. c. 62) for any term not exceeding six weeks for default in payment of any debt or instalment of any debt in pursuance of any order or judgment of the Court. See County Court Rules, Ord. XLA. r. 7, and Form 312B, *post*, pp. 149, 155.

Appointment of guardian.

25. Where a landlord or tenant is an infant without guardian, or is of unsound mind, not so found by inquisition, the County Court, on the application of any person interested, may appoint a guardian of the infant or person of unsound mind for the purposes of this Act, and may change the guardian if and as occasion requires.[1]

([1]) See County Court Rules, Ord. XLA. r. 1, *post*, p. 141.

Provisions respecting married women.

26. Where the appointment of a person to act as the next friend of a married woman is required for the purposes of this Act, the County Court may make such appointment, and may remove or change that next friend if and as occasion requires.

45 & 46 Vict. c. 75.

A woman married before the commencement of the Married Women's Property Act, 1882,[1] entitled for her separate use to land, her title to which accrued before such commencement as aforesaid, and not restrained from anticipation, shall, for the purposes of this Act, be in respect of land as if she was unmarried.

Where any other woman[2] married before the commencement of the Married Women's Property Act, 1882, is desirous of doing any act under this Act in respect of land, her title to which accrued before such commence-

§§ 26, 27, 28.

ment as aforesaid, her husband's concurrence shall be requisite, and she shall be examined apart from him by the County Court, or by the judge of the County Court for the place where she for the time being is, touching her knowledge of the nature and effect of the intended act, and it shall be ascertained that she is acting freely and voluntarily.

The Married Women's Property Act, 1882.

(1) A married woman, by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), is, from the commencement of that Act (1st January, 1883), capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property, as if she were a *feme sole* (sect. 1, sub-sect. 1), and every woman marrying after the commencement of the Act is entitled to have and to hold, as her separate property, and to dispose of in manner aforesaid, all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage (sect. 2). And every woman married before the commencement of the Act is entitled to have and to hold, and to dispose of in manner aforesaid as her separate property, all real and personal property, her title to which accrues after the commencement of the Act (sect. 5).

(2) "Any other woman married," &c. is any woman, married before the commencement of the Act of 1882, entitled to land not for her separate use, or, if for her separate use, with a restraint upon anticipation. If restrained from anticipation, the Court, if it thinks it for her benefit, may, under sect. 39 of the Conveyancing and Law of Property Act, 1881, bind her interest in any property notwithstanding the restraint.

Costs in County Court.

27. The costs of proceedings in the County Court under this Act shall be in the discretion of the Court.

The Lord Chancellor may from time to time prescribe a scale of costs for those proceedings, and of costs to be taxed by the registrar of the Court.

Service of notice, &c.

28. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there; and if so sent by post it shall

be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand, or other instrument to be served. §§ 28,29.

Charge of Tenant's Compensation.

29. A landlord,[1] on paying to the tenant the amount due to him in respect of compensation under this Act, or in respect of compensation authorized by this Act to be substituted for compensation under this Act, or on expending such amount as may be necessary to execute an improvement under the second part of the 1st Schedule hereto, after notice given by the tenant of his intention to execute such improvement in accordance with this Act, shall be entitled to obtain from the County Court a charge on the holding, or any part thereof, to the amount of the sum so paid or expended. § 29. Power for landlord on paying compensation to obtain charge.

The Court shall, on proof of the payment or expenditure, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this Act, make an order charging the holding, or any part thereof, with repayment of the amount paid or expended, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the Court thinks fit.[2]

But where the landlord obtaining the charge is not absolute owner of the holding for his own benefit, no instalment or interest shall be made payable after the time when the improvement in respect whereof compensation is paid will, *where an award has been made, be taken to have been exhausted according to the declaration of the award, and in any other case after the time when any such improvement will* in the opinion of the Court, after hearing such evidence (if any) as it thinks expedient, have become exhausted.

§ 29. The instalments and interest shall be charged in favour of the landlord, his executors, administrators, and assigns.

The estate or interest of any landlord holding for an estate or interest determinable or liable to forfeiture by reason of his creating or suffering any charge thereon shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

45 & 46 Vict. c. 38.

Capital money arising under the Settled Land Act, 1882,[3] may be applied in payment of any moneys expended and costs incurred by a landlord under or in pursuance of this Act in or about the execution of any improvement mentioned in the first or second parts of the schedule hereto, as for an improvement authorized by the said Settled Land Act; and such money may also be applied in discharge of any charge created on a holding under or in pursuance of this Act in respect of any such improvement as aforesaid, as in discharge of an incumbrance authorized by the said Settled Land Act to be discharged out of such capital money.

"Landlord."

([1]) The word "landlord" in this section includes a landlord's executors, so that the executors of a landlord tenant for life, who have paid compensation to an outgoing tenant whose tenancy determined before the landlord's death, are entitled to obtain a charge on the holding under this section for the amount paid by them: *Gough* v. *Gough* (60 L. J. Q. B. 726; (1891) 2 Q. B. 664).

([2]) The provisions contained in this section may be useful to land-owners who are limited owners and desire to charge money expended in paying compensation for the benefit of their younger children or others. It also facilitates the borrowing from a land improvement company or others (see sect. 32) of money by landlords to pay compensation. See note to sect. 32, *post*, p. 38, as to land improvement charges. The powers conferred on the County Court by this section and sects. 30, 31, 32, and 39, will henceforth be exercised by the Board of Agriculture (see sect. 3 of Agricultural Holdings Act, 1900).

§§ 29,30.

The section applies to ecclesiastical and charity lands, as well as to land belonging to private proprietors. In the case of land belonging to a benefice, the Commissioners of Queen Anne's Bounty may, as well as the incumbent, obtain a charge for money paid by them in compensation (see sect. 39).

It is to be remarked that the Act does not expressly require notice of the application for a charge to be served on remaindermen, or other persons interested in a settled estate; but the Board of Agriculture would be unlikely to make a charge unless it had the persons interested in the estate in remainder before it. The remainderman appeared in the case of *Gough* v. *Gough*.

Any charge obtained under this section must be registered as a land charge under the Lands Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51). If not so registered it will be void as against a purchaser for value of the land charged therewith. The register is kept at the Land Registry Office. Any person may search the register on payment of the prescribed fee. Forms for the application to register a land charge and for the declaration to be made in support of an application to register may be obtained at the Land Registry Office.

Modes in which capital money may arise under the Settled Land Act, 1882.

(3) The following are some of the principal modes by which capital money arises under the Settled Land Act, 1882 :—

1. By a sale or enfranchisement by the tenant for life or other limited owner (sect. 3).
2. By a fine on grants or confirmations of leases (sect. 7).
3. By a mining lease (three-fourths of the rent will be treated as capital money where the tenant for life is impeachable for waste, otherwise one-fourth) (sect. 11).
4. By the sale of timber cut by a tenant for life impeachable for waste (sect. 35).

Money in Court, or in the hands of trustees, liable to be laid out in land to be settled, as the settled land, is also capital money under the Act (sects. 32, 33).

Incidence of charge.

30. The sum charged by the order of a County Court under this Act shall be a charge on the holding, or the part thereof charged, for the landlord's interest therein, and for all interests therein subsequent to that of the landlord; but so that the charge shall not extend beyond the interest of the landlord, his executors, ad-

§§ 30,31. ministrators, and assigns, in the tenancy where the landlord is himself a tenant of the holding.[1]

(1) The latter words of this section prevent a landlord who himself is a leaseholder from charging more than his own interest in the property leased. As to the meaning of the word "tenant," see the interpretation clause, sect. 61.

Provision in case of trustee.

31. Where the landlord is a person entitled to receive the rents and profits of any holding as trustee, or in any character otherwise than for his own benefit, the amount due from such landlord in respect of compensation under this Act, or in respect of compensation authorized by this Act to be substituted for compensation under this Act, shall be charged and recovered as follows and not otherwise; (that is to say,)

(1.) The amount so due shall not be recoverable personally against such landlord, nor shall he be under any liability to pay such amount, but the same shall be a charge on and recoverable against the holding only.

(2.) Such landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the County Court[1] a charge on the holding to the amount of the sum required to be paid or which has been paid, as the case may be, to the tenant.[2]

(3.) If such landlord neglect or fail within one month after the tenant has quitted his holding to pay to the tenant the amount due to him, then after the expiration of such one month the tenant shall be entitled to obtain from the County Court[1] in favour of himself, his executors, administrators, and assigns, a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge or in raising the amount due thereunder.

(4.) The Court[1] shall on proof of the tenant's title to have a charge made in his favour make an order charging the holding with payment of the amount of the charge, including costs, in like manner and form as in case of a charge which a landlord is entitled to obtain.[3] §§ 31,32.

(1) The Board of Agriculture is now substituted for the County Court. See note (2) to sect. 29.

(2) This sub-section enables a landlord trustee to advance moneys belonging to the trust for payment of the compensation. Such an investment of trust money, being on real security, is authorized by the Trustee Act, 1893, sect. 1. See also sect. 5, sub-sect. 1, of the same Act, which provides that any charge made under the Improvement of Land Act, 1864, or a mortgage of any charge, shall be an authorized security for trustees having power to invest money on real security, unless expressly forbidden by the trust.

Trustee obtaining a charge.

As the charge may be obtained before the money is actually paid, money may be obtained from a land improvement company without any actual advance by the landlord. The section empowers a trustee to take a charge in his own favour, which he may transfer to a land company or other mortgagee on their advancing the money.

(3) A charge under this section in order to be valid as against a purchaser for value of the land must be registered under the Lands Charges Registration and Searches Act, 1888. See Tenants' Compensation Act, 1890, sect. 3.

Advance made by a company.

32. Any company now or hereafter incorporated by Parliament, and having power to advance money for the improvement of land, may take an assignment of any charge made by a County Court[1] under the provisions of this Act, upon such terms and conditions as may be agreed upon between such company and the person entitled to such charge; and such company may assign any charge so acquired by them to any person or persons whomsoever.[2]

(1) The Board of Agriculture is now substituted for the County Court. See note (2) to sect. 29.

§§ 32,33.

Improvement of Land Acts.

(2) Charges under the Improvement of Land Act, 1864, and other special Improvement Acts, are by way of rent-charge, by which the money advanced, together with interest, is repaid over a term of years.

The Improvement of Land Act, 1899 (62 & 63 Vict. c. 46), provides that where under the Improvement of Land Act, 1864, or any special Improvement Act, a charge is authorized in respect of an improvement of land, the period for repayment of the charge shall be such period, not exceeding forty years, as the Board of Agriculture, having regard to the character and probable duration of the improvement, determine.

Notice to Quit.

Time of notice to quit.

33. Where a half-year's notice, expiring with a year of tenancy, is by law necessary[1] and sufficient for determination of a tenancy from year to year, in the case of any such tenancy under a contract of tenancy made either before or after the commencement of this Act, a year's notice so expiring shall by virtue of this Act be necessary and sufficient for the same, unless the landlord and tenant of the holding, by writing under their hands, agree that this section shall not apply;[2] in which case a half-year's notice shall continue to be sufficient; but nothing in this section shall extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.[3]

How the section may be excluded.

(1) In the case of a tenancy from year to year, a half-year's notice, expiring at the end of the first or any subsequent year of the term, was, before the passing of this Act, necessary by law, unless some other period was agreed upon or was implied by local custom: *Right* v. *Darby* (1 T. R. 159). To exclude the operation of this section, an express agreement in writing is necessary in the case of agricultural holdings.

(2) In *Wilkinson* v. *Calvert* (47 L. J. C. P. 679; 3 C. P. D. 360), it was held, in the case of a tenancy under a contract subject to a similar section in the Agricultural Holdings Act, 1875, that an agreement in writing, made previously to the commencement of the Act, to accept six months' notice would

exclude the operation of the Act, six months' differing from half-a-year's notice. § 33.

In *Barlow* v. *Teal* (54 L. J. Q. B. 564; 15 Q. B. D. 501), there was a tenancy under a written agreement "until six months' notice shall have been given . . . in the usual way to determine the tenancy." The Court held that sect. 33 did not apply so as to render a year's notice necessary to determine it. Brett, M. R., said: "Wherever there is an express contract as to the time of quitting, or as to the mode of giving notice to quit, the enactment does not apply." Baggallay, L. J., added: "The statute was intended to apply, not where a half-year's notice to quit is provided by the contract between the parties, but where it is created by implication of law."

General law as to notices to quit.

A notice to quit must be clear and unambiguous; but if it gives an option to continue the tenancy at a higher or lower rent it is not invalid: *Ahearn* v. *Bellman* (48 L. J. Ex. 681; 4 Ex. D. 201); *Bury* v. *Thompson* (64 L. J. Q. B. 500).

The day mentioned in a demise as the commencement of a tenancy is the first day of the term, whether it is said to commence "from" or "on" that day. A notice to quit should properly be given for the last day of the tenancy, but it is not necessarily bad if given for the anniversary of its commencement: *Sidebotham* v. *Holland* (64 L. J. Q. B. 200; (1895) 1 Q. B. 378).

It would seem, from *Aldenburgh* v. *Peaple* (6 C. & P. 212), that a landlord may treat an irregular notice to quit from the tenant as a surrender. That case, however, has been much shaken by *Weddall* v. *Capes* (5 L. J. Ex. 111; 1 M. & W. 50), where the efficacy of a surrender to operate *in futuro* was doubted; and in *Johnstone* v. *Huddlestone* (4 L. J. O. S. K. B. 71; 4 B. & C. 922) it was held that such notice could not operate as a surrender unless it were in writing, so as to satisfy the Statute of Frauds, sect. 3 (see also *Doe* d. *Murrell* v. *Milward* (7 L. J. Ex. 57; 3 M. & W. 328); *Bessell* v. *Landsberg* (14 L. J. Q. B. 355; 7 Q. B. 638).

Notice to quit need not be served personally, but it will be sufficient if left with a servant of the tenant at his dwelling-house: *Jones* v. *Marsh* (4 T. R. 464); *Doe* d. *Neville* v. *Dunbar* (M. & Malk. 10); even though it be shown not to have actually come into the hands of the tenant: *Tanham* v. *Nicholson* (L. R. 5 H. L. 561). It may be put under the door of a house, or sent through the post: *Alford* v. *Vickery* (Car. & M. 280); *Papillon* v. *Brunton* (29 L. J. Ex. 265; 5 H. & N. 518).

§§ 33,34. For further particulars of the law relating to notices to quit, see Dixon, pp. 435 *et seq.*

Bankruptcy of tenant.

(3) Upon a tenant becoming bankrupt, or filing a petition in bankruptcy, the landlord will have his former common law right of determining the tenancy upon a half-year's notice.

See Form 10.

Fixtures.

Tenant's property in fixtures, machinery, &c.

34. Where after the commencement of this Act[1] a tenant affixes to his holding any engine, machinery, fencing, or other fixture, or erects any building for which he is not under this Act[2] or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, then such fixture[3] or building shall be the property of and be removable by the tenant before or within a reasonable time[4] after the termination of the tenancy.

Provided as follows :—

1. Before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all other his obligations to the landlord in respect of the holding :
2. In the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding :
3. Immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal :
4. The tenant shall not remove any fixture or building without giving one month's previous notice in writing to the landlord of the intention of the tenant to remove it :
5. At any time before the expiration of the notice of removal the landlord, by notice in writing

given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay the tenant the fair value thereof to an incoming tenant of the holding; and any difference as to the value shall be settled by a reference under this Act, as in case of compensation (but without appeal). § 34.

(1) It is to be noticed that the erection of the fixture must have been after the commencement of this Act.

(2) Certain fixtures in the nature of buildings are comprised in the first part of the 1st Schedule.

(3) Fixtures include anything annexed to the freehold, and the law formerly was that the tenant could not remove anything fixed to the freehold without committing waste. The tenant might, however, remove fixtures put up for the ornament of the premises or convenience of his occupation. Such fixtures are called "tenant's fixtures," and include such articles as stoves, grates, hangings, cupboards, &c. They must, however, be but slightly fixed, and capable of being moved entire. Fixtures erected for the purpose of trade have also been excepted from the general rule, but the exception was not extended to fixtures put up for agricultural purposes: *Elwes* v. *Mawe* (3 East, 38; 2 Sm. L. C. 183). In that case the fixtures were a beast-house, a carpenter's shop, a fuel-house, a cart-house, a pump-house and fold-yard. This section enables the tenant to remove any engine, machinery, fencing, or other fixture, or any building created by him to which he is not entitled to compensation under the Act. The fixture to be removable must be "affixed to the holding," *i.e.*, some "parcel of land held by the tenant" (sect. 61), and it may be doubted whether it would include an addition to the dwelling-house not coming within the ordinary description of "tenant's fixtures."

What are "fixtures."

Tenant's fixtures.

Trade fixtures.

Sect. 4 of the Agricultural Holdings Act, 1900, extends the provisions of this section to cases where the fixtures or building have not been put up by the tenant himself, but have been purchased by him from a former tenant.

§§ 34, 35.

Within what time a fixture may be removed.

(4) It is to be noticed that a reasonable time is now given for the removal of fixtures. In cases to which the Act does not apply and in the absence of express contract, a tenant cannot remove fixtures after the expiration of the tenancy: *Pugh* v. *Arton* (38 L. J. Ch. 619; L. R. 8 Eq. 626); *Ex parte Stephens, In re Lavies* (47 L. J. Bkcy. 22; 7 Ch. D. 127); and if he so removes them he is a trespasser, and liable for damages for wrongful removal and conversion: *Barff* v. *Probyn* (64 L. J. Q. B. 557). The fixture by this section is to become *the property of the tenant*. It therefore seems doubtful if the landlord could prevent the removal by the tenant of his own property, even after the expiration of a reasonable time. See *Re Walker, Ex parte Gould* (13 Q. B. D. 454). The refusal of the landlord to permit severance and removal would give the tenant a right of action: *Thomas* v. *Jennings* (66 L. J. Q. B. 5).

For the general law as to fixtures, see Dixon, p. 454.

See Forms 11, 12.

Crown and Duchy Lands.

Application of Act to Crown lands.

35. This Act shall extend and apply to land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown.

With respect to such land, for the purposes of this Act, the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or one of them, or other the proper officer or body having charge of such land for the time being, or in case there is no such officer or body, then such person as Her Majesty, her heirs or successors, may appoint in writing under the Royal Sign Manual, shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

Any compensation payable under this Act by the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, in respect of an improvement mentioned in the first or second part of the First Schedule hereto, shall be deemed to be payable in respect of an improvement of land within section one of the Crown Lands Act, 1866,[1] and the amount thereof shall be charged and repaid as in that section provided

with respect to the costs, charges, and expenses therein mentioned. §§ 35,36.

Any compensation payable under this Act by those Commissioners, or either of them, in respect of an improvement mentioned in the third part of the First Schedule hereto shall be deemed to be part of the expenses of the management of the Land Revenues of the Crown, and shall be payable to those Commissioners out of such money and in such manner as the last-mentioned expenses are by law payable.

(1) The Crown Lands Act, 1866 (29 & 30 Vict. c. 62), s. 1, provides that, if an improvement of land is effected, with reference to any part of the Crown lands, the Commissioners of the Treasury may direct the expenses thereof to be charged as a principal sum to the account of the capital of the Land Revenue of the Crown, provision being made for repayment out of income within a period not exceeding thirty years. 29 & 30 Vict. c. 62.

36. This Act shall extend and apply to land belonging to Her Majesty, her heirs and successors, in right of the Duchy of Lancaster. Application of Act to land of Duchy of Lancaster.

With respect to such land for the purposes of this Act, the Chancellor for the time being of the Duchy shall represent Her Majesty, her heirs and successors, and shall be deemed to be the landlord.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an improvement mentioned in the first or second part of the First Schedule to this Act shall be deemed to be an expense incurred in improvement of land belonging to Her Majesty, her heirs or successors, in right of the Duchy, within section twenty-five of the Act of the fifty-seventh year of King George the Third, chapter ninety-seven, and shall be raised and paid as in that section provided with respect to the expenses therein mentioned.

The amount of any compensation payable under this Act by the Chancellor of the Duchy in respect of an

§§ 36, 37, 38.

improvement mentioned in the third part of the First Schedule to this Act shall be paid out of the annual revenues of the Duchy.

Application of Act to land of Duchy of Cornwall.

37. This Act shall extend and apply to land belonging to the Duchy of Cornwall.

With respect to such land, for the purposes of this Act, such person as the Duke of Cornwall for the time being, or other the personage for the time being entitled to the revenues and possessions of the Duchy of Cornwall, from time to time, by sign manual, warrant, or otherwise, appoints, shall represent the Duke of Cornwall or other the personage aforesaid, and be deemed to be the landlord, and may do any act or thing under this Act which a landlord is authorized or required to do thereunder.

Any compensation payable under this Act by the Duke of Cornwall, or other the personage aforesaid, in respect of an improvement in the first or second part of the First Schedule to this Act shall be deemed to be payable in respect of an improvement of land within section eight of the Duchy of Cornwall Management Act, 1863, and the amount thereof may be advanced and paid from the money mentioned in that section, subject to the provision therein made for repayment of sums advanced for improvements.

26 & 27 Vict. c. 49.

Ecclesiastical and Charity Lands.

Landlord, archbishop or bishop.

38. Where lands are assigned or secured as the endowment of a see, the powers by this Act conferred on a landlord shall not be exercised by the archbishop or bishop, in respect of those lands, except with the previous approval in writing of the Estates Committee of the Ecclesiastical Commissioners for England.[1]

Previous approval of the Ecclesiastical Commissioners, &c.

(1) Under this and the two following sections it would seem advisable that tenants of ecclesiastical or charity lands should satisfy themselves that their ostensible landlords have received the previous approval of the Estates Committee of the Ecclesiastical Commissioners, the patron, the Governors of Queen Anne's Bounty, or the Charity Commissioners (as the case may be), before making any improvement for which consent is required,

or entering into any agreement as to compensation. These sections, however, only apply to powers; where a simple notice has to be given, it is sufficient to give it to the person entitled to receive the rents and profits, who is the landlord according to the definition clause, and who alone will be liable to the tenant (sect. 61).

Landlord, incumbent of benefice.

39. Where a landlord is incumbent of an ecclesiastical benefice, the powers by this Act conferred on a landlord shall not be exercised by him in respect of the glebe land or other land belonging to the benefice, except with the previous approval in writing of the patron of the benefice, that is, the person, officer, or authority who, in case the benefice were vacant, would be entitled to present thereto, or of the Governors of Queen Anne's Bounty (that is, the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy).[1]

In every such case the Governors of Queen Anne's Bounty may, if they think fit, on behalf of the incumbent, out of any money in their hands, pay to the tenant the amount of compensation due to him under this Act; and thereupon they may, instead of the incumbent, obtain from the county court a charge on the holding, in respect thereof, in favour of themselves.[2]

Every such charge shall be effectual, notwithstanding any change of the incumbent.

(1) See note to the preceding section.

(2) "In every such case," it is submitted, means "where a landlord is incumbent of an ecclesiastical benefice," so that the Governors of Queen Anne's Bounty may in any such case pay the compensation on behalf of the incumbent if they think fit, and not only in cases where their consent may have been required under the earlier part of this section.

Landlord, charity trustees, &c.

40. The powers by this Act conferred on a landlord in respect of charging the land shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval in writing of the Charity Commissioners for England and Wales.[1]

(1) See note to sect. 38.

§ 41.

Resumption for Improvements, and Miscellaneous.

Resumption of possession for cottages, &c.

41. Where on a tenancy from year to year a notice to quit is given by the landlord with a view to the use of land for any of the following purposes:

The erection of farm labourers' cottages or other houses, with or without gardens;

The providing of gardens for existing farm labourers' cottages or other houses;

The allotment for labourers of land for gardens or other purposes;

The planting of trees;

The opening or working of any coal, ironstone, limestone, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connexion therewith;

The obtaining of brick earth, gravel, or sand;

The making of a watercourse or reservoir;

The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith;

and the notice to quit so states, then it shall, by virtue of this Act, be no objection to the notice that it relates to part only of the holding.[1]

In every such case the provisions of this Act respecting compensation shall apply as on determination of a tenancy in respect of an entire holding.

The tenant shall also be entitled to a proportionate reduction of rent in respect of the land comprised in the notice to quit, and in respect of any depreciation of the value to him of the residue of the holding, caused by the withdrawal of that land from the holding or by the use to be made thereof, and the amount of that reduction shall be ascertained by agreement or settled by a reference under this Act, as in case of compensation (but without appeal).

§§ 41, 42, 43.

The tenant shall further be entitled, at any time within twenty-eight days after service of the notice to quit, to serve on the landlord a notice in writing to the effect that he (the tenant) accepts the same as a notice to quit the entire holding, to take effect at the expiration of the then current year of tenancy; and the notice to quit shall have effect accordingly.

(1) Previously to the passing of this Act, a notice to quit extending to part only of the demised premises was bad: *Doe* d. *Rodd* v. *Archer* (14 East, 244). See Dixon, p. 440.

See Forms 13, 14.

Provision as to limited owners.

42. Subject to the provisions of this Act in relation to Crown, duchy, ecclesiastical, and charity lands, a landlord, whatever may be his estate or interest in his holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act which he might give or make or do or have done to him if he were in the case of an estate of inheritance[1] owner thereof in fee, and in case of a leasehold possessed of the whole estate in the leasehold.

Application of section to a tenancy for life.

(1) The two alternative cases of "an estate of inheritance," and of "a leasehold," do not, strictly speaking, include the case of a tenant for life of freehold land whose estate is not one of inheritance. It is presumed, however, that the words "a landlord whatever may be his estate or interest in his holding" would be held to show sufficiently the intention of the Legislature to give a tenant for life the powers conferred by this section.

Provision in case of reservation of rent.

43. When, by any Act of Parliament, deed, or other instrument, a lease of a holding is authorized to be made, provided that the best rent, or reservation in the nature of rent, is by such lease reserved, then whenever any lease of a holding is, under such authority, made to the tenant of the same, it shall not be necessary, in estimating such rent or reservation, to take into

§§ 43,44. account against the tenant the increase (if any) in the value of such holding arising from any improvements made or paid for by him on such holding.[1]

Application of the section.

([1]) This section applies to cases where a lease is granted to a tenant who has made or paid for improvements under this Act, and where the landlord, instead of paying compensation, has agreed to allow the tenant to hold at a rent which does not include the value of the improvements. The landlord is thus empowered to compensate the tenant for his improvement by a rent below the full value of the land. See sect. 56 as to the right of a tenant in respect of improvement purchased from an outgoing tenant.

PART II.

Distress.[1]

Limitation of distress in respect of amount and time.

44. After the commencement of this Act it shall not be lawful for any landlord[2] entitled to the rent of any holding to which this Act applies to distrain for rent which became due in respect of such holding more than one year before the making of such distress, except in the case of arrears of rent in respect of a holding to which this Act applies existing at the time of the passing of this Act, which arrears shall be recoverable by distress up to the first day of January, one thousand eight hundred and eighty-five, to the same extent as if this Act had not passed.

Provided that where it appears that according to the ordinary course of dealing[3] between the landlord and tenant of a holding the payment of the rent of such holding has been allowed to be deferred until the expiration of a quarter of a year or half a year after the date at which such rent legally became due, then for the purpose of this section the rent of such holding shall be deemed to have become due at the expiration of such quarter or half year as aforesaid, as the case may be, and not at the date at which it legally became due.

§ 44.

The law relating to distress.

([1]) Under 3 & 4 Will. IV. c. 27, s. 42, the landlord may distrain for six years' arrears of rent, and no more. This section shortens the period for making a distress for rent to one year in the case of tenancies within the operation of the Act, that is, all agricultural tenancies, whether current at or commenced after the 1st of January, 1884. A landlord cannot distrain till the day after the rent becomes due; see Woodfall's Landlord and Tenant (16th edition), p. 487. No distress can be made between sunset and sunrise: *Tutton* v. *Darke* (5 H. & N. 647). If rent is made payable quarterly "in advance if required," the landlord may distrain at any time during the quarter after demand: *London and Westminster Discount Co.* v. *London and North-Western Ry.* (62 L. J. Q. B. 370; (1893) 2 Q. B. 49). A landlord is bound to set off compensation due to the tenant against the rent due (sect. 47). See Dixon, p. 477.

Where an agreement for a lease provided that the lease should contain stipulations making the rent payable in advance on demand, and the tenant entered and held under the agreement, it was held that the lessee was subject to the same right of distress as if a lease had been granted, and that if under the terms of the lease a year's rent would have been payable in advance on demand, a distress for that was lawful: *Walsh* v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9).

Who may distrain.

([2]) The person legally entitled to the immediate reversion on a lease is the person entitled to distrain by virtue of the common law. A mortgagee, who has given notice of the mortgage to a tenant holding land under a lease or tenancy created prior to the mortgage, may distrain for rent in arrear at the time of the notice, or becoming in arrear subsequently: *Moss* v. *Gallimore* (1 Dougl. 279; 1 Sm. L. C. 629). The Conveyancing Act, 1881, s. 18, empowers a mortgagor or mortgagee while in possession to let the mortgaged land for agricultural purposes for any term not exceeding twenty-one years. When a lease is made by a mortgagor in possession under the powers conferred by this Act, the mortgagee, on giving notice to the tenant and going into possession, is entitled to enforce the covenants and conditions contained in the lease in the same way as if he had been a party to it: *Municipal, &c. Society* v. *Smith* (58 L. J. Q. B. 61; 22 Q. B. D. 70). A mortgagee may, of course, distrain for rent due under a lease or agreement made by himself after the mortgage, though in a case not within the Conveyancing Act, 1881, he may not do so in the case of a lease or agreement made by the mortgagor after the mortgage, unless he has accepted rent from the tenant,

§§ 44,45.

or given him notice to pay rent and the tenant has acquiesced: *Rogers* v. *Humphreys* (4 A. & E. 299). The word "landlord," according to the definition in sect. 61, would include the mortgagee in these cases.

"Ordinary course of dealing."

(3) In many parts of the country, it is not usual to demand the rent till a quarter or half-year after it becomes due. If, for instance, it is the practice of the landlord to hold his rent-day at Christmas for the Michaelmas rents, that would no doubt be held to be sufficient evidence of the "ordinary course of dealing." It has been held in a case within this section that a landlord may distrain for rent legally due at the time of the distress, but not yet payable "according to the ordinary course of dealing," and also for rent which has become due more than a year previously, but has become payable "according to the ordinary course of dealing" less than a year previously, although the total amount distrained for may thus exceed one year's rent: *Re Bew, Ex parte Bull* (56 L. J. Q. B. 270; 18 Q. B. D. 642).

Limitation of distress in respect of things to be distrained.

45. Where live stock[1] belonging to another person has been taken in by the tenant of a holding to which this Act applies to be fed at a fair price[2] agreed to be paid for such feeding by the owner of such stock to the tenant, such stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and if so distrained by reason of other sufficient distress not being found, there shall not be recovered by such distress a sum exceeding the amount of the price so agreed to be paid for the feeding, or if any part of such price has been paid exceeding the amount remaining unpaid, and it shall be lawful for the owner of such stock, at any time before it is sold, to redeem such stock by paying to the distrainer a sum equal to such price as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding: Provided always, that so long as any portion of such live stock shall remain on the said holding the right to distrain such portion shall continue to the full extent of the

price originally agreed to be paid for the feeding of the whole of such live stock, or if part of such price has been *bonâ fide* paid to the tenant under the agreement, then to the full extent of the price then remaining unpaid.[3] § 45.

Agricultural or other machinery which is the *bonâ fide* property of a person other than the tenant, and is on the premises of the tenant under a *bonâ fide* agreement with him for the hire or use thereof in the conduct of his business, and live stock of all kinds which is the *bonâ fide* property of a person other than the tenant, and is on the premises of the tenant solely for breeding purposes, shall not be distrained for rent in arrear.[4]

(1) See interpretation clause, sect. 61.

(2) The words "at a fair price" will exclude cases where there is an absence of *bona fides*. The equivalent for which the live stock are agisted need not necessarily be money. In *London and Yorkshire Bank* v. *Belton* (54 L. J. Q. B. 568; 15 Q. B. D. 457), cows were agisted on the terms "milk for meat," *i.e.*, that the cows should feed on the farm, and the farmer should have their milk in return; and it was held that the agistment was within the Act, and that they were privileged from distress. In *Masters* v. *Green* (20 Q. B. D. 807) the tenant allowed the owner of certain cattle the exclusive right to feed the "grass on the land for four weeks" in consideration of 2*l*. The Court held that they were not "taken in to be fed at a fair price" within the meaning of this section, the payment being in the nature of rent for use and occupation, and not for agistment at all. "At a fair price."

(3) If the person who has agisted his stock at a certain price withdraws a portion of such stock before the price payable by agreement for the agistment has actually been paid, the landlord may distrain upon the stock still remaining for the whole of the price thus unpaid, although some of such price is in respect of the stock withdrawn.

(4) Previously to this Act the principal exceptions from distress for rent in the case of agricultural tenancies were fixtures, things in actual use, beasts of the plough, and tools of trade; the two latter being liable to distress if there should not be other sufficient distress. To this list is now to be added (*a*) machinery on the premises of the tenant under a *bonâ fide* agree- Exceptions from distress.

§§ 45,46. ment for hire in the conduct of his business; (*b*) live stock of all kinds which is the *bonâ fide* property of a person other than the tenant, and is on the tenant's premises solely for breeding purposes; (*c*) live stock agisted with the tenant at a fair price. In the latter case, however, if there is no other sufficient distress, the landlord may distrain for a sum not exceeding the amount agreed to be paid for the feeding, and then unpaid, and the transaction must be a *bonâ fide* agistment. See *Masters* v. *Green* (20 Q. B. D. 807).

The old law was that cattle upon land by way of agistment might be distrained for rent; though in *Miles* v. *Furber* (42 L. J. Q. B. 41; L. R. 8 Q. B. 77), Mellor, J., doubted if it would apply if it were shown that a person exercised the trade of agisting cattle. See Rolle, Abr. 669; Cro. Eliz. 549; Dixon, p. 484.

Remedy for wrongful distress under this Act.

46. Where any dispute arises—

(*a*) in respect of any distress having been levied contrary to the provisions of this Act; or

(*b*) as to the ownership of any live stock distrained, or as to the price to be paid for the feeding of such stock; or

(*c*) as to any other matter or thing relating to a distress on a holding to which this Act applies:[1]

such dispute may be heard[2] and determined by the County Court or by a Court of Summary Jurisdiction, and any such County Court or Court of Summary Jurisdiction may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid in the case where the price of the feeding is required to be ascertained, or may make any other order[3] which justice requires: any such dispute as mentioned in this section shall be deemed to be a matter in which a Court of Summary Jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts;[4] but any person aggrieved by any decision of such Court of Summary Jurisdiction under this section may, on giving such security to the other party as the Court

may think just, appeal[5] to a Court of General or Quarter Sessions. § 46.

(1) The effect of sub-sect. (*c*) is very wide, and includes all disputes as to illegal or excessive distress which were formerly subjects of an action in the High Court of Justice: but see note (3), *infra*. Scope of the section.

(2) It is to be observed that this section is permissive, and does not exclude the jurisdiction of the High Court, so that a person aggrieved may still bring an action for illegal distress if he think fit. Sect. 60 saves all present rights of a landlord or tenant not expressly excluded by the Act.

(3) The words "or may make any other order" might enable magistrates to award damages. Such an order would not seem to be quite outside their jurisdiction, as they have already power of enforcing certain civil debts; but it is not known that damages in a case of distress have ever been awarded under this section by a Court of Summary Jurisdiction, and it would not seem a suitable tribunal to deal with a claim for damages. See Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 6 and 7.

(4) The matter will be brought before the Court of Summary Jurisdiction by a complaint made by the person aggrieved, followed by a summons issued thereupon. A complaint must be made within six months of the time when the matter of such complaint arose: *Morant* v. *Taylor* (45 L. J. M. C. 78; 1 Ex. D. 188). The mode of making and enforcing summary orders by the justices other than for the payment of money, is laid down in the Summary Jurisdiction Act, 1879, s. 34. The person making default may be ordered to pay a sum not exceeding 1*l*. for every day he is in default, or may be imprisoned till he has remedied his default. Procedure before a Court of Summary Jurisdiction or County Court.

If the dispute is to be settled by a County Court, the procedure laid down in the County Court Rules, Order XLA, Rule 8, must be adopted. See this rule, *post*, p. 150, and Form 312c.

(5) The procedure on appeal to a Court of General or Quarter Sessions is regulated by the Summary Jurisdiction Act, 1879, s. 31. Notice in writing of the intention to appeal must be given to the other party, and to the clerk of the Court of Summary Jurisdiction within seven days after the day on which the decision of the Court (of Summary Jurisdiction) was given. Such notice must contain a statement of the general grounds of the appeal (sub-sect. 2). The appeal is to the next practicable Procedure on appeal to the Quarter Sessions.

§§ 46, 47, 48, 49, 50.

Court of General or Quarter Sessions having jurisdiction in the county, borough, or place for which the Court of Summary Jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given, upon which the order was founded (sub-sect. 1). The notice required by sub-sect. 2 must be in writing, and may be transmitted as a registered letter by the post (sub-sect. 7).

The right to appeal to the High Court from the decision of a County Court under this section is not excluded by the express power given to appeal to the Court of Quarter Sessions from the decision of a Court of Summary Jurisdiction: *Hanmer* v. *King* (57 L. T. Rep. 507).

Set-off of compensation against rent.

47. Where the compensation due under this Act, or under any custom or contract, to a tenant, has been ascertained before the landlord distrains for rent due, the amount of such compensation may be set off against the rent due, and the landlord shall not be entitled to distrain for more than the balance.

Exclusion of certiorari.

48. An order of the County Court or of a Court of Summary Jurisdiction under this Act shall not be quashed for want of form, or be removed by certiorari or otherwise into any superior Court.[1]

(1) Under words in the Prevention of Cruelty to Animals Act, 1849 (12 & 13 Vict. c. 92), s. 26, similar to those in this section, it was held that the Court of Queen's Bench was precluded from entertaining a case stated by justices for the opinion of the Court: *Reg.* v. *Chantrell* (L. R. 10 Q. B. 587); but see the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 19), s. 40.

Limitation of costs in case of distress.

49. *No person whatsoever making any distress for rent on a holding to which this Act applies when the sum demanded and due shall exceed the sum of twenty pounds for or in respect of such rent shall be entitled to any other or more costs and charges for and in respect of such distress or any matter or thing done therein than such as are fixed and set forth in the 2nd Schedule hereto.*

Repeal of 2 W. & M. c. 5, s. 1,

50. *So much of an Act passed in the second year of the reign of their Majesties King William the Third and*

Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed as respects any holding to which this Act applies, and the landlord or other person levying a distress on such holding may sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room or to some other fit and proper place specified in such request, and be there sold. The costs and expenses attending any such removal, and any damage to the goods and chattels arising therefrom, shall be borne and paid by the party requesting the removal.

§§ 50, 51, 52. — as to appraisement and sale at public auction.

51. *The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant or owner of goods and chattels distrained may replevy the same shall, in the case of any distress on a holding to which this Act applies, be extended to a period of not more than fifteen days, if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional costs that may be occasioned by such extension of time. Provided that the landlord or person levying the distress may, at the written request or with the written consent of the tenant, or such owner as aforesaid, sell the goods and chattels distrained or part of them at any time before the expiration of such extended period as aforesaid.*

Extension of time to replevy at request of tenant.

52. *From and after the commencement of this Act no person shall act as a bailiff to levy any distress on any holding to which this Act applies unless he shall be authorized to act as a bailiff by a certificate in writing under the hand of the judge of a County Court; and every County Court judge shall, on or before the thirty-first day of December one thousand eight hundred and eighty-three, and afterwards from time to time as occasion shall require, appoint a competent number of fit and proper persons to act as such bailiffs as aforesaid. If any person*

Bailiffs to be appointed by County Court judges.

§ 52. *so appointed shall be proved to the satisfaction of the said judge to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff, he shall be liable to have his appointment summarily cancelled by the said judge.*

Law of Distress Amendment Act, 1888.

Sects. 49, 50, 51, and 52 were repealed by the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), and replaced by the following sections:—

Sect. 5. "So much of an Act passed in the second year of the reign of their Majesties King William the Third and Mary, chapter five, as requires appraisement before sale of goods distrained is hereby repealed, except in cases where the tenant or owner of the goods and chattels by writing requires such appraisement to be made, and the landlord or other person levying a distress may, except as aforesaid, sell the goods and chattels distrained without causing them to be previously appraised; and for the purposes of sale the goods and chattels distrained shall, at the request in writing of the tenant or owner of such goods and chattels, be removed to a public auction room, or to some other fit and proper place specified in such request, and be there sold. The costs and expenses of appraisement when required by the tenant or owner shall be borne and paid by him; and the costs and expenses attending any such removal, and any damage to the goods and chattels arising therefrom, shall be borne and paid by the person requesting the removal."

Sect. 6. "The period of five days provided in the said Act of William and Mary, chapter five, within which the tenant as owner of goods and chattels distrained may replevy the same, shall be extended to a period of not more than fifteen days if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional cost that may be occasioned by such extension of time: Provided that the landlord or person levying the distress may, at the written request, or with the written consent, of the tenant or such owner as aforesaid, sell the goods and chattels distrained, or part of them, at any time before the expiration of such extended period as aforesaid."

Sect. 7. "From and after the commencement of this Act no person shall act as a bailiff to levy any distress for rent unless he shall be authorized to act as a bailiff by a certificate in writing under the hand of a County Court judge; and such certificate may be general or apply to a particular distress or

§ 52.

distresses, and may be granted at any time after the passing of this Act in such manner as may be prescribed by rules under this Act. If any person holding a certificate shall be proved to the satisfaction of a judge of a County Court to have been guilty of any extortion or other misconduct in the execution of his duty as a bailiff, he shall be liable to have his certificate summarily cancelled by the said judge.

"Nothing in this section shall be deemed to exempt such bailiff from any other penalty or proceeding to which he may be liable in respect of such extortion or misconduct.

"A County Court registrar may exercise the power of granting certificates hereby conferred upon a County Court judge in cases in which he may be authorized to do so by rules made under this Act.

"If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this Act, the person so levying, and any person who has authorized him so to levy, shall be deemed to have committed a trespass."

Rules were issued under this Act on 31st August, 1888, and the Table of Fees thereunder will be found, *post*, p. 68.

Law of Distress Amendment Act, 1895.

The Law of Distress Amendment Act, 1895 (58 & 59 Vict. c. 24), gives general power to the judge of a County Court to cancel any bailiff's certificate granted by the judge of that Court (sect. 1), and makes the acting without a certificate punishable by fine not exceeding 10*l.* (sect. 2). It also empowers a Court of Summary Jurisdiction to direct that goods and chattels, exempt from distress under the Act of 1888, which have been taken under such distress, if not sold shall be restored; or if they have been sold, that their value shall be paid to the complainant (sect. 4).

Rules made under this Act on 29th November, 1895, provide that a general certificate shall (unless previously determined) have effect until the 1st February next after the expiration of twelve months from the granting thereof, and may be renewed from time to time for a like period, and that a list of bailiffs holding certificates shall, on the 1st February in every year, be exhibited in the office of every Court.

PART III.

General Provisions.

§§ 53,54.

Commencement of Act.

53. This Act shall come into force on the first day of January, one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

Holdings to which Act applies.

54. Nothing in this Act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral, or in whole or in part cultivated as a market garden,[1] or to any holding let to the tenant during his continuance in any office, appointment, or employment held under the landlord.

(1) The words of this section will not include garden ground other than market gardens. A "holding" will not be excluded from the benefit of the Act, because it comprises among other things a house and garden for the use of the tenant, as long as the object of the letting is either agricultural or pastoral, or both. There is nothing said as to the size of the holding, but "allotments" which do not exceed two acres in extent are dealt with by the Allotments and Cottage Gardens Compensation for Crops Act, 1887. Market gardens are the subject of the Market Gardeners' Compensation Act, 1895, see *post*, p. 76.

What is an "agricultural holding."

There is no definition of what is to be considered an "agricultural" holding in this Act. In the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), s. 9, "agricultural land" is defined as meaning "any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards, or allotments, but does not include land occupied together with a house as a park, gardens, other than as aforesaid, pleasure-grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse." It is submitted that the meaning in this Act is at least as extensive as in the Agricultural Rates Act. The occupier of a market garden covered with glass-houses was, in *Smith* v. *Richmond* (68 L. J. Q. B. 898; (1899) A. C. 448), held not to be an occupier of agricultural land within the Agricultural Rates Act, 1896, and therefore not

entitled to the exemption from rates conferred by that Act, which was intended to be given to land only, and not to land covered with buildings. The antithesis between land and buildings in that Act is not found in the present Act or the Market Gardeners' Compensation Act, 1895, and probably land covered with buildings such as glass-houses for market gardening purposes would be entitled to the benefit of these Acts. See *Purser* v. *Worthing Local Board* (56 L. J. M. C. 78; 18 Q. B. D. 818), where it was held that land covered with greenhouses used for growing fruit and vegetables for sale constituted a "market garden or nursery ground" within sect. 211, subsect. 1, of the Public Health Act, 1875, and was only rateable on one-fourth of its annual value. §§ 54,55.

Avoidance of agreement inconsistent with Act.

55. Any contract, agreement, or covenant made by a tenant, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement mentioned in the 1st Schedule hereto (except an agreement providing such compensation as is by this Act permitted to be substituted for compensation under this Act[1]), shall, so far as it deprives him of such right, be void both at law and in equity.[2]

Agreements providing substituted compensation.

(1) By sections 3 and 4, the landlord may agree to pay compensation for improvements mentioned in the first and second parts of the 1st Schedule; by sect. 5, he may by a particular agreement agree to pay fair and reasonable compensation for an improvement mentioned in the third part of the 1st Schedule.

How far the Act may be excluded.

(2) It is to be noticed that this section only avoids agreements depriving the tenant of his right to compensation in respect of improvements.

This section does not apply to any tenancy for a less period than one year (sect. 61), *e.g.*, to a letting of pasture land for the summer months, and it has been suggested that the compulsory effect of the Act may be avoided by means of an agreement for a half-yearly or quarterly letting, determinable by notice at the end of any half-year or quarter; but a letting "at the rent of 19*l.* 12*s.* a year payable quarterly on the four usual quarter-days for payment of rent in every year" is a yearly tenancy and therefore within the Act, notwithstanding that it is provided that it may be determined by a three months' notice to quit on any day of the year: *King* v. *Eversfield* (66 L. J. Q. B. 809; (1897) 2 Q. B. 475).

§§ 55,56, 57.

Other methods suggested for excluding this Act are a reservation of penal rents for improvements executed without the landlord's consent, and a covenant not to execute any improvements without the landlord's consent; but it is submitted that neither of these expedients would be valid under sect. 55. It has also been suggested that a higher rent might be reserved during the last two or three years of a term, reducible to the normal rent on the execution in each year by the tenant of improvements of a certain value within the third part of the schedule, in which case the amount to be taken off from the rent could be deducted from the amount payable for compensation, as being a "benefit allowed in consideration of the tenant executing the improvement." See sect. 1 of the Act of 1900.

Right of tenant in respect of improvement purchased from outgoing tenant.

56. Where an incoming tenant has, with the consent in writing of his landlord,[1] paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, such incoming tenant shall be entitled on quitting the holding to claim compensation in respect of such improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding, and quitted the holding at the time at which the incoming tenant quits the same.

(1) It is to be noticed that the consent in writing of the landlord is necessary to enable an incoming tenant to avail himself of this section. As the compensation will practically be generally paid in this way by the incoming to the outgoing tenant, the former should be careful to get the written consent of the landlord before making any payment.

See Form 16.

In respect of any improvement provided for by the Market Gardeners' Compensation Act, 1897, the consent of the landlord to the purchase by the incoming tenant is not necessary. See *post*, p. 77.

Compensation under this Act to be exclusive.

57. *A tenant shall not be entitled to claim compensation by custom*[1] *or otherwise than in manner authorized by this Act in respect of any improvement for which he is entitled to compensation under or in pursuance of this Act, but*

where he is not entitled to compensation under or in pursuance of this Act he may recover compensation under any other Act of Parliament, or any agreement or custom, in the same manner as if this Act had not passed. §§ 57,58, 59.

(1) See Agricultural Holdings Act, 1900 (sect. 1, sub-sect. 5), which restores the right to claim under the custom of the country, and permits a claim under an agreement in lieu of under the Act.

This section, though prohibiting a tenant from claiming compensation in respect of an improvement under the Act otherwise than in manner authorized by the Act, was held only to apply to a tenant claiming under the Act, and not to one claiming under an agreement or submission to arbitration outside the Act: *Re Pearson and l'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618); *Newby* v. *Eckersley* (68 L. J. Q. B. 261; (1899) 1 Q. B. 465); *Re Lloyd and Tooth* (68 L. J. Q. B. 376; (1899) 1 Q. B. 559).

Provision as to change of tenancy.

58. A tenant who has remained in his holding during a change or changes of tenancy shall not thereafter on quitting his holding at the determination of a tenancy be deprived of his right to claim compensation in respect of improvements by reason only that such improvements were made during a former tenancy or tenancies, and not during the tenancy at the determination of which he is quitting.[1]

(1) This section supplements sect. 1 of the Agricultural Holdings Act, 1900, so that a tenant will on quitting his holding be entitled to compensation for improvements made at any time during his occupation, notwithstanding a change of tenancy.

Restriction in respect of improvements by tenant about to quit.

59. Subject as in this section mentioned, a tenant shall not be entitled to compensation in respect of any improvements, other than manures[1] as defined by this Act, begun by him, if he holds from year to year, within one year before he quits his holding, or at any time after he has given or received final notice to quit, and, if he holds as a lessee, within one year before the expiration of his lease.

A final notice to quit means a notice to quit which

§§ 59,60.

has not been waived or withdrawn, but has resulted in the tenant quitting his holding.

The foregoing provisions of this section shall not apply in the case of any such improvement as aforesaid—

(1.) Where a tenant from year to year has begun such improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord,[2] has quitted his holding at the expiration of that year; and

(2.) Where a tenant, whether a tenant from year to year or a lessee, previously to beginning any such improvement,[3] has served notice on his landlord of his intention to begin the same, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement.

(1) "Manures" mean any of the improvements numbered 23, 24, and 25 in the 1st Schedule to the Agricultural Holdings Act, 1900. See sect. 9 of that Act.

(2) Notice to quit may be given within the last year of a tenancy from year to year, if the operation of sect. 33 be excluded by express agreement between the landlord and tenant.

(3) This section will not apparently give a tenant any right to compensation for an improvement begun but not completed. According to sect. 1 of the Agricultural Holdings Act, 1900, he must have "made the improvement."

General saving of rights.

60. Except as in this Act expressed, nothing in this Act shall take away, abridge, or prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exerciseable by him by virtue of any other Act or law, or under any custom of the country, or otherwise, in respect of a contract of tenancy or other contract, or of any improvements, waste, emblements,

tillages, away-going crops, fixtures, tax, rate, tithe rent-charge, rent, or other thing. §§ 60,61.

61. In this Act— Interpretation.

"Contract of tenancy" means a letting of or agreement for the letting land for a term of years, or for lives, or for lives and years, or from year to year:

A tenancy from year to year under a contract of tenancy current at the commencement of the Act shall for the purposes of this Act be deemed to continue to be a tenancy under a contract of tenancy current at the commencement of this Act until the first day on which either the landlord or tenant of such tenancy could, the one by giving notice to the other immediately after the commencement of this Act, cause such tenancy to determine, and on and after such day as aforesaid shall be deemed to be a tenancy under a contract of tenancy beginning after the commencement of this Act:[1]

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause:

"Landlord" in relation to a holding means any person for the time being entitled to receive the rents and profits of any holding:[2]

"Tenant" means the holder of land under a landlord for a term of years, or for lives, or for lives and years, or from year to year:

"Tenant" includes the executors, administrators, assigns, legatee, devisee, or next-of-kin, husband, guardian, committee of the estate or trustees in bankruptcy of a tenant, or any person deriving title from a tenant; and the right to receive compensation in respect of any improvement made by a tenant shall enure to the benefit of

§ 61.

such executors, administrators, assigns, and other persons as aforesaid:

"Holding" means any parcel of land held by a tenant:[3]

"County Court," in relation to a holding, means the County Court within the district whereof the holding or the larger part thereof is situate:

"Person" includes a body of persons and a corporation aggregate or sole:

"Live stock" includes any animal capable of being distrained:

"*Manures*" *means any of the improvements numbered twenty-two and twenty-three in the third part of the 1st Schedule hereto:*

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

"Yearly tenancy" and "tenancy from year to year."

(1) There may be a distinction between a yearly tenancy and a tenancy from year to year. An agreement to let at a rent payable quarterly, determinable on any day of the year by three calendar months' notice to quit will create a tenancy from year to year: *King* v. *Eversfield* (66 L. J. Q. B. 809; (1897) 2 Q. B. 475).

Who is a "landlord."

(2) "Landlord" will include a mortgagee in possession. By the Tenants' Compensation Act, 1890 (*post*, p. 70), a mortgagee who deprives the occupier of land of possession is liable to compensate him for his crops and expenditure.

In *Mansel* v. *Norton* (52 L. J. Ch. 357; 22 Ch. D. 769), an owner in fee demised a farm for seven years, and agreed, at the expiration of the term, to pay for the tenant's property on the farm at a valuation. He devised the land to trustees for a term of 1,000 years, upon trust to raise money in aid of his personal estate, and subject thereto to the plaintiff for life, with divers remainders over. On the testator's death the plaintiff took possession. On the expiration of the term a new tenant could not be found. The plaintiff paid the outgoing tenant for his property on the farm, and claimed to be repaid out of the testator's estate. It was

held that the landlord for the time being was the person primarily liable, and that the plaintiff (being in receipt of the rents and profits) was the landlord, and not the trustee of the term, and that he therefore was the person primarily liable, and had no claim to be repaid wholly or in part out of the testator's estate or by the persons entitled in remainder. §§ 61, 62, 63, 64.

(3) In the Irish case of *Ex parte Sir Edward S. Hutchinson* (12 L. R. Ir. 79), under the Irish Land Act, 1881, a *profit à prendre* appurtenant to the lands comprised in the letting was held to form part of the "holding."

Repeal of Acts of 1875 and 1876.

62. On and after the commencement of this Act, the Agricultural Holdings (England) Act, 1875, and the Agricultural Holdings (England) Act, 1875, Amendment Act, 1876, shall be repealed.

Provided that such repeal shall not affect—

(a) any thing duly done or suffered, or any proceedings pending under or in pursuance of any enactment hereby repealed; or

(b) any right to compensation in respect of improvements to which the Agricultural Holdings (England) Act, 1875, applies, and which were executed before the commencement of this Act; or

(c) any right to compensation in respect of any improvement to which the Agricultural Holdings (England) Act, 1875, applies, although executed by a tenant after the commencement of this Act, if made under a contract of tenancy current at the commencement of this Act; or

(d) any right in respect of fixtures affixed to a holding before the commencement of this Act;

and any right reserved by this section may be enforced after the commencement of this Act in the same manner in all respects as if no such repeal had taken place.

Short title of Act.

63. This Act may be cited for all purposes as the Agricultural Holdings (England) Act, 1883.

Limits of Act.

64. This Act shall not apply to Scotland or Ireland.

Sched. I.

FIRST SCHEDULE.

Part I.—Improvements to which consent of Landlord is required.

(1.) *Erection or enlargement of buildings.*
(2.) *Formation of silos.*
(3.) *Laying down of permanent pasture.*
(4.) *Making and planting of osier beds.*
(5.) *Making of water meadows or works of irrigation.*
(6.) *Making of gardens.*
(7.) *Making or improving of roads or bridges.*
(8.) *Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power, or for supply of water for agricultural or domestic purposes.*
(9.) *Making of fences.*
(10.) *Planting of hops.*
(11.) *Planting of orchards or fruit bushes.*
(12.) *Reclaiming of waste land.*
(13.) *Warping of land.*
(14.) *Embankment and sluices against floods.*

Part II.—Improvement in respect of which notice to Landlord is required.

(15.) *Drainage.*

Part III.—Improvements to which consent of Landlord is not required.

(16.) *Boning of land with undissolved bones.*
(17.) *Chalking of land.*
(18.) *Clay-burning.*
(19.) *Claying of land.*
(20.) *Liming of land.*
(21.) *Marling of land.*

(22.) *Application to land of purchased artificial or other purchased manure.*

(23.) *Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.*

The First Schedule to the Agricultural Holdings Act, 1900, is substituted for this Schedule: see *post*, p. 100.

SECOND SCHEDULE.

Levying distress. Three per centum on any sum exceeding 20*l.* *and not exceeding* 50*l.* *Two and a half per centum on any sum exceeding* 50*l.*

To bailiff for levy, 1*l.* 1*s.*

To man in possession, if boarded, 3*s.* 6*d.* *per day; if not boarded,* 5*s.* *per day.*

For advertisements the sum actually paid.

To auctioneer. For sale five pounds per centum on the sum realized not exceeding 100*l.*, *and four per centum on any additional sum realized not exceeding* 100*l.*, *and on any sum exceeding* 200*l.* *three per centum. A fraction of* 1*l.* *to be in all cases considered* 1*l.*

Reasonable costs and charges where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress; such costs and charges in case the parties differ to be taxed by the registrar of the County Court of the district in which the distress is made.

Costs of distress.

This Schedule, under sect. 49, fixed the costs of distress in a holding to which the Act applies. Sect. 49 and the three following sections were repealed by the Law of Distress Amendment Act, 1888; and by rules of August 31, 1888, made under that Act, the following scales were laid down for regulating the fees, charges, and expenses in and incidental to distresses.

Sched. II.

By these rules it is provided that no person shall be entitled to any fees, charges, or expenses for levying a distress, or for doing any act or thing in relation thereto than those specified as follows :—

Scale I.—Distresses for Rent where the Sum demanded and due shall exceed 20l.

For levying distress[1]—Three per cent. on any sum exceeding 20*l.* and not exceeding 50*l.* Two and a half per cent. on any sum exceeding 50*l.* and not exceeding 200*l.*; and one per cent. on any additional sum.

For man in possession, 5*s.* per day; to provide his own board in every case.

For advertisements the sum actually and necessarily paid.

For commission to the auctioneer. On sale by auction seven and a half per cent. on the sum realized not exceeding 100*l.*, five per cent. on the next 200*l.*, four per cent. on the next 200*l.*; and on any sum exceeding 500*l.* three per cent. up to 1,000*l.*, and two and a half per cent. on any sum exceeding 1,000*l.* A fraction of 1*l.* to be in all cases reckoned 1*l.*

Reasonable fees, charges, and expenses (subject to rule 17) where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress.

For appraisement, on tenant's written request, whether by one broker or more, 6*d.* in the pound on the value as appraised, in addition to the amount for the stamp.

Scale II.—Distresses for Rent where the sum demanded and due shall not exceed 20l.

For levying distress, 3*s.*[1]

For man in possession, 4*s.* 6*d.* per day; to provide his own board in every case.

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For appraisement, on the tenant's written request, whether by one broker or more, 6*d.* in the pound on the value as appraised, in addition to the amount for the stamp.

For all expenses of advertisements, if any, 10*s.*

Catalogues, sale and commission, and delivery, 1*s.* in the pound on the net produce of the sale.

For removal at tenant's request, the reasonable expenses (subject to rule 17) attending such removal.

(1) The bailiff, not the landlord, is entitled to the fee for levying the distress. See *Philipps* v. *Rees* (59 L. J. Q. B. 1; 24 Q. B. D. 17), overruling *Coode* v. *Johns* (55 L. J. Q. B. 475; 17 Q. B. D. 714).

THE TENANTS' COMPENSATION ACT, 1890.

(53 & 54 Vict. c. 57.)

§§ 1, 2. *An Act to Amend the Law with respect to Compensation due to Tenants on Land under Mortgage.*

[18th August, 1890.]

46 & 47 Vict. c. 61. 50 & 51 Vict. c. 26.

Whereas it is expedient to amend the Agricultural Holdings Act, 1883, and the Allotments and Cottage Gardens Compensation for Crops Act, 1887, in so far as they relate to the compensation paid to tenants for improvements where land is under mortgage:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and short title.

1. This Act shall be construed as one with the Agricultural Holdings Act, 1883, and the Allotments and Cottage Gardens Compensation for Crops Act, 1887[1] (in this Act referred to as the principal Acts), and this Act may be cited as the Tenants' Compensation Act, 1890.

(1) See this Act, *post*, p. 110.

Compensation to tenants,

2. Where a person occupies land under a contract of tenancy[1] with the mortgagor, whether made before or

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when mortgagee in possession.

after the passing of this Act, which is not binding on the mortgagee of such land,[2] then—

(1.) The occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession be due to the occupier from the mortgagor as respects crops, improvements, tillages, or other matters connected with the land, whether under the principal Acts or the custom of the country, or agreements sanctioned by the principal Acts;

Provided that any sum ascertained to be due to the occupier for such compensation or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the land, and recovered as compensation under the principal Acts, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance only with section thirty-one of the Agricultural Holdings Act, 1883, as if the mortgagee were the landlord within the meaning of that section.[3]

(2.) Before the mortgagee deprives the occupier of possession of the land otherwise than in accordance with the said contract, he shall give to the occupier six months' notice in writing of his intention so to deprive him, and if he so deprives him compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of holding the land for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived, and such compensation shall be determined in like manner as compensation under the prin-

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cipal Acts, and shall be set off, charged, and recovered in manner before provided in this section. This sub-section shall only apply where the said contract is for a tenancy from year to year, or for a term of years not exceeding twenty-one, at a rack-rent.[4]

([1]) "Contract of tenancy" includes a lease for a term of years and a yearly tenancy. See Agricultural Holdings Act, 1883, s. 61.

Effect of leases by mortgagors.

([2]) Previously to the Conveyancing and Law of Property Act, 1881, a lease made by a mortgagor after the mortgage was not binding on the mortgagee, and he could on taking possession at once evict the tenant as a trespasser: *Keech* v. *Hall* (1 Dougl. 21). A mere notice to the tenant from the mortgagee to pay rent to him was insufficient to create the relation of landlord and tenant between the mortgagee and tenant unless assented to by the tenant: *Rogers* v. *Humphreys* (4 A. & E. 299); and such relation was not created even if the tenant continued in possession after the receipt of such a notice: *Towerson* v. *Jackson* (61 L. J. Q. B. 36; (1891) 2 Q. B. 484). If, however, the tenant complied with the notice he became tenant from year to year of the mortgagee: *Corbett* v. *Plowden* (54 L. J. Ch. 109; 25 Ch. Div. 678), and payment of rent to the mortgagee under compulsion operated as a discharge of rent to the mortgagor: *Underhay* v. *Read* (57 L. J. Q. B. 129; 20 Q. B. D. 209). A mortgagor who has mortgaged land after a lease made by him cannot recover possession of land on a forfeiture for breach of covenant in the lease, as he is no longer legally entitled to the reversion: *Matthews* v. *Usher* (69 L. J. Q. B. 856), unless the lease was made after the commencement of the Conveyancing Act, 1881: see sect. 10 of that Act. The law as above stated is applicable at present (subject to the tenant's rights under this Act) to all cases of mortgages where the operation of sect. 18 of the Conveyancing Act, 1881, is expressly excluded.

Conveyancing Act, 1881, s. 18.

Sect. 18 of the Conveyancing and Law of Property Act, 1881, provides—

"18. (1) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as in this section described and authorized.

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"(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

"(3) The leases which this section authorizes are—

"(i) An agricultural or occupation lease for any term not exceeding twenty-one years; and

"(ii) A building lease for any term not exceeding ninety-nine years.

"(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

"(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

"(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

"(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

"(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

* * * * *

"(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

* * * * *

"(16) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them, may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to a mortgage made before the commencement of this Act, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

"(17) The provisions of this section referring to a lease

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shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting."

The result of the above provisions is that either mortgagor or mortgagee when in possession may, unless the operation of the Act is expressly excluded, grant a lease or enter into an agreement of tenancy of agricultural land for a term not exceeding twenty-one years, and such letting will be binding on the other of them. While in possession the mortgagor or mortgagee will be entitled to receive the rent and will be liable to the tenant for improvements for which compensation is payable under the Agricultural Holdings Acts.

In cases where the Conveyancing Act does not apply, or is excluded, and the tenancy is therefore not binding on the mortgagee, this Act provides that the tenant shall not lose his rights if the mortgagee refuses to accept him as tenant and takes possession. The Act not only gives him the right to compensation for improvements under the Agricultural Holdings Acts, but also the right to claim for crops, tillages and acts of husbandry, which he might have claimed against his landlord as an ordinary outgoing tenant.

Recovery of compensation.

(3) The sum due to the occupier for "compensation," which expression covers the various matters mentioned in the early part of sub-sect. 1, viz., crops, improvements, tillages, or other matters connected with the land, may be set off against rent or other sums due from the occupier, but is not recoverable against a mortgagee landlord personally. In default of payment the occupier will be entitled to a charge on the holding under sect. 31, sub-sect. 4 of the Agricultural Holdings Act, 1883, to be obtained on application to the Board of Agriculture (see *ante*, p. 36).

Right of tenant to notice before eviction.

(4) This sub-sect. gives additional rights to tenants holding under a yearly tenancy, or for a term not exceeding twenty-one years, at a rack-rent, *i.e.*, a rent representing the full annual value of the land, no premium having been given, or allowance from the rent made on account of any improvement executed by the tenant. In such cases (which would include most agricultural tenancies) the tenant is entitled as against any mortgagee to—

(i) Six months' notice in writing to quit. Apparently the notice need not be given to determine at any of the recognized quarter days, but may expire at any time.

(ii) In addition to compensation in respect of the matters mentioned in sub-sect. 1, the tenant may claim com-

pensation for his crops which he leaves, and for any expenditure made by him in the expectation of holding on his tenancy until it expires in the natural course of events, so far as the results of such expenditure have not been exhausted. This compensation will be ascertainable by arbitration under the Agricultural Holdings Acts. §§ 2, 3, 4, 5.

3. Where compensation for improvements comprised in Part One or Part Two of the First Schedule to the Agricultural Holdings (England) Act, 1883, is charged by an order under section thirty-one of that Act, the charge shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, and shall be registered accordingly.[1] 51 & 52 Vict. c. 51, to apply to compensation under 46 & 47 Vict. c. 61 s. 31.

(1) The Land Charges Registration and Searches Act, 1888, provided for the registration of charges under sect. 29 of the Agricultural Holdings Act, 1883, but omitted to notice sect. 31. The omission was remedied by this Act. Any charge not registered will be void as against a purchaser for value of the land charged therewith. See note 2 to sect. 29 of the Agricultural Holdings Act, 1883, *ante*, p. 35.

4. This Act shall not apply to provisions for the payment of tithe rent-charge arising under the Tithe Commutation Act, and subsequent Acts relating thereto.[1] Exception of tithe rent-charge. 6 & 7 Will. IV. c. 71.

(1) The owner of tithe rent-charge is not under any circumstances to be considered a mortgagee in possession under this Act. As to the provisions for recovery of tithe rent-charge under the Tithe Act, 1891, see Dixon, p. 187.

5. This Act shall not apply to Scotland or Ireland. Extent of Act.

THE MARKET GARDENERS' COMPENSATION ACT, 1895.[a]

(58 & 59 Vict. c. 27.)

§§ 1, 2, 3.

An Act to Extend and Amend the Provisions of the Agricultural Holdings (England) Act, 1883, so far as they relate to Market Gardens.

[6th July, 1895.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title and construction.

1. This Act may be cited as the Market Gardeners' Compensation Act, 1895, and shall be read and construed as part of the Agricultural Holdings (England) Act, 1883, hereinafter called the principal Act, as amended by the Tenants' Compensation Act, 1890.

Commencement of Act.

2. This Act shall come into operation on the first day of January, one thousand eight hundred and ninety-six, which date is hereinafter referred to as the commencement of this Act.

Amendment and extension of 46 & 47 Vict. c. 61, as to improvements executed

3. Where after the commencement of this Act it is agreed in writing that a holding shall be let or treated as a market garden,[1] the following provisions shall have effect :—

(1.) The provisions of section thirty-four of the principal Act shall extend to every fixture or

[a] The portion of this Act which has been repealed is printed in italics.

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in or upon market gardens.

building affixed or erected by the tenant to or upon such holding for the purposes of his trade or business of a market gardener.[2]

(2.) *The improvements numbered* (1) "*erection or enlargement of buildings*," (6) "*making of gardens*," *and* (11) "*planting of orchards or fruit bushes*," *in Part I. of the First Schedule to the principal Act shall, as far as regards such holding, cease to be comprised in the said schedule.*[3]

(3.) *The following improvements shall, as far as regards such holding, be deemed to be comprised in Part III. of the said schedule :—*

(i.) *Planting of standard or other fruit trees permanently set out*[4] *;*

(ii.) *Planting of fruit bushes permanently set out*[4] *;*

(iii.) *Planting of strawberry plants ;*

(iv.) *Planting of asparagus and other vegetable crops ;*

(v.) *Erection or enlargement of buildings for the purposes of the trade or business of a market gardener.*

(4.) Section fifty-six of the principal Act shall be read and construed as if the words "with the consent in writing of his landlord" were not included therein.[5]

(5.) It shall be lawful for the tenant to remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out[4]; but if the tenant shall not remove such fruit trees and fruit bushes before the termination of his tenancy, such fruit trees and fruit bushes shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

Tenancies affected by the Act.

(1) In the case of a holding not in use or cultivation as a market garden at the commencement of this Act, in order that

§ 3. the tenant may reap the benefits of the Act, it is necessary that there should be an express agreement in writing that the holding shall "be let or treated as a market garden." In the case of a lease or tenancy agreement it would probably be sufficient that the holding should be described in terms which showed an intention that it should be so treated. It is not necessary that the whole of the holding should be so let or treated; it is sufficient if a part of it is cultivated "wholly or mainly" for the purpose or trade or business of market gardening (see sect. 6). In such a case the Act will apply to that part. Where the holding is not so let or treated originally, in order that this Act may operate the tenant must obtain a supplemental agreement from his landlord allowing him so to treat it.

The manager of an estate has, in the absence of any limitation of his authority, power to bind the landlord by an agreement with the tenant that the latter may be at liberty to change the cultivation of an estate from agricultural land to that of a market garden: *Re Pearson and l'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618).

Even if the consent of the landlord is not obtained, the conversion of arable and pasture land into a market garden and the erection of glass-houses thereon does not constitute a breach of a covenant to cultivate the farm "in a good and husbandlike manner according to the best rules of husbandry practised in the neighbourhood": *Meux* v. *Cobley* (61 L. J. Ch. 449; (1892) 2 Ch. 253).

Fixtures. (2) The result of this sub-section is that any fixture or building affixed or erected by the tenant "for the purposes of his trade or business of a market gardener," is removable by the tenant "before or within a reasonable time after the termination of the tenancy" upon one month's notice in writing to the landlord, who will have an option of purchasing at a fair value. See sect. 34 of the Agricultural Holdings Act, 1883, and the notes thereto, *ante*, p. 40.

(3) This and the following sub-section are repealed by the Agricultural Holdings Act, 1900, which in item No. 27 of Part III. of the 1st Schedule enumerates the improvements (which are substantially the same as those contained in the repealed sub-section) to which this section applies (see *post*, p. 101).

Removal of trees (4) Apart from this Act, trees and shrubs planted would not be removable by the tenant unless they were planted by a

nurseryman for the purposes of his trade and are not too aged for transplanting, *i.e.*, "not permanently set out": *Wardell* v. *Usher* (3 Scott, N. R. 508). The ploughing up of strawberry beds out of the ordinary course of management has been held to be waste, although the tenant may have paid for them in a valuation when he entered: *Watherell* v. *Howells* (1 Camp. 227). and shrubs.

(5) Sect. 56 of the Agricultural Holdings Act, 1883, gives the right to an incoming tenant who, "with the consent in writing of his landlord," has paid compensation for an improvement to an outgoing tenant "under or in pursuance of" the Act, to claim against the landlord on quitting his holding in respect of that improvement. This right can be obtained by payment to an outgoing tenant *without* the consent of the landlord in the case of improvements within this Act. Right of incoming tenant who has paid for improvement.

4. Where, under a contract of tenancy current at the commencement of this Act, a holding is at that date in use or cultivation as a market garden with the knowledge of the landlord, and the tenant thereof has then executed thereon, without having received previously to the execution thereof any written notice of dissent by the landlord, any of the improvements in respect of which a right of compensation or removal is given to a tenant by this Act, then the provisions of this Act shall apply in respect of such holding, as if it had been agreed in writing after the commencement of this Act that the holding should be let or treated as a market garden.[1] Application to current tenancies.

(1) This section has, if construed literally (and it is difficult to see how it can be otherwise construed), a somewhat extraordinary result, which places a tenant under a contract of tenancy current at the commencement of the Act (January 1, 1896) in a much better position as regards compensation than one whose tenancy commenced after that date. In order to be able to claim compensation, a tenant under a current tenancy has only to show that he has then (*i.e.*, on January 1, 1896) executed some one of the improvements in respect of which the Act gives him a right to compensation or removal without any written dissent by his landlord, and that his holding is at that date, *to the knowledge of his landlord*, cultivated as a market garden, and he at once, without the necessity of obtaining any consent from his landlord to its future cultivation in that way, Construction of section.

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such as is required by the previous section in the case of a tenancy commenced after January 1, 1896, becomes entitled to claim compensation under the provisions of the Act for any improvement executed by him. The result is that the Act has a retrospective effect without giving the landlord any opportunity of avoiding the heavy expense for compensation to which he may so be rendered liable; for it is difficult to see how the landlord could have given a written dissent to the execution of an improvement before the Act was passed, and before he knew the liability in which it would involve him.

Retrospective effect.

The wording of the section is, however, clear, and it is difficult to see how the interpretation of it can be otherwise than is suggested above. In a recent Scottish case, *Callander* v. *Smith* (37 Sc. L. R. 890), the Court of Session, who had to deal with the corresponding section in the Market Gardeners' Compensation (Scotland) Act, 1897, which is in all material respects identical with the above section, held that the section does not entitle a tenant, under a lease current at the commencement of the Act, to claim compensation in respect of market garden improvements executed prior to the commencement of the Act, but they considered that the words "has then executed thereon" mean "has executed such improvements prior to the commencement of the Act." The result, therefore, was that the tenant, by executing improvements before the commencement of the Act, obtained the right to claim compensation under the Act, but the claim could only be made in respect of improvements subsequently executed. This decision reversed the judgment of Lord Kyllachy, who considered that "has then executed thereon" must have been intended to mean, "has subsequently to the passing of this Act executed thereon."

Under sect. 61 of the Agricultural Holdings Act, 1883, a tenancy from year to year current at the commencement of the Act, ceases to be a tenancy "under a contract at the commencement of the Act" on the first day on which either landlord or tenant could, the one by giving notice to the other immediately after the commencement of the Act, cause a tenancy to determine. There can, therefore, now be no tenancies from year to year affected by this section.

The section applies where part only of a farm, held under an ordinary agricultural lease, has been cultivated as a market garden prior to the commencement of the Act, the term "holding" in this section including "part of a holding": *Callander* v. *Smith* (*ubi sup.*).

5. Any compensation payable under this Act shall as regards land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown or in right of the Duchy of Lancaster, and as regards land belonging to the Duchy of Cornwall, be paid in the same manner and out of the same funds respectively as if it were payable in respect of an improvement mentioned in the first part of the 1st Schedule to the principal Act, except that as regards land belonging to Her Majesty the Queen, her heirs and successors, in right of the Crown, compensation for planting strawberry plants and asparagus and other vegetable crops shall be paid in the same manner and out of the same funds as if it were payable in respect of an improvement mentioned in the third part of the said schedule.[1]

As to Crown lands and lands belonging to the Duchies of Lancaster and Cornwall.

(1) See sect. 35 of the Agricultural Holdings Act, 1883.

6. For the purposes of the principal Act and of this Act the expression "market garden" shall mean a holding or that part of a holding which is cultivated wholly or mainly for the purpose of the trade or business of market gardening.[1]

Interpretation.

(1) This section defines the meaning of a "market garden," but it still leaves undefined the expression "the trade or business of market gardening."

Meaning of "market garden."

In *Cooper* v. *Pearse* (65 L. J. M. C. 95; (1896) 1 Q. B. 562) a garden is defined as "a plot of ground in which fruit, flowers, or vegetables are grown for food or pleasure," and in *Purser* v. *Worthing Local Board* (56 L. J. M. C. 78; 18 Q. B. D. 818) a piece of land, on which were built 16 greenhouses or glasshouses which practically covered the surface of the land and were used for growing vegetables and fruit for sale, was held to constitute a "market garden or nursery ground" within sect. 211, subsect. 1, of the Public Health Act, 1875. Probably "market gardening" may be taken to mean "the growing for sale of garden produce, whether fruit, flowers, or culinary vegetables," as distinguished from farm produce. It is submitted that a farmer who *occasionally* grows a market garden crop, *e.g.*, cabbages or carrots, and sells the same for consumption as

§ 6. garden produce, does not come within the Act having regard to the words "wholly or mainly," nor does a person in possession of a garden who occasionally sells surplus garden produce. See *Re Hammond* (14 L. J. Bk. 14), where a farmer, who was in the habit of growing in open fields a quantity of peas and young potatoes as a fallow crop and sending them to London for sale, was held not to be a market gardener within 5 & 6 Vict. c. 122, s. 10. It is not necessary, however, that the whole of the holding should be cultivated as a market garden. The Act will apply if and so far as part of the holding is "wholly or mainly" so cultivated, *e.g.*, a farmer who devotes part of his farm to the growing of fruit, flowers, or culinary vegetables for sale, if his landlord agrees in writing to his so treating it, may claim compensation under the Act. See *Callander* v. *Smith* (37 Sc. L. R. 890), where it was held by Lord Kyllachy and acquiesced in by the Court of Session that in the construction of the Act the term "holding" includes "part of a holding," and consequently that sect. 4 applies where part of a farm, held under ordinary agricultural lease, has been cultivated as a market garden prior to the commencement of the Act.

THE AGRICULTURAL HOLDINGS ACT, 1900.

(63 & 64 Vict. c. 50.)

An Act to Amend the Law relating to Agricultural Holdings. [8th August, 1900.]

§ 1.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Right of tenant to compensation for improvements.

1.—(1.)[1] Where a tenant has made on his holding any improvement comprised in the First Schedule to this Act he shall, subject as in the Agricultural Holdings (England) Act, 1883 (in this Act referred to as the principal Act), and in this Act mentioned, be entitled, at the determination of a tenancy,[2] on quitting his holding[3] to obtain from the landlord[4] as compensation under the said Acts for the improvement such sum as fairly represents the value of the improvement to an incoming tenant.[5] Provided always, that in estimating the value of any such improvement there shall not be taken into account, as part of the improvement made by the tenant, what is justly due to the inherent capabilities of the soil.[6]

(2.) References in the principal Act to the First Schedule to that Act shall be construed as references to the First Schedule to this Act.

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(3.) In the ascertainment of the amount of the compensation payable to a tenant under the principal Act or this Act, there shall be taken into account any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement.[7]

(4.) In the ascertainment of the amount of the compensation payable to a tenant in respect of manures as defined by this Act,[8] there shall be taken into account the value of the manure required by the contract of tenancy or by custom to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed.[9]

(5.) Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.[10]

(1) This sub-section replaces sect. 1 of the Agricultural Holdings Act, 1883, and is in almost identical terms therewith.

Determination of a tenancy.

(2) "Determination of a tenancy" is interpreted in sect. 61 of the Agricultural Holdings Act, 1883, as meaning the cesser of a contract of tenancy by effluxion of time (as in the case of a lease for a term) or from any other cause (as by notice to quit, surrender, forfeiture, or re-entry for breach of covenant, &c.).

A tenancy from year to year is not determined by the death of the tenant, but vests in his personal representatives: *Doe* d. *Shaw* v. *Porter* (3 T. R. 13); *James* v. *Dean* (11 Ves. 391).

A tenancy from year to year, implied under an agreement for a lease or a void lease, determines at the end of the term without notice: *Doe* d. *Tilt* v. *Stratton* (1 Bing. 446); see also *Walsh* v. *Lonsdale* (52 L. J. Ch. 2; 21 Ch. D. 9).

Disclaimer.

If a trustee in bankruptcy disclaims a lease vested in the bankrupt, "the disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property

disclaimed": Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sect. 55, sub-s. 2.

The effect, however, of the disclaimer, when executed, is that neither the lessor nor the trustee can claim the benefit of any provisions contained in the lease which were to come into operation at the expiration or sooner determination of the term (*Ex parte Sir W. Hart Dyke, In re Morrish* (52 L. J. Ch. 570; 22 Ch. D. 410)), and the trustee who disclaims cannot claim compensation under the Act: *Schofield* v. *Hincks* (58 L. J. Q. B. 147; 60 L. T. Rep. 573).

Forfeiture.

A lease may be determined by a proviso for forfeiture on breach of covenant, or on the happening of some event, such as the bankruptcy of the lessee; but it is to be remembered that the Conveyancing Act, 1881, s. 14, makes it necessary in most cases to serve a notice requiring the lessee to remedy the breach complained of, and to make compensation for the breach before the right of re-entry can be enforced. That section does not extend to a covenant or condition against assigning, underletting, or parting with the possession of the land leased, or (in the case of a lease of agricultural land) to a condition for forfeiture on the bankruptcy of the lessee or on the taking in execution of his interest.

It is doubtful, in the case of a lease containing a proviso for re-entry on breach of covenant (but not making the lease *ipso facto* void on that event), whether the mere commencement of an action by the lessor to recover possession of the property for breach of covenant will, without actual entry, operate to determine the lease: *Ex parte Sir W. Hart Dyke, In re Morrish* (52 L. J. Ch. 570; 22 Ch. D. 410).

Where there was a lease for twenty-one years, with a proviso that the lease might be determined by the lessee at the end of seven or fourteen years, and it was agreed that the landlord should pay the tenant compensation for seeds, gooseberry and currant bushes, &c., "at the end of the term," the Court held that the tenant was entitled to compensation, although he determined it at the end of fourteen years: *Bevan* v. *Chambers* (14 Times L. R. 417).

Repudiation of the landlord's title.

A tenancy may also be determined by the lessee's repudiation of the landlord's title. In such a case a notice to quit is not required to determine a tenancy from year to year. In *Vivian* v. *Moat* (50 L. J. Ch. 331; 16 Ch. D. 730), the defendants disputed the plaintiff's alleged right to raise their rent, but were willing and offered to pay what was due in respect of a customary

§ 1.

rent-charge. It was held that this was a repudiation of the relation of landlord and tenant between them, and that the plaintiffs, on proving their title, were entitled to eject without proving a valid notice to quit.

Surrender.

A surrender is another mode of determining a tenancy. Every surrender by act of the parties must be in writing, and, if the term be for more than three years, it must be by deed: Real Property Amendment Act, 1845 (8 & 9 Vict. c. 106), s. 3.

A surrender may also take place by act and operation of law, as by the acceptance of a new lease by the tenant, or by a mutual agreement between landlord and tenant, followed by the granting of a new lease to a stranger with the assent of the lessee: *Nickells* v. *Atherstone* (16 L. J. Q. B. 371; 10 Q. B. 944). See Woodfall's Landlord and Tenant (16th ed.), p. 316.

In *Whittaker* v. *Barker* (1 C. & M. 113), a tenant under an agreement for a lease for fourteen years was to receive compensation on quitting his farm, according to a valuation to be then made, for the tillages and improvements he might leave on the farm. On account of some dispute the tenant said he would quit at the end of the year, and the landlord said he might. He did so, and the farm was let to another. The Court held that such a quitting was not a quitting under the terms of the tenancy, but in reality a running away, and the landlord was entitled to possession without making any compensation for tillages and improvements.

At what time the tenant is entitled to compensation.

(3) The tenant "must quit his holding" before he can obtain compensation. The "sitting tenant," as he is called, whose rent is raised is not so entitled, though, as the landlord must legally give the tenant whose rent he intends to raise the notice to which he would be entitled for the determination of his tenancy, it is in the tenant's power either to give up his holding, receiving the compensation to which he is entitled, or to elect to continue at the new rent. A tenant who remains in his holding, and submits to a change of the terms under which he holds, will not thereby lose his right to compensation on finally quitting the holding in respect of improvements made by him during the earlier tenancy. See sect. 58 of Agricultural Holdings Act, 1883.

In cases where, by the custom of the country or the terms of the letting, the tenant is not bound to deliver up possession of the whole of his holding at the same time, but retains part temporarily, the result of the authorities and of sect. 2, sub-s. 2 (*post*, p. 90), seems to be that the tenancy will be taken to

have determined in respect of each part of the holding when the tenant actually gives up possession. He will therefore be entitled to compensation for any improvement effected "on quitting" that parcel of the whole holding upon which the improvement was executed: see *Black* v. *Clay* ((1894) A. C. 368); *Morley* v. *Carter* (66 L. J. Q. B. 843; (1898) 1 Q. B. 8); *Re Paul, Ex parte Earl of Portarlington* (59 L. J. Q. B. 30; 24 Q. B. D. 247).

Case where the landlord is himself a leaseholder.

(4) Where the landlord is himself a leaseholder, the question arises whether, under the words of this section, he can, on the expiration of his lease, recover from his own superior landlord compensation in respect of money paid under the Act to the tenant who has been in actual occupation. It would seem not, for the intermediate landlord can scarcely be said to have "made" the improvement.

Value of the improvement.

(5) The compensation payable is to be ascertained by estimating "the value of the improvement" to an incoming tenant, not by the cost incurred in effecting it, with a proportionate deduction for each year while the tenancy lasts, which was the method of valuation under the Agricultural Holdings Act, 1875. The "value to an incoming tenant" may differ very much from the value arrived at by the ascertainment of the cost incurred, for though the latter may have been great, the present value may be very small, or *vice versâ*. It is believed, however, that on account of the difficulty in ascertaining the value in this way, valuers very commonly (though wrongly) award compensation on the basis of cost, which is undoubtedly the easiest method of valuation, and has, in fact, been adopted by many Chambers of Agriculture in their scales of compensation.

"Inherent capabilities of the soil."

(6) The proviso as to the "inherent capabilities of the soil" has been the subject of considerable difference of opinion. The proviso was in the Agricultural Holdings Act, 1883, but the Royal Commission, in the final report of the majority, recommended as follows: "We see no objection to the removal from sect. 1 of the proviso recognizing the inherent capabilities of the soil, a term which appears to be obnoxious to many, as we are confident that referees, in estimating the tenant's interest in the value of an improvement, will take into consideration the character of the soil, its natural fertility and capabilities, without any instruction by statute."

In consequence of this recommendation, the Bill, as presented to the House of Commons, omitted this proviso, and it was passed by the Lower House in that form. The proviso

§ 1.

was, however, restored by the House of Lords and finally accepted by the Commons, the ground for its restoration being that its being expressly omitted after having been a part of the Agricultural Holdings Act, 1883, might lead to misconception on the part of valuers, and to their making the landlord pay for what was in fact part of the natural virtue of his own land. The phrase "inherent capabilities of the soil" is not, it is submitted, very clear. In one sense, the value of any agricultural improvement is wholly attributable to the "inherent capabilities of the soil." For instance, "claying of land" is of value only in certain soils, and its worth might be said to be due to the "inherent capabilities of the soil." The whole value of drainage certainly, in one sense, depends upon "the inherent capabilities of the soil." It is clear, however, that it is not intended to make the Act a nullity by reading the proviso in this way. It is submitted that the proper way of valuing any improvement, having regard to this proviso, is not by taking the cost to the tenant who makes it (as is frequently done), but by ascertaining (1) the letting value of the land without the improvement and having regard to the possibility of the improvement being made thereon: (2) (a) the capital sum, or (b) the extra rent which it would reasonably be worth the while of an incoming tenant to pay in consideration of having the benefit of the improvement as it stands on the determination of the previous tenancy. The sum payable by the landlord for the improvement will be either (a), or (b) capitalized at so many years' purchase as will accord with the ordinary selling value of agricultural land in the district, subject in either case to any deduction necessary under sub-sect. 3. In order to find out (a), it may be helpful to ascertain the cost of the improvement, but it by no means follows that it will be equal to that, for the real value of any improvement may be either greater or very much less than its cost.

Proper method of valuation.

(7) This sub-section provides for cases, amongst others, where the landlord may, in consideration of the execution of an improvement by the tenant, have allowed him to hold his farm at a rent below its real value.

"Manures."

(8) "Manures" are defined by sect. 9 as referring to the improvements numbered 23, 24, and 25 in Part III. of the 1st Schedule, and include both chemical and animal manures.

Reduction of compensation by

(9) The word "crops" in this somewhat obscure sub-section is substituted for the words "hay, straw, roots, or green crops," used in sect. 6 of the Agricultural Holdings Act, 1883, which

§ 1. sale of crops.

provided that there should be "taken into account in reduction" of the compensation payable to the tenant "the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off or removed from the holding within the last two years of the tenancy." It is presumed that "taken into account" in this sub-section means "taken into account in reduction of the tenant's claim" or "as a set-off against it," though it is not expressly so stated. It is also presumed that "the value of the manure required, &c.," is not to be taken into account in reduction unless such value has not in fact been returned to the holding, though this is not expressly so stated. The present clause is less favourable to the landlord than the corresponding clause in the Agricultural Holdings Act, 1883, as it does not allow a reduction in respect of "crops" (which no doubt includes hay, straw, &c.) sold or removed, unless the contract of tenancy or custom requires a return of manure to be made in respect thereof. The former clause applied whether or not the contract or custom prevented the sale or removal without the return of equivalent manure. In any case, the amount taken into account is not now to exceed the actual value of the manure which would have been produced by consumption on the holding of the crops sold or removed; so that where a lease or tenancy agreement provides, as is sometimes the case, for the return of manure in excess of the manurial value of the crops sold off, with a view of penalizing and so preventing any sale or removal, such excess will not be taken into account under this section, though it will be open to the landlord to seek to recover it by action outside the Act or, it would seem, by a claim as for breach of contract under sect. 2, sub-s. 3.

If the lease or tenancy agreement or the custom of the country simply prohibits the sale or removal of hay or straw without providing for a return of manure, and the tenant sells or removes in breach of his agreement, this sub-section is inapplicable, but the landlord can either sue for damages or claim against the tenant under sect. 2, sub-s. 3, and require the arbitration to extend to such claim.

Claim may be made under custom, &c.

([10]) This sub-section effects a very important alteration. By sect. 57 of the Agricultural Holdings Act, 1883, a claim under the custom of the country was excluded in respect of any improvement to which the Act applied, and there was no option to the tenant of claiming except under the Act, although the custom might have been more advantageous to him. He might,

§§ 1, 2.

however, have claimed under an agreement altogether outside the Act: *Newby* v. *Eckersley* (68 L. J. Q. B. 261; (1899) 1 Q. B. 465); *Re Pearson and l'Anson* (68 L. J. Q. B. 878; (1899) 2 Q. B. 618). Now the tenant can claim (a) under the Act; (b) under the custom of the country; (c) under agreement; or (d) otherwise. These various methods of obtaining compensation are, no doubt, mutually exclusive as to any particular improvement, but may be made use of side by side as regards different improvements.

For the law as to customs of the country, see Dixon, pp. 520 *et seq.*, and for a statement of the customs prevailing in different counties, see pp. 620 *et seq.* As a rule, the custom of the country does not provide compensation for "improvements" except in respect of purchased or artificial manures applied in growing a root or other fallow crop.

Settlement of differences by arbitration.

2.—(1.) If a tenant claims to be entitled to compensation, whether under the principal Act or this Act, or under custom, 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 such compensation, the difference shall be settled by arbitration in accordance with the provisions, if any, in that behalf in any agreement betweeen landlord and tenant, and in default of and subject to any such provisions by arbitration under this Act in accordance with the provisions set out in the Second Schedule to this Act.[1]

(2.) Any claim by a tenant for compensation under the principal Act or this Act in respect of any improvement comprised in the First Schedule to this Act shall not be made after the determination of the tenancy. Provided that where the claim relates to an improvement executed after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the claim may be made at any time before the tenant quits that part.[2]

(3.)[3] Where any claim by a tenant for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to arbitration, and any

sum is claimed to be due to the tenant from the landlord in respect of any breach of contract or otherwise in respect of the holding,[4] or to the landlord from the tenant in respect of any waste wrongfully committed or permitted by the tenant,[5] or in respect of breach of contract or otherwise[6] in respect of the holding, the party claiming such sum may, if he thinks fit, by written notice to the other party given by registered letter or otherwise not later than seven days after the appointment of the arbitrator or arbitrators, require that the arbitration shall extend to the determination of the further claim, and thereupon the provisions of this section with respect to arbitration shall apply accordingly, and any sum awarded to be paid by a landlord or tenant shall be recoverable in manner provided by the principal Act for the recovery of compensation.[7]

(4.) Where any claim which is referred to arbitration relates to an improvement executed or matter arising after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the arbitrator may, if he thinks fit, make a separate award in respect of such claim.

(5.) An arbitration shall, unless the parties otherwise agree, be before a single arbitrator.[8]

(6.) If in any arbitration under this Act the arbitrator states a case for the opinion of the County Court on any question of law, the opinion of the Court on any question so stated shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal, from whose decision no appeal shall lie.[9]

(7.) Any person who wilfully and corruptly gives false evidence before an arbitrator or umpire in any arbitration under this Act shall be guilty of perjury, and may be dealt with, prosecuted, and punished accordingly.

§ 2. (8.) Subject to any provision contained in any agreement between landlord and tenant the Arbitration Act, 1889, shall not apply to any arbitration to which this Act applies.[10]

52 & 53 Vict. c. 49.

Reference to arbitration.

(1) The provisions contained in the Agricultural Holdings Act, 1883, ss. 9—16, for the reference of claims to compensation to the decision of two referees and an umpire, are repealed; and this sub-section provides that in default of agreement between the landlord and tenant such claims, whether arising under the Act, custom, agreement, or otherwise, shall be settled by arbitration in manner agreed upon between the landlord and tenant (by the lease or tenancy agreement or otherwise), or, in the absence of any such agreement, in accordance with the provisions in the 2nd Schedule, under which the arbitration will be before a single arbitrator, unless the parties agree in writing that there be not a single arbitrator. See Schedule 2, *post*, p. 102.

A claim for compensation must be settled by agreement between the parties or referred to arbitration, and cannot be the subject of a counter-claim in an action: *Gas Light and Coke Co.* v. *Holloway* (52 L. T. 434); *Schofield* v. *Hincks* (58 L. J. Q. B. 147).

Notice of claim.

(2) Under the Agricultural Holdings Act, 1883, s. 7, a tenant claiming compensation was obliged to give notice in writing to the landlord at least two months before "the determination of the tenancy," which was held to mean its determination as an agricultural tenancy, although the buildings might be retained until a later date: *Morley* v. *Carter* (66 L. J. Q. B. 843; (1898) 1 Q. B. 8). If a substantial part of the farm was retained under custom or stipulation in the lease after some part had been given up, the notice in respect of the part retained might have been given two months before it was given up: *Re Paul* (59 L. J. Q. B. 30; 24 Q. B. D. 247); *Black* v. *Clay* ((1894) A. C. 368). Now it is only required that the claim shall be made *not after* the determination of the tenancy, or in case of an improvement executed after the determination of the tenancy (presumably on the part of the holding of which the tenant lawfully remains in occupation under custom or by agreement), then before the tenant quits the part so occupied. It is not required that the claim shall be made in writing or in any particular form, as was the case under the Agricultural Holdings Act, 1883, but it would scarcely be prudent to make it otherwise than in writing to the landlord and with some general particulars as to the

nature of the claim. Notices under the Act may be sent by post. See Agricultural Holdings Act, 1883, s. 28.

See Form 17.

Inclusion of other differences in arbitration.

(3) Sub-sect. 3 will have an important effect in enabling the arbitrator to settle all differences between the parties. It empowers the tenant, by written notice given by registered letter to the landlord not later than seven days after the appointment of an arbitrator, to require the arbitrator, in addition to any claim for compensation, to deal with further claims by the tenant against the landlord for breach of contract or otherwise in respect of the holding. The landlord may within the same time, by notice to the tenant, require the arbitrator to deal with claims by him against the tenant for waste or in respect of breach of contract or otherwise. If such notice be given, the award dealing with the additional claim so made on either side will not be bad on the ground that it includes other matters besides compensation under the Act, as it would have been under the Agricultural Holdings Act, 1883, if it so included other matters: *Farquharson* v. *Morgan* (63 L. J. Q. B. 474; (1894) 1 Q. B. 552). That case, however, shows that an award even under the present Act will be bad which includes matters other than compensation in respect of which notice has not been given under this sub-section. In a notice of claim under this section it does not appear necessary to state the amounts claimed.

See Forms 18 and 19.

Claims by tenant.

(4) A claim for breach of an agreement by the landlord to put or keep the buildings in repair or for quiet enjoyment by the tenant are examples of possible claims by the tenant for breach of contract. The landlord, it must, however, be remembered, is not bound, in the absence of express agreement, to put or keep any part of the demised property in repair. Under the expression "or otherwise" the arbitration may extend to a claim by the tenant for acts of husbandry, tillages, unconsumed hay, straw, &c., for which the landlord may be liable to an outgoing tenant by custom.

Waste.

(5) Waste is either voluntary or permissive. Voluntary waste includes such matters as felling timber trees, opening mines or quarries, ploughing up permanent pasture, destroying buildings, or otherwise changing the nature of the property.

Permissive waste consists of neglect whereby the property is deteriorated, as by failure to keep in repair.

A tenant from year to year is not liable for permissive waste: *Torriano* v. *Young* (6 C. & P. 8). Whether or not a tenant for

§§ 2, 3.

years is so liable in the absence of express agreement is not clear on the authorities. In *Davies* v. *Davies* (57 L. J. Ch. 1093; 38 Ch. D. 499), Kekewich, J., held a tenant for years to be so liable, but *Barnes* v. *Dowling* (44 L. T. 809) is to the opposite effect. See also *Re Cartwright, Avis* v. *Newman* (58 L. J. Ch. 590; 41 Ch. D. 532).

Leaving the land uncultivated is not waste at common law: *Hutton* v. *Warren* (1 M. & W. 466); but the law will imply a promise on the tenant's part to cultivate his farm in a husband-like manner and according to the custom of the country. See *Brown* v. *Crump* (1 Marsh. 567).

Breaches of contract by tenant.

(6) Breaches of contract in the lease or tenancy agreement for which the tenant may be liable may include such matters as not keeping up the fences, failure to cultivate properly, or to repair, or selling hay or straw, &c., where there is no provision for the return of a manurial equivalent.

(7) The recovery of compensation is provided for by sect. 24 of the Agricultural Holdings Act, 1883. See *ante*, p. 30.

Arbitration to be before a single arbitrator.

(8) Unless both parties agree otherwise, the arbitration is necessarily before a single arbitrator to be appointed by agreement between the parties, or, if no agreement can be come to, by the Board of Agriculture. Any agreement that the arbitration should not be before a single arbitrator must be in writing. See the 2nd Schedule, Part II. Rule 1, and Forms 21, 22, and 23.

(9) See Ord. XLA. r. 3 of the County Court Rules (November), 1900, and Forms 311B, 311C, and 311D (*post*, pp. 143, 150), for the procedure on the statement of a case. The procedure on appeal to the Court of Appeal will be similar to that in appeals under the Workmen's Compensation Act, 1897. See Rules of the Supreme Court, Ord. LVIII. r. 20.

Arbitration Act, 1889.

(10) If it is desired, instead of proceeding under the 2nd Schedule to this Act, to make use of the Arbitration Act, 1889, which gives power to summon witnesses by subpœna and enables the High Court of Justice to control the award, a special agreement should be made. See Form 22, *post*, p. 136.

Land charges.

3.—(1.) The powers of the County Court under the principal Act with respect to charges shall be exercised by the Board of Agriculture, and accordingly the Board of Agriculture shall be substituted for the County Court in sections twenty-nine, thirty, thirty-one, thirty-two, and thirty-nine of that Act.

§§ 3, 4, 5.

(2.) Where a charge may be made under the principal Act or this Act for compensation, the person making the award shall, at the request and cost of the party entitled to obtain the charge, certify the amount to be charged and the term for which the charge may properly be made, having regard to the time at which each improvement in respect of which compensation is awarded is to be deemed to be exhausted.[1]

(3.) Sections twenty-nine, thirty, and thirty-one of the principal Act shall apply to any money paid by or due from a landlord to a tenant as compensation for any improvement comprised in the First Schedule to this Act, whether the compensation be claimed under this Act or under custom or agreement or otherwise.

(4.) A charge made by the Board of Agriculture pursuant to this section shall be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888, and may be registered accordingly.[2] This sub-section shall not apply to Scotland.

51 & 52 Vict. c. 51.

(1) Under sect. 29 of the Agricultural Holdings Act, 1883, where the landlord is not absolute owner of the holding for his own benefit, no instalment of, or interest in, any charge is to be made payable after the time when the improvement in respect of which the charge is made is to be deemed to be exhausted. That time is by this section to be fixed by the person making the award.

Time of exhaustion of improvement.

(2) As to the registration of land charges, see *ante*, p. 35.

4. The provisions of section thirty-four of the principal Act shall apply to a fixture or building acquired by a tenant in like manner as they apply to a fixture or building affixed or erected by a tenant.[1]

Fixtures and buildings.

(1) See sect. 34 of Agricultural Holdings Act, 1883, *ante*, p. 40.

5. The landlord of a holding or any person authorized by him may at all reasonable times enter on the holding, or any part of it, for the purpose of viewing the state of the holding.[1]

Power of entry.

§§ 5, 6.

(1) Apart from this section, unless an express right of entry is reserved, a landlord has no right to enter his tenant's premises to repair, or for any other purpose. If he does so, he is a trespasser. See Woodfall, L. & T. (16th ed.), p. 639.

Penal rents and liquidated damages.

6. Notwithstanding any provision in a contract of tenancy making the tenant liable to pay a higher rent or other liquidated damages in the event of any breach or non-fulfilment of a covenant or condition, a landlord shall not be entitled to recover, by distress or otherwise, any sum in consequence of any breach or non-fulfilment of any such covenant or condition in excess of the damage actually suffered by him in consequence of the breach or non-fulfilment. Provided that this section shall not apply to any covenant or condition against breaking up permanent pasture, grubbing underwoods, or felling, cutting, lopping, or injuring trees, or regulating the burning of heather.[1]

Penalties to secure performance of contracts.

(1) According to the long-established doctrine of equity, wherever a penalty is inserted merely to secure the performance of some act, or the enjoyment of some right or benefit, the performance of such act or the enjoyment of such right or benefit is considered the substantial and principal intent of the instrument, and the penalty only accessory. In such cases, therefore, the Court relieves against the penalty and decrees compensation in lieu thereof proportionate to the damage actually sustained: *Sloman* v. *Walter* (1 Bro. C. C. 418; 2 Wh. & Tu. L. C. 257). Where, however, a sum is agreed upon by the parties as liquidated damages or the price to be paid for doing or refraining from doing a certain act, the Court will not interfere. In *Rolfe* v. *Peterson* (2 Bro. P. C. 436), the lessee covenanted not to plough up any of the ancient meadow or pasture ground, and if he did to pay an additional rent of 5*l.* per acre. Lord Camden looked upon the additional rent as a penalty, and decreed that the tenant should be relieved, and directed an issue to ascertain the actual damage suffered, but the House of Lords overruled the decree. In *Jones* v. *Green* (3 Y. & J. 298), Alexander, C. B., says: "Since the case of *Rolfe* v. *Peterson* it has always been understood in all cases between the landlord and tenant, whether the term used has been

'penalty' or 'liquidated' damages, or 'additional rent,' or any other similar expression, that it should not be considered as a penalty in order to protect the defendant from answering, but as stipulated damages or additional rent." See Dixon, p. 513. §§ 6, 7, 8, 9.

The result of this section is to alter the law so as to allow the actual damage only, and not the "higher rent or other liquidated damages" to be recovered, except in relation to covenants or conditions against breaking up permanent pasture, grubbing underwoods, or felling, cutting, lopping, or injuring trees, or regulating the burning of heather, in which cases the law will remain as it was before. As penal or additional rents are not commonly reserved, except in these cases, the effect of this section is likely to be insignificant.

The section would appear to apply to a contract of tenancy, whether made before or after the Act.

7. The compensation in respect of an improvement made before this Act comes into operation shall be such (if any) as could have been claimed if this Act had not been passed, but shall be ascertained in the manner provided by this Act.[1] Improvements executed before Act comes into operation.

(1) It is submitted, though with some hesitation, that "the manner" of ascertaining the compensation covers all matters of mere procedure under the Acts, and that in respect of improvements made before the commencement of this Act, but claimed for afterwards, it will not be necessary to give notice in accordance with sect. 7 of the Act of 1883. The question is, however, by no means clear, and it will be safer in any such case to comply strictly with sect. 7, if possible. See *Smith* v. *Acock* (53 L. T. 230).

8. From and after the passing of this Act notice of termination of tenancy under section twenty-eight of the Agricultural Holdings (Scotland) Act, 1883, may be given in the same manner as a notice of removal under section six of the Removal Terms (Scotland) Act, 1886. Notice of termination of tenancy. 46 & 47 Vict. c. 62. 49 & 50 Vict. c. 50.

9.—(1.) References to "manures" in the principal Act and this Act shall be construed as references to the improvements numbered twenty-three, twenty-four, and twenty-five in Part III. of the First Schedule to this Act. Interpretation.

(2.) This Act shall be construed as one with the principal Act.

§ 10. Application to Scotland.

10. In the application of this Act to Scotland—

(1.) References to the principal Act and to sections twenty-nine, thirty, thirty-two, and thirty-four thereof shall be construed as references to the Agricultural Holdings (Scotland) Act, 1883, and to sections twenty-four, twenty-six, twenty-five, and thirty thereof respectively. References to sections thirty-one and thirty-nine of the principal Act shall not apply.

46 & 47 Vict. c. 62.

(2.) A reference to the Arbitration Act, 1889, shall be construed as a reference to the Arbitration (Scotland) Act, 1894, and a reference to the Market Gardeners' Compensation Act, 1895, shall be construed as a reference to the Market Gardeners' Compensation (Scotland) Act, 1897:

57 & 58 Vict. c. 13.

60 & 61 Vict. c. 29.

(3.) The expression "either Division of the Court of Session" shall be substituted for "Court of Appeal," "sheriff" for "county court" or "judge of a county court," "auditor of the sheriff court" for "registrar of the county court," "Act of Sederunt" for "Rules of the Supreme Court," "arbiter" and "arbiters" for "arbitrator" and "arbitrators," "oversman" for "umpire," "deterioration" for "waste" and "expenses" for "costs":

(4.) Any award or agreement as to compensation, and any other award under this Act, may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral.

(5.) Where any jurisdiction committed by the principal Act or this Act to the sheriff is

exercised by the sheriff-substitute there shall be no appeal to the sheriff. §§ 11, 12, 13, 14.

Extent of Act.

11. This Act shall not extend to Ireland.

Repeal.

12. The enactments specified in the Third Schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Commencement of Act.

13. This Act shall come into operation on the first day of January one thousand nine hundred and one.

Short titles.

14.—(1.) This Act may be cited as the Agricultural Holdings Act, 1900.

53 & 54 Vict. c. 57. 58 & 59 Vict. c. 27.

(2.) The Agricultural Holdings (England) Act, 1883, the Tenants Compensation Act, 1890, the Market Gardeners' Compensation Act, 1895, and this Act, may be cited together as the Agricultural Holdings (England) Acts, 1883 to 1900.

(3.) The Agricultural Holdings (Scotland) Act, 1883, the Market Gardeners' Compensation (Scotland) Act, 1897, and this Act may be cited together as the Agricultural Holdings (Scotland) Acts, 1883 to 1900.

SCHEDULES.

Sch. I.

Sects. 1, 2, 3.

FIRST SCHEDULE.

PART I.

Improvements to which consent of Landlord is required.

(1.) Erection, alteration, or enlargement of buildings.
(2.) Formation of silos.
(3.) Laying down of permanent pasture.
(4.) Making and planting of osier beds.
(5.) Making of water meadows or works of irrigation.
(6.) Making of gardens.
(7.) Making or improving of roads or bridges.
(8.) Making or improving of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
(9.) Making or removal of permanent fences.
(10.) Planting of hops.
(11.) Planting of orchards or fruit bushes.
(12.) Protecting young fruit trees.
(13.) Reclaiming of waste land.
(14.) Warping or weiring of land.
(15.) Embankments and sluices against floods.
(16.) The erection of wirework in hop gardens.

[N.B.—*This part is subject as to market gardens to the provisions of Part III.*]

PART II.

Improvements in respect of which notice to Landlord is required.

(17.) Drainage.

PART III.

Improvements in respect of which Consent of or Notice to Landlord is not required.

(18.) Chalking of land.

(19.) Clay-burning.

(20.) Claying of land or spreading blaes upon land.

(21.) Liming of land.

(22.) Marling of land.

(23.) Application to land of purchased artificial or other purchased manure.

(24.) Consumption on the holding by cattle, sheep, pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.

(25.) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.

(26.) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy.

(27.) In the case of a holding as to which section three of the Market Gardeners' Compensation Act, 1895, applies— 58 & 59 Vict. c. 27.

(i.) Planting of standard or other fruit trees permanently set out;

(ii.) Planting of fruit bushes permanently set out;

(iii.) Planting of strawberry plants;

(iv.) Planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years;

(v.) Erection or enlargement of buildings for the purpose of the trade or business of a market gardener.

Schs. I., II.

Items 12, 16, 25, 26 in the above schedule are altogether new. To item 1 the word "alteration" has been added; to item 9 the words "or removal" and "permanent"; to item 14 "or weiring"; to item 20 "or spreading blaes upon land"; to item 24 "or by horses other than those regularly employed on the holding of corn." "Boning of land with undissolved bones," being item 16 in the 1st Schedule to the Agricultural Holdings Act, 1883, has been omitted. Item 27 has been taken from the Market Gardeners' Compensation Act, 1897, with the addition of the words "rhubarb" and "which continue productive for two or more years" to sub-head (iv).

It is to be observed that items 24 and 25 do not apply to feeding stuffs or corn consumed by horses "regularly employed on the holding," which, it is presumed, excludes the ordinary carting staff of the farm, but not presumably hunters or nag-horses or breeding stock.

In order to substantiate a claim under item 25 "satisfactory evidence" must be produced, and it will be important that a tenant who may propose to make such a claim should keep an accurate record of corn produced on the holding and consumed as mentioned.

The cost of clover and other "seeds" mentioned in item 26 is commonly given by the custom of the country to an outgoing tenant, but the right to claim is generally limited to cases where the sowing has taken place not more than one or two years prior to the determination of the tenancy.

SECOND SCHEDULE.

Sect. 2.

Rules as to Arbitration.

PART I.

Arbitration before a Single Arbitrator.

Appointment of Arbitrator.

1. A person agreed upon between the parties, or in default of agreement nominated by the Board of Agriculture on the application in writing of either of the parties, shall be appointed arbitrator.

2. If a person appointed arbitrator dies, or is incapable of acting, or for seven days after notice from

either party requiring him to act fails to act, a new arbitrator may be appointed as if no arbitrator had been appointed.

3. Neither party shall have power to revoke the appointment of the arbitrator without the consent of the other party.

4. Every appointment notice, revocation, and consent under this part of these rules must be in writing.

Time for Award.

5. The arbitrator shall make and sign his award within twenty-eight days of his appointment or within such longer period as the Board of Agriculture may (whether the time for making the award has expired or not) direct.

Removal of Arbitrator.

6. Where an arbitrator has misconducted himself the County Court may remove him (*a*).

Evidence.

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrator, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrator all samples, books, deeds, papers, accounts, writings, and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbitrator may require.

8. The arbitrator shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the arbitrator thinks fit, be examined on oath or affirmation.

(*a*) See County Court Rules (November), 1900, Ord. XLA, r. 4 (*post*, p. 145), and Forms 311E, 311F and 311G for procedure on an application to remove an arbitrator.

Sch. II.

Statement of Case.

9. The arbitrator may at any stage of the proceedings, and shall, if so directed by the judge of a County Court (which direction may be given on the application of either party), state in the form of a special case for the opinion of that Court any question of law arising in the course of the arbitration (*a*).

Award.

10. The arbitrator shall on the application of either party specify the amount awarded in respect of any particular improvement or improvements, and the award shall fix a day not sooner than one month nor later than two months after the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise, and shall be in such form as may be prescribed by the Board of Agriculture (*b*).

11. The award to be made by the arbitrator shall be final and binding on the parties and the persons claiming under them respectively.

12. The arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the County Court may set the award aside (*c*).

Costs.

14. The costs of and incidental to the arbitration and award shall be in the discretion of the arbitrator, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the County Court on the application of either party, but that

(*a*) See Ord. XLA, rr. 2 and 3 (*post*, p. 142), and Forms 311B, 311C and 311D.

(*b*) See the form of award prescribed by the Board of Agriculture (*post*, p. 118).

(*c*) See Ord. XLA, r. 4 (*post*, p. 145), and Forms 311E, 311F and 311G.

taxation shall be subject to review by the judge of the County Court (*a*).

15. The arbitrator shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been incurred unnecessarily.

Forms.

16. Any forms for proceedings in arbitrations under this Act which may be prescribed by the Board of Agriculture shall, if used, be sufficient (*b*).

PART II.

Arbitration before two Arbitrators or an Umpire.

Appointment of Arbitrators and Umpire.

1. If the parties agree in writing that there be not a single arbitrator, each of them shall appoint an arbitrator.

2. If before award one of two arbitrators dies or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the party appointing him shall appoint another arbitrator.

3. Notice of every appointment of an arbitrator by either party shall be given to the other party.

4. If for fourteen days after notice by one party to the other to appoint an arbitrator, or another arbitrator, the other party fails to do so, then, on the application of the party giving notice, the Board of Agriculture shall appoint a person to be an arbitrator.

(*a*) See order as to costs (*post*, p. 140), and Ord. XLa, rr. 5 and 6 (*post*, p. 148).

(*b*) See the forms prescribed by the Board of Agriculture (*post*, p. 122). See also General Forms 24 to 32 (*post*, p. 137 *et seq.*).

Sch. II.

5. Where two arbitrators are appointed, then (subject to the provisions of these rules) they shall, before they enter on the arbitration, appoint an umpire.

6. If before award an umpire dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the arbitrators may appoint another umpire.

7. If for seven days after request from either party, the arbitrators fail to appoint an umpire, or another umpire, then, on the application of either party, the Board of Agriculture shall appoint a person to be the umpire.

8. Neither party shall have power to revoke an appointment of an arbitrator without the consent of the other.

9. Every appointment, notice, request, revocation, and consent under this part of these rules shall be in writing (*a*).

Time for Award.

10. The arbitrators shall make and sign their award in writing within twenty-eight days after the appointment of the last appointed of them, or on or before any later day to which the arbitrators, by any writing signed by them, may enlarge the time for making the award, not being more than forty-nine days from the appointment of the last appointed of them.

11. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to either party or to the umpire a notice in writing stating that they cannot agree, the umpire may forthwith enter on the arbitration in lieu of the arbitrators.

12. The umpire shall make and sign his award within one month after the original or extended time appointed for making the award of the arbitrators has expired.

13. The time for making an award may from time to

(*a*) See General Forms 26 to 32 (*post*, pp. 138 and 139).

time be extended by the Board of Agriculture, whether the time for making the award has expired or not. Sch. II.

Removal of Arbitrator, Evidence, Statement of Case, Award, Costs, Forms.

14. The provisions of Part I. of these rules as to the removal of an arbitrator, the evidence, the statement of a case, the award, costs, and forms shall apply to an arbitration in accordance with this Part as if the expression "arbitrator" whenever used in those provisions included two arbitrators or an umpire, as the case may require.

The above schedule is substituted for the procedure sections (7 to 23) of the Agricultural Holdings Act, 1883, and prescribes the procedure in arbitrations under the Agricultural Holdings (England) Acts, 1883 to 1900.

An arbitration under the Acts will be partly under the control of the Board of Agriculture and partly under the County Court. The Board of Agriculture have power to appoint a single arbitrator in default of agreement, or an umpire if two arbitrators fail to appoint one. The time for making an award (twenty-eight days from the appointment) may be extended by the Board, and they have power to prescribe forms for proceedings in arbitrations. See forms prescribed (*post*, p. 122), and also Forms 24 to 32. Powers of Board of Agriculture.

The County Court may remove an arbitrator for misconduct, and may decide any question of law stated in a special case, and may direct the statement of a special case. See Ord. XLA, rr. 2, 3 and 4 (*post*, p. 141). If a party to an arbitration *bonâ fide* requests the arbitrator to state a case or to delay making his award until the party can apply to the Court for an order directing a case, and the arbitrator refuses to comply with either request, he is *primâ facie* guilty of misconduct such as would justify the Court in setting aside the award: *Re Palmer and Hosken & Co.* (67 L. J. Q. B. 1; (1898) 1 Q. B. 131). A case may be stated "at any stage of the proceedings." (Part I., Rule 9.) It has been questioned if this would enable a case to be stated after the award has been made. It might be argued that the proceedings are not concluded until payment or execution; but this would seem to be inconsistent with the dictum of Lord Halsbury, L. C., in *Tabernacle Permanent Building Society* v. *Knight* (62 L. J. Q. B. 52; (1892) A. C. 302): "I should agree Powers of County Court.

Sch. II.

that if a complete award had been made, a statute which gives the Court or a judge power at any stage of the proceedings under a reference to direct a case to be stated would not be applicable where the proceedings had come to an end by a completed award." An appeal from the decision of the County Court judge on a question of law stated in a case lies to the Court of Appeal (Agricultural Holdings Act, 1900, sect. 2 (6)).

Evidence and costs.

Evidence may be required by the arbitrator to be given on oath or affirmation, though he is not obliged to so require. He has full power to deal with the costs of and incidental to the arbitration and award. Under the repealed section (20) relating to costs in the Agricultural Holdings Act, 1883, it was held that there was no power for the arbitrators or umpire to direct one party to pay the costs of the reference as between solicitor and client: *Re Griffiths and Morris* (64 L. J. Q. B. 386; (1895) 1 Q. B. 866). If that decision is correct, it would seem to apply to Rule 14 in this Schedule. The award must be made in the form prescribed by the Board of Agriculture. See the rules and forms (*post*, p. 117). It is final and cannot be appealed from.

The arbitrator.

The arbitrator should be one who has no secret interest in the matter referred or may be affected by any circumstance likely to bias his mind unknown to one of the parties: *Earl* v. *Stocker* (2 Vern. 251); *Kimberley* v. *Dick* (41 L. J. Ch. 38; L. R. 13 Eq. 1). If the interest of the arbitrator is known to both parties they will be taken to have waived it: *Re Elliott and South Devon Ry. Co.* (2 De G. & S. 17).

An arbitrator cannot determine the differences between the parties in a way other than that directed by the submission: *Ross* v. *Boads* (7 L. J. Q. B. 209; 8 A. & E. 290). An arbitrator under this Act will, following this rule, only be empowered to make a money award.

Stamp duties.

Under the Stamp Act, 1891 (54 & 55 Vict. c. 39), the following are the stamp duties on awards:—

	£	*s.*	*d.*
Where no amount is awarded or the amount or value awarded does not exceed 5*l.*	0	0	3
When the amount or value awarded—			
Exceeds 5*l.* and does not exceed 10*l.*	0	0	6
,, 10*l.* ,, ,, 20*l.*	0	1	0
,, 20*l.* ,, ,, 30*l.*	0	1	6
,, 30*l.* ,, ,, 40*l.*	0	2	0
,, 40*l.* ,, ,, 50*l.*	0	2	6
,, 50*l.* ,, ,, 100*l.*	0	5	0
,, 100*l.* ,, ,, 200*l.*	0	10	0
,, 200*l.* ,, ,, 500*l.*	0	15	0
,, 500*l.* ,, ,, 750*l.*	1	0	0
,, 750*l.* ,, ,, 1000*l.*	1	5	0
,, 1000*l.* - - - - -	1	15	0

THIRD SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 61.	The Agricultural Holdings (England) Act, 1883.	Section one. Sections six to sixteen. Section seventeen from "and the award shall" to the end of the section. Sections eighteen to twenty-three. In section twenty-four the words "or ordered on appeal" and the words "or ordered." Section twenty-nine from "where an award has been made" to "improvement will." Section fifty-seven. The definition of "manures" in section sixty-one. The First Schedule.
46 & 47 Vict. c. 62.	The Agricultural Holdings (Scotland) Act, 1883.	Section one. Sections six to eight. Sections eleven to fifteen. Section sixteen from the beginning thereof to "within the county," and from "and the award shall" to the end of the section. Sections seventeen to twenty. In section twenty-one the words "or ordered on appeal," and the words "or ordered." Section twenty-four from "where an award has been made" to "improvement will." Section thirty-eight. The Schedule.
52 & 53 Vict. c. 20.	The Agricultural Holdings (Scotland) Act, 1889.	The whole Act.
58 & 59 Vict. c. 27.	The Market Gardeners' Compensation Act, 1895.	In section three the paragraphs numbered (2) and (3).
60 & 61 Vict. c. 22.	The Market Gardeners' Compensation (Scotland) Act, 1897.	In section three the paragraphs numbered (2) and (3).

ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

(50 & 51 Vict. c. 26.)

§§ 1, 2, 3, 4.

An Act to provide Compensation to the Occupiers of Allotments and Cottage Gardens for Crops left in the Ground at the End of their Tenancies.

[8th August, 1887.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Allotments and Cottage Gardens Compensation for Crops Act, 1887.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland or to the metropolis.

Commencement of Act.

3. This Act shall come into force on the first day of January, one thousand eight hundred and eighty-eight, which day is in this Act referred to as the commencement of this Act.[1]

(1) This Act is to be construed as one with the Tenants' Compensation Act, 1890 (see *ante*, p. 70).

Definitions.

4. In this Act—

"The metropolis" means the city of London and all parishes and places mentioned in Schedules A,

B, and C to the Metropolis Management Act, 1855.[1] § 4.

18 & 19 Vict. c. 120.

"Allotment" means any parcel of land of not more than two acres in extent held by a tenant under a landlord and cultivated as a garden or as a farm, or partly as a garden and partly as a farm.[2]

"Cottage garden" means an allotment attached to a cottage.

"Holding" means an allotment or cottage garden.

"Tenant" means the holder of a holding under a landlord for any term, and includes the legal personal representative of a deceased tenant.

"Landlord" means the person for the time being entitled to receive the rents and profits of any holding.

"Person" includes a body of persons and a corporation aggregate or sole.

"Contract of tenancy" means the letting of land for any term.

"Determination of tenancy" means the cesser of a contract of tenancy by effluxion of time or from any other cause.[3]

The designations of landlord and tenant shall for the purposes of this Act continue to apply to the parties to a contract of tenancy until the conclusion of any proceedings taken under this Act on the determination of a tenancy.

(1) The Metropolis Management Act, 1855, was the Act which constituted the Metropolitan Board of Works, the place of which has now been taken by the London County Council under the Local Government Act, 1888 (51 & 52 Vict. c. 41). The City of London and parishes and places mentioned in Schedules A., B., and C. to the Metropolis Management Act, 1855, now form part of the administrative county of London.

(2) In *Cooper* v. *Pearse* (65 L. J. M. C. 95; (1896) 1 Q. B. 562), it was held that a piece of land less than two acres in extent occupied by a seedsman for the purposes of his business, and

§§ 4, 5. having on it vegetables, fruit trees, and flowering plants, which he sold, was not "cultivated as a garden," and was therefore not an allotment within this section. To come within the Act as a garden the holding must be "a plot of ground on which fruit, vegetables, and flowers are grown for food or pleasure" (*per* Collins, J.).

The holding in that case would, however, it is presumed, have come within the definition of a "market garden" in the Market Gardens Compensation Act, 1895 (see *ante*, p. 81).

An allotment comes under this Act whatever may be the nature of the tenancy, whether yearly, quarterly, or at will.

(3) As to the various ways in which a tenancy may be determined, see note to Agricultural Holdings Act, 1900, s. 1, *ante*, p. 81.

Under the Allotments Act, 1887 (50 & 51 Vict. c. 48), s. 8, the tenancy of an allotment may be determined by one month's notice if the rent is in arrear for not less than forty days; or if it appears to the sanitary authority that the tenant, not less than three months after the commencement of the tenancy, has not duly observed the regulations affecting such allotment made by or in pursuance of the Act, or is resident more than one mile out of the district or parish for which the allotments are provided: "Provided that in every such case the sanitary authority in default of agreement between the incoming and outgoing tenant shall on demand pay to the tenant whose tenancy is so determined any compensation due to him as outgoing tenant; and such compensation shall be assessed by an arbitrator appointed by the sanitary authority, or, if the tenant so elect, either by an arbitrator appointed under the Allotments and Cottage Gardens Compensation for Crops Act, 1887, or by a reference under the Agricultural Holdings (England) Act, 1883."

By sub-sect. 2 of the same section, upon the recovery of an allotment from any tenant, the Court or justice directing the recovery may stay delivery of possession until payment of the compensation (if any) due to the outgoing tenant has been made or secured to the satisfaction of the Court or justice.

Compensation.

5. Upon the determination of the tenancy of a holding after the commencement of this Act the tenant shall be entitled notwithstanding any agreement to the contrary[1] to obtain from the landlord compensation in

money for the following matters and things, that is to say:— § 5.

(a) For crops, including fruit, growing upon the holding in the ordinary course of cultivation, and for fruit trees and fruit bushes growing thereon, which have been planted by the tenant with the previous consent in writing of the landlord.[2]

(b) For labour expended upon and for manure applied to the holding since the taking of the last crop therefrom in anticipation of a future crop.

(c) For drains and for any outbuildings, pigsties, fowlhouses, or other structural improvements made by the tenant upon his holding with the written consent of his landlord.[3]

(1) The operation of this Act cannot be excluded by any agreement between the landlord and tenant.

(2) It is to be noted that, in respect of fruit trees and fruit bushes planted, and of drains, outbuildings, &c., no compensation can be obtained unless the planting or making of the improvement has been carried out with the previous consent of the landlord in writing. Strawberry plants would not, it is submitted, be considered "fruit bushes," and therefore would be the subject of compensation, notwithstanding that the consent of the landlord to the planting had been obtained.

Under the Market Gardeners' Compensation Act, 1895, compensation can be obtained for fruit trees and fruit bushes permanently set out without the consent of the landlord. If the allotment has been treated as a "market garden," it is doubtful if it comes within this Act at all: see *Cooper* v. *Pearse* (65 L. J. M. C. 95; (1896) 1 Q. B. 562); and it may, anyhow, be more advantageous to the tenant to claim under the Act of 1895 than under the present Act.

In the case of an allotment let by the local authority under the Allotments Act, 1887, a tenant may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation (sect. 7, sub-sect. 6).

(3) Under the Allotments Act, 1887, on any holding to which that Act applies, no building other than a tool-house, shed,

§§ 5, 6, 7, 8.

green-house, fowl-house, or pigsty may be erected; and if any building other than as aforesaid is so erected, it is to be pulled down and the materials forthwith sold.

If any building so allowed to be erected is erected, the tenant will not be entitled at the end of his tenancy to any compensation for it, but the outgoing tenant is to be at liberty before the expiration of his tenancy to remove the same. If he fails to do so it may be pulled down and the materials sold by the sanitary authority (sect. 7, sub-sect. 5).

Deduction from compensation on account of rent or breach of contract.

6. In the ascertainment of the amount of compensation payable to the tenant under this Act, any sum due to the landlord in respect of rent or of any breach of the contract of tenancy or wilful or negligent damage committed or permitted by the tenant shall be taken into account in reduction of the amount of compensation.

Compensation if not agreed upon to be settled by an arbitrator.

7. The landlord and tenant may agree upon the amount and time of payment of compensation to be paid under this Act. If in any case they do not so agree, the difference shall be settled by an arbitrator.

See notes on arbitration, *ante*, p. 108.

Appointment of arbitrator.

8. If the landlord and tenant concur they may, within twenty-eight days after the determination of the tenancy, jointly appoint such arbitrator. If they do not concur, such arbitrator shall be appointed in the following manner:—

(1.) The landlord and tenant or either of them may apply personally or in writing to the justices of the peace, acting for the petty sessional division in which the holding is situated, in petty sessions, and such justices shall, upon the receipt of the application, appoint one of their number not being interested in the holding, or other competent person not being interested as aforesaid, to act as such arbitrator.

(2.) If before award the person so appointed dies or becomes incapable of acting, or for seven days after his appointment fails to act, the justices shall appoint in manner aforesaid another arbitrator. §§ 8, 9, 10, 11, 12, 13, 14.

Justices if practicable to appoint person to act as arbitrator without remuneration.

9. The justices shall in all cases in which it is practicable obtain the consent of the arbitrator to act without remuneration, and in any case in which it is impracticable to obtain such consent they shall direct that the arbitrator shall be paid such moderate sum as they consider will reasonably remunerate him for his time and expenses.

Time for commencement of arbitration.

10. The arbitrator shall proceed to determine any difference referred to him under this Act within seven days after his appointment.

Power for arbitrator to administer oaths.

11. The arbitrator, if he shall consider it desirable or necessary so to do, shall have power to call for the production of any document which is in the possession of either party, or which either party can produce, and which to the arbitrator seems necessary for determination of the difference referred to him, and to take the examination of the parties and witnesses on oath and to administer oaths and take affirmations, and if any person so sworn or affirming wilfully and corruptly gives false evidence he shall be guilty of perjury.

Power to proceed in absence of either party.

12. The arbitrator may proceed in the absence of either party after notice given to both parties.

Form of award and time for its delivery.

13. The award shall be in writing signed by the arbitrator, and shall be ready for delivery within fourteen days after his appointment, or within such extended time not exceeding in the whole twenty-eight days after his appointment, as the parties may agree upon in writing.

Costs of arbitration.

14. The costs (if any) of and attending the arbitration, including the remuneration (if any) of the arbitrator shall be borne and paid by the parties in such proportion as to the arbitrator appears just, and

§§ 14,15, 16,17,18.

the award may direct the payment of the whole or any part of the aforesaid costs by the one party to the other, or may declare that no costs shall be payable.

Day for payment.

15. The award shall fix a day not sooner than fourteen days after the delivery of the award for the payment of the money awarded for compensation, costs, or otherwise.

Award to be final.

16. The award shall be final and conclusive in every case; and neither the submission to arbitration nor the award shall be made a rule of any Court, or be removable by any process into any Court.

Recovery of compensation money.

17. Where any money agreed or awarded to be paid for compensation, costs, or otherwise, is not paid within fourteen days after the time when it is agreed or awarded to be paid, it shall be recoverable upon order made by the judge of the County Court within the district of which the holding is situated, as money ordered to be paid by a County Court under its ordinary jurisdiction is recoverable.[1]

(1) As to the mode in which money ordered to be paid by a County Court is recoverable, see *ante*, p. 31.

The proceedings for recovery of compensation under this Act, whether ascertained by an award or by agreement, are regulated by Ord. XLA, rr. 7 and 8 of the County Court Rules (November), 1900 (*post*, p. 149). See also Forms 312B and 312C.

Upon the recovery of an allotment under the Allotments Act, 1887, the Court or justice directing the recovery may stay delivery of possession until payment of compensation due to the outgoing tenant has been made or secured to the satisfaction of the Court or justice (sect. 8, sub-sect. 3).

No claim to be made under the Agricultural Holdings (England) Act for any matter or thing for which a claim is made under this Act.

18. No claim for compensation shall be made under the Agricultural Holdings (England) Act, 1883, for any matter or thing in respect of which a claim for compensation is made under this Act, and in any case in which the provisions of that Act and of this Act conflict the provisions of this Act shall prevail.

APPENDIX.

I.

BOARD OF AGRICULTURE RULES, AND FORMS THEREUNDER.

Rules.

(Dated 7th December, 1900.)

Agricultural Holdings (England) Rules of 1900.

The Board of Agriculture, by virtue and in exercise of the powers in them vested under the Agricultural Holdings Act, 1900, do hereby prescribe as follows:—

1. An award in an arbitration under the Agricultural Holdings Act, 1900, shall be in the form set forth in the First Schedule hereto, with such modifications of the recitals therein contained as circumstances may require.

2. The several forms for proceedings in arbitrations under the said Act, which are set forth in the Second Schedule hereto, shall, if used, be sufficient.

3. These Rules extend to England and Wales only.

4. These Rules may be cited as the Agricultural Holdings (England) Rules of 1900.

In witness whereof the Board of Agriculture have hereunto set their official seal this 7th day of December, one thousand nine hundred.

The FIRST SCHEDULE to the above Rules.

Forms.

Form A.

Form of Award (a).

Agricultural Holdings (England) Acts, 1883 to 1900.

Insert name (if any) and description of holding.

In the matter of a holding known as lately in the occupation of A. B. of (*the quitting tenant*).

To all to whom these presents shall come, I, F. G., of [we, F. G., of , and H. K. of ,] send greeting.

Whereas C. D., the landlord of the above-mentioned holding, and the said A. B., the tenant thereof, have failed to agree as to the amount and time and mode of payment of the compensation to which the said A. B. claims to be entitled in respect of the improvements made on the above-mentioned holding, which are comprised in the First Schedule to this Award.

(*Here insert recitals of appointments of arbitrator, arbitrators, or umpire. See Forms B., C., and D.*)

And whereas the said A. B., by written notice to the said C. D., has required that the arbitration shall extend to the determination of certain further claims by the said A. B. against the said C. D. in respect of the said holding, the short particulars of which claims are set forth in the Second Schedule to this Award.

And whereas the said C. D., by written notice to the said A. B., has required that the arbitration shall extend to the determination of certain claims by the said C. D. against the said A. B. in respect of the said holding, the short particulars of which claims are set forth in the Third Schedule to this Award.

And whereas the said A. B. *or* C. D. has applied to me [us] to specify the amount awarded in respect of such of the improvements comprised in the First Schedule to

(*a*) The use of this form is compulsory.

this Award as are in such Schedule marked with an asterisk.

And whereas the time for making my [our] Award has been extended by the Board of Agriculture to the day of , 190 ,

or

And whereas we have duly enlarged the time for making our Award to the day of , 190 ,

Now know ye that I, the said F. G. [we, the said F. G. and H. K.], having taken upon myself [ourselves] the burden of the said reference, and having heard, examined, and considered the witnesses and evidence concerning the said matters so referred to me [us] as aforesaid, do make and publish this my [our] Award of and concerning the same in manner following, that is to say:—

1. I [We] award and determine that the said A. B. is entitled to receive from the said C. D. the sum of pounds shillings and pence, as compensation in respect of the improvements comprised in the First Schedule to this Award, and I [we] do hereby declare that the amounts awarded by me [us] in respect of such of the said improvements as are marked with an asterisk are the amounts set against such improvements in such Schedule.

2. I [We] award and determine that the said A. B. is entitled to receive from the said C. D. the sum of pounds shillings and pence in respect of the claims mentioned in the Second Schedule to this Award.

3. I [We] award and determine that the said C. D. is entitled to receive from the said A. B. the sum of pounds shillings and pence in respect of the claims mentioned in the Third Schedule to this Award.

4. I [We] award and determine that the said sum[s] of pounds shillings and pence [and pounds shillings and pence] awarded by me [us] shall, subject to the provisions of the Agricultural Holdings (England) Acts, 1883 to 1900, be paid by the said C. D. to the said A. B. on the day after the delivery of this Award; and that the said sum of pounds shillings and pence awarded by

Forms.

me [us] shall, subject as aforesaid, be paid by the said A. B. to the said C. D. on the same day.

5. I [We] award and direct that the costs of and incidental to the arbitration and this Award shall be paid by the said A. B. *or* C. D. *or* by the said A. B. and C. D. in the following proportions, namely, part thereof by the said A. B. and part thereof by the said C. D. [*or otherwise as may be directed*], *or* I [we] award and direct that each party shall bear his own costs of and incidental to this arbitration, and shall pay part of my [our] costs of this Award, and that any costs payable by the one party to the other party under or by virtue of this Award shall be so paid on the day after the delivery of this Award.

In witness whereof I [we] have hereunto set my [our] hand[s] this day of , 190 .

Signed by the said F. G. [and H. K.] in the presence of

F. G.

[H. K.]

Note.—The date in paragraphs 4 and 5 must not be earlier than one calendar month, nor later than two calendar months, after the delivery of the award.

The First Schedule referred to in the above-written Award.

(*Here insert each of the improvements comprised in the First Schedule to the Agricultural Holdings Act*, 1900, *in respect of which a claim by the tenant has been referred to arbitration. If either party has required that the amount awarded in respect of any particular improvement shall be specified, the person or persons making the Award will mark such improvement with an asterisk, and place against the improvement the amount awarded in respect thereof.*)

The Second Schedule referred to in the above-written Award.

(*Here insert short particulars of any further claim by the tenant to which he has by written notice required that the arbitration shall extend.*)

The THIRD SCHEDULE referred to in the above-written Award.

(*Here insert short particulars of any claim by the landlord to which he has by written notice required that the arbitration shall extend.*)

NOTE.—*The Award may be endorsed as follows* :—

This Award was delivered to A. B. [*or* C. D.] on the day of , 190 .

F. G.
[H. K.]

FORM B.

Recital of Appointment of a Single Arbitrator.

And whereas by an appointment, dated the day of , 19 , signed by the said A. B. and C. D. [*or* sealed by the Board of Agriculture, *as the case may be*], I, the said F. G., was duly appointed under the Agricultural Holdings (England) Acts, 1883 to 1900, to act as arbitrator for the purpose of settling the said differences, in accordance with the provisions set out in the Second Schedule to the Agricultural Holdings Act, 1900.

FORM C.

Recital of Appointment of Two Arbitrators.

And whereas by two appointments, dated respectively the day of , 19 , and the day of , 19 , we, the said F. G. and H. K., were duly appointed under the Agricultural Holdings (England) Acts, 1883 to 1900, to act as arbitrators for the purpose of settling the said differences, in accordance with the provisions set out in the Second Schedule to the Agricultural Holdings Act, 1900.

Forms.

FORM D.

Recital of Appointment of Umpire.

(After recital of appointment of two arbitrators, M. N. and P. Q.)

And whereas by an appointment, dated the day of , 19 , signed by the said M. N. and P. Q. [*or* sealed by the Board of Agriculture, *as the case may be*], I, the said F. G., was duly appointed under the said Acts to act as umpire in the said arbitration.

Omit if there has been no such extension.

[And whereas the said M. N. and P. Q. duly enlarged the time for making their award to the day of , 19 .]

And whereas the said M. N. and P. Q. have allowed their time to expire without making an award [*or, as the case may be*, have delivered to the said A. B. *or* C. D. *or* to me, the said F. G., a notice in writing stating that they cannot agree].

The SECOND SCHEDULE to the above Rules(*a*).

FORM E.

Application for Appointment by Board of Agriculture of a single Arbitrator.

Agricultural Holdings (England) Acts, 1883 to 1900.

To the Board of Agriculture.

Insert name (if any) and description of holding.

In the matter of the holding known as , lately in the occupation of A. B., of (*the quitting tenant*).

Whereas the said A. B. claims to be entitled to compensation in respect of certain improvements made on the above-mentioned holding.

And whereas C. D., of , the landlord of the said holding, and the said A. B., have failed to agree as to the amount and time and mode of payment of such compensa-

(*a*) The use of the forms in the Second Schedule is optional only, but it will, no doubt, be advisable to use them on any application to the Board of Agriculture.

tion, and as to the person to act as arbitrator for the purpose of settling the differences that have so arisen.

And whereas there is not any provision in any agreement between the said A. B. and C. D. relating to the appointment of such arbitrator, and such arbitrator may accordingly be appointed by the Board of Agriculture on the application in writing of either of the parties.

Now I, the said A. B. *or* C. D., do hereby apply to the Board of Agriculture for the appointment by them of an arbitrator for the purpose of settling the said differences.

(Signature of A. B. *or* C. D., or his duly authorized agent.)

NOTE.—*Delay in making the appointment will be avoided if the application is signed by or on behalf of both parties.*

FORM F.

Application for Appointment by Board of Agriculture of Arbitrator for party failing to appoint.

Agricultural Holdings (England) Acts, 1883 to 1900.

To the Board of Agriculture.

In the matter of the holding known as , lately in the occupation of A. B., of (*the quitting tenant*).

Insert name (if any) and description of holding.

Whereas the said A. B. claims to be entitled to compensation in respect of certain improvements made on the above-mentioned holding.

And whereas C. D., of , the landlord of the said holding, and the said A. B. have failed to agree as to the amount and time and mode of payment of such compensation.

And whereas by writing, dated the , the said parties agreed, in effect, that the differences which have so arisen should be settled by two arbitrators or an umpire.

And whereas the said A. B. *or* C. D. has, for fourteen days after notice by the said C. D. *or* A. B. to him to appoint an arbitrator, failed to do so.

Forms.

And whereas there is not any provision in any agreement between the said A. B. and C. D. relating to the appointment of an arbitrator for or on behalf of the said A. B. *or* C. D., in case of such default as aforesaid, and such arbitrator may accordingly be appointed by the Board of Agriculture.

Now I, the said A. B. *or* C. D., do hereby apply to the Board of Agriculture for the appointment by them of an arbitrator for or on behalf of the said C. D. *or* A. B.

(Signature of A. B. *or* C. D., or his duly authorised agent.)

FORM G.

Application for appointment by Board of Agriculture of Umpire.

Agricultural Holdings (England) Acts, 1883 to 1900.

To the Board of Agriculture.

Insert name (if any) and description of holding.

In the matter of the holding known as , lately in the occupation of A. B., of (*the quitting tenant*).

Whereas the said A. B. claims to be entitled to compensation in respect of certain improvements made on the above-mentioned holding.

And whereas C. D., of , the landlord of the said holding, and the said A. B. have failed to agree as to the amount and time and mode of payment of such compensation.

And whereas by writing, dated the , the said parties agreed, in effect, that the differences which have so arisen should be settled by two arbitrators or an umpire.

And whereas M. N., of , and P. Q., of , having been duly appointed to be the arbitrators for the purpose of settling the said differences, have for seven days after a request in writing in that behalf by the said A. B. *or* C. D. failed to appoint an umpire.

And whereas there is not any provision in any agreement between the said A. B. and C. D. relating to the

appointment of an umpire in case of such default as aforesaid, and such umpire may accordingly be appointed by the Board of Agriculture.

Now I, the said A. B. *or* C. D., do hereby apply to the Board of Agriculture for the appointment by them of an umpire for the purpose of such arbitration.

(Signature of A. B. *or* C. D., or his duly authorized agent.)

NOTE.—*Delay in making the appointment will be avoided if the application is signed by or on behalf of both parties.*

FORM H.

Application to Board of Agriculture for Extension of Time for Award.

Agricultural Holdings (England) Acts, 1883 to 1900.

To the Board of Agriculture.

In the matter of an arbitration under the above-mentioned Acts between A. B., of (*the quitting tenant*), and C. D., of (*the landlord*), relating to the holding known as , lately in the occupation of the said A. B.

Insert name (if any) and description of holding.

Whereas the time for making the Award in the said arbitration will expire [*or* expired] on the day of , 19 .

Now I, the undersigned, do hereby apply to the Board of Agriculture to extend the time for making the said Award to the day of , 19 .

[*This may be signed by an arbitrator, or by an umpire, where the matter is referred to him, or in any case by either party to the arbitration or his duly authorized agent.*]

II.

Forms.

GENERAL FORMS.

Sect. 3.

1. *Consent by Landlord to the making of an Improvement mentioned in Schedule I., Part* 1.

To C. D. (*tenant*).

I, A. B. (*landlord*), hereby consent to the erection by you in a substantial and workmanlike manner of a brick cow-house (*or making any other improvement, as the case may be*) on the farm of, &c., now occupied by you as my tenant.

Dated . (*Signed*) A. B.

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2. *Consent by Agent to the same upon Terms.*

To C. D. (*tenant*).

I, E. F., the duly authorized agent of A. B. (*landlord*), in that behalf, hereby consent on behalf of the said A. B. to your making a road between and , on the farm of, &c., now occupied by you as his tenant, upon the terms that such road shall be in accordance with the plan and specification submitted to me and annexed hereto, and that you shall not be entitled to claim as compensation under the Agricultural Holdings (England) Acts, 1883 to 1900, for the making of such road, any sum exceeding £ .

Dated . (*Signed*) E. F. for A. B.

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3. *Consent by Landlord to the laying down of a Field in Permanent Pasture by a Yearly Tenant, and Agreement as to Compensation.*

An Agreement entered into the day of , Between A. B. (*landlord*), of, &c., of the one part, and C. D. (*tenant*), of, &c., of the other part.

The said A. B. hereby consents to the laying down in permanent pasture by the said C. D. of the arable field

known as Whiteacre, now occupied by the said C. D. as tenant of the said A. B., upon the terms following (that is to say):—

1. The said C. D. hereby agrees to execute the above-mentioned improvement within one year from the date of this agreement in a proper and husbandlike manner. [*Specify, if thought desirable, the cleaning to be done, the proportion of various grass and clover seeds to be sown, and other particulars.*]

2. If the said C. D. shall execute the said improvement within such year as aforesaid, the said A. B., or the incoming tenant who may succeed the said C. D. in the occupation of Whiteacre, will pay to the said C. D. such sums as may be shown by production of vouchers and labour-book to have been expended by the said C. D. in purchasing grass seeds from Messrs. , seedsmen, for such laying down in pasture as aforesaid and in labour employed for the same purpose, not exceeding £ per acre for cost of seeds, and £ per acre for labour. Provided always that the total sum payable under this agreement shall be subject to a deduction of per cent. for each year or part of a year during which the said C. D. shall continue in occupation of Whiteacre after the 29th day of September, 19 , and so that after the expiration of years from the 29th day of September, 19 , no compensation shall be payable to the said C. D. in respect of the said improvement.

3. The said field shall not be grazed before the day of 19 . [*State any provisions for treatment and manuring of the field, &c. after it is laid down which may be thought desirable.*]

4. It is hereby agreed that the compensation hereby provided shall be substituted for and in lieu of any compensation which might otherwise be payable in respect of the said improvement under the Agricultural Holdings (England) Acts, 1883 to 1890.

As WITNESS, the hands of the parties hereto. (*Signed*) A. B.
C. D.

Forms.

Sect. 4.

4. *Notice by Tenant of intention to execute an Improvement mentioned in Schedule I., Part* 2.

To A. B. (*landlord*).

I, C. D. (*tenant*), hereby give you notice of my intention after two months and not more than three months from the date of this notice to begin to drain and to drain the field known as Whiteacre and I propose to execute such drainage in the manner specified in the schedule hereto.

Dated . (*Signed*) C. D.

SCHEDULE.

The drains to be laid at a depth of 3 feet with 2-inch pipes, at intervals of 30 feet, the main drains to be laid with 8-inch pipes and to discharge into the ditch on the south side of the above field, as shown on the plan annexed hereto (*or as the case may be*).

Sect. 4.

5. *Undertaking by Landlord to execute the Improvement himself.*

To C. D. (*tenant*).

I, A. B. (*landlord*), acknowledge the receipt of a notice from you, dated the day of , of your intention to drain Whiteacre, and I hereby give you notice that I undertake to drain the same field myself and intend to charge you 5*l.* per cent. per annum (to be paid in the manner and at the times at which your rent is now payable to me, and to be recoverable as rent) on the outlay incurred by me in executing such drainage from the Lady-day next following the date of the completion thereof.

Dated . (*Signed*) A. B.

Sect. 4.

6. *Agreement as to Terms of Compensation for an Improvement mentioned in Schedule I., Part* 2, *to be paid to a Tenant holding under a Lease.*

AN AGREEMENT entered into the day of ,
BETWEEN A. B. (*landlord*), of, &c., of the one part, and

C. D. (*tenant*), of, &c., farmer, of the other part. IT IS HEREBY AGREED between the parties hereto as follows:—

1. The said C. D. will within one year from the date of this agreement under-drain in a proper and husbandlike manner, and in the manner specified in the schedule hereto, and as shown in the plan annexed hereto, the field known as Whiteacre now occupied by the said C. D. as tenant under a lease dated .

2. The said A. B. or the incoming tenant will pay to the said C. D., on his giving up occupation of his farm on the determination of the said lease, one th of such sums as may be shown by production of vouchers and labour book to have been expended by the said C. D. in under-draining the said field.

3. The compensation payable under this agreement shall be substituted for and in lieu of any compensation which might otherwise be payable under the Agricultural Holdings (England) Acts, 1883 to 1900, in respect of such drainage.

AS WITNESS, &c.

SCHEDULE.

(*To contain particulars of the work to be executed.*)

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7. *Clause to be inserted in a Lease or Agreement dispensing with Notice and fixing the Terms of Compensation for an Improvement mentioned in Schedule I., Part 2.*

IT IS HEREBY AGREED between the parties hereto that the tenant may under-drain any of the land comprised in this agreement (*or* lease) which has not been already drained, and that the landlord or the incoming tenant will, on the tenant's quitting his holding on the determination of his tenancy, compensate him for his outlay on any such under-draining done by him upon the said land, by payment according to the following scale:—

For draining done within 5 years previous to the determination of the tenancy.	The full amount of the outlay as certified.
For ditto within 6 years . .	90*l.* per cent. of such outlay.
For ditto within 7 years . .	80*l.* per cent. of ditto.

(*And so on.*)

Forms.

PROVIDED ALWAYS that in order to entitle the tenant to payment the outlay shall be approved and certified in writing by the landlord by his signature in the schedule hereto annexed (to be affixed on the Lady Day next following such outlay) and the landlord hereby agrees to affix his signature upon due proof of the said outlay.

AND IT IS HEREBY FURTHER AGREED that no notice of his intention to drain need be given by the tenant under sect. 4 of the Agricultural Holdings (England) Act, 1883, and that the compensation payable under this agreement (*or* lease) shall be substituted for and in lieu of compensation under the said Act.

THE SCHEDULE above referred to.

Particulars and Date of Completion of Work.	Labour.	Pipes.	Total.	Signature.
	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	

8. *Particular Agreement to be inserted in a Lease or Agreement for a Lease securing Compensation* (*sect.* 5) *for an Improvement mentioned in Schedule I., Part* 3 (*a*).

Sect. 5.

IT IS HEREBY AGREED between the parties hereto that if the tenant shall during the continuance of the tenancy created by this agreement (*or* lease) marl or chalk any of the land hereby let to him (*or execute any of the improvements numbered* 18 *to* 22 *in Schedule I., Part* 3), the landlord will, on his quitting his holding on the determination of the said tenancy, pay to the tenant the sum laid out by him in such marling or chalking (including the cost of carting and spreading), with a deduction of one-seventh for each year that his tenancy continues after

(*a*) The compensation provided by agreement for an improvement in Part 3 of Schedule I. must be "fair and reasonable." The form provides such compensation as was made payable by the Act of 1875, which it is submitted would be held fair and reasonable.

the year of tenancy in which the outlay is made, and such compensation shall be deemed to be substituted for compensation under the said Act. Forms.

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9. *Particular Agreement for Compensation for Consumption of Cake.*

IT IS HEREBY AGREED that the landlord will pay to the tenant, on his quitting his holding at the determination of the tenancy hereby created, one-third of the actual cost of every ton of best linseed cake (*a*) consumed by his cattle or sheep upon the land hereby let to him during the year of tenancy immediately preceding such determination and one-sixth of the actual cost of every ton of such cake so consumed during the last year of tenancy but one, and compensation under this agreement shall be deemed to be substituted for compensation under the Agricultural Holdings (England) Acts, 1883 to 1900. PROVIDED ALWAYS that the tenant shall not be entitled to compensation under this agreement for any larger consumption during the last year of his tenancy than the average amount of his consumption during the three next preceding years of his tenancy or other less number of years for which the tenancy may have endured. AND there shall be deducted from the compensation to be paid to the tenant the value of the manure that would have been produced by the consumption on the holding of any hay, straw, or roots sold off the holding within the last two years of the tenancy or other less time for which the tenancy has endured (such value to be computed at s. for every ton of hay, &c.), except so far as a proper return of manure to the holding has been made in respect of such produce sold off (*b*). Sect. 5.

(*a*) See the Fertilizers and Feeding Stuffs Act, 1893, which requires vendors of fertilizers and feeding stuffs to give the purchaser an invoice stating the nature of the article sold, which is to have the effect of a warranty that the article is of the quality stated.

(*b*) This clause may be omitted if the tenant is by the terms of his agreement or lease forbidden to sell hay, straw, &c., off his holding.

Forms. 10. *Agreement making half a year's Notice to Quit sufficient*

Sect. 33. It is hereby agreed between A. B. (*landlord*) and C. D. (*tenant*) that the 33rd section of the Agricultural Holdings (England) Act, 1883, shall not apply to the tenancy subsisting between them, and that half a year's notice to quit expiring with a year of tenancy shall be necessary and sufficient for the determination of the said tenancy.

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11. *Notice to Landlord of intention to remove Fixture* (*a*).

Sect. 34. To A. B. (*landlord*).

Take notice that I intend after one month from this day to remove the milk cooling apparatus erected by me on the farm of, &c., now held by me as your tenant.

Dated . (*Signed*) C. D.

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12. *Notice to tenant of Landlord's intention to purchase Fixture.*

Sect. 34, sub-s. (5). To C. D. (*tenant*).

Take notice that I elect to purchase the steam-engine erected by you on your holding, which you have by notice dated , informed me of your intention to remove, and I hereby offer you £ for the same as being the fair value thereof.

Dated . (*Signed*) A. B.

---

13. *Notice to Tenant to quit part of his Holding.*

Sect. 41. To C. D. (*tenant*).

I hereby give you notice to quit the field of Whiteacre (being part of the land now held by you as my tenant) on the 29th day of September, 1887, and require you to deliver up possession of the same field to me on that day, as I intend to resume possession of the said field for the purpose of planting of trees (*or any other improvement*

(*a*) This notice must be given at least one month before the removal.

mentioned in sect. 41), and I hereby offer to reduce your rent by the sum of £ from the day above-mentioned on account of the resumption by me of the said field.

Dated . (*Signed*) A. B.

14. *Notice by Tenant accepting Notice to Quit part of Holding as Notice for the entire Holding.*

Sect. 41.

To A. B. (*landlord*).

I have received your notice to me, dated the day of , to quit Whiteacre on the day of , 19 , and I hereby give you notice that I accept the said notice from you as a notice to quit the whole of the farm of, &c., now held by me as your tenant, and I intend to deliver up possession of the same farm on the said day of , 19 .

Dated . (*Signed*) C. D.

15. *Clause excluding the Operation of the Acts except as to Compensation.*

Sect. 55.

It is hereby agreed that the Agricultural Holdings (England) Acts, 1883 to 1900, and the provisions therein contained, with the exception of so much thereof as relates to the right of the tenant to compensation for improvements, shall not apply to the tenancy hereby created between A. B. and C. D.

16. *Consent by Landlord to the Payment of Compensation by the Incoming to the Outgoing Tenant.*

Sect. 56.

To C. D. (*incoming tenant*).

I, A. B. (*landlord*), hereby consent to your paying the sum of £ to E. F. (*outgoing tenant*), being the sum payable by me for compensation to the said E. F. under or in pursuance of the Agricultural Holdings (England) Acts, 1883 to 1900, and under an award dated, &c., and made by, &c. (*or* under an agreement dated, &c., and made between me and the said E. F.).

Dated . (*Signed*) A. B.

Forms.

17. *Notice of claim of Compensation for Improvements* (*a*).

Sect. 2 (1900).

To A. B. (*landlord*).

Take notice that I claim under and in accordance with the Agricultural Holdings (England) Acts, 1883 to 1900, to be paid, on the determination of my tenancy, the compensation to which I am entitled under the said Acts or the custom of the country for the improvements executed by me during my tenancy of the farm of, &c. The particulars of the improvements so executed are as follows:—

1. Erection of cowshed in 1901 with your consent.
2. Draining of Blackacre meadow in 19 .
3. Application during the year 19 of tons of Peruvian guano to Whiteacre.
4. Consumption during 1902 and 1903 of tons of decorticated cotton cake by my cattle.

Dated . (*Signed*) C. D.

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18. *Notice by Landlord of Claim for Waste or Breach of Covenant* (*b*).

To C. D. (*tenant*).

Sect. 2, sub-s. (3) (1900).

Having received a notice from you, dated, &c., of your claim for compensation from me on the determination of your tenancy of the farm of, &c., I hereby require that the arbitration shall extend to the determination of my claim against you for waste and breach of contract on your part as mentioned below:—

1. Ploughing the grass field of Whiteacre.
2. Taking two white straw crops in succession from Blackacre.
3. Neglect to keep fences in repair.
4. Sale of hay and straw in breach of contract.
5. Failure to keep the homestead in repair according to covenant in your lease.

Dated . (*Signed*) A. B.

(*a*) Claim to be made before the determination of the tenancy.

(*b*) To be given by registered letter not later than seven days after the appointment of an arbitrator.

19. *Notice by tenant of Claim for other matters in respect of the holding besides compensation for improvements* (*a*).

Sect. 2, sub-s. (3) (1900).

To A. B. (*landlord*).

Take notice that I require that the arbitration between us under the Agricultural Holdings (England) Acts, 1883 to 1900, shall extend to the further claims by me against you which are mentioned below :—

1. For neglect to keep the farm buildings in repair as per contract of tenancy.
2. For cost of seeds, manure, and acts of husbandry on root crops and fallows.
3. For tons of hay and loads of straw left by me on the holding to be paid for at consuming price according to the custom.

(*Signed*) C. D.

---

20. *Agreement between Landlord and Tenant after Claim for Compensation.*

Agreement entered into on the day of , Between A. B. (*landlord*) of the one part and C. D. (*tenant*), of, &c. of the other part. Whereas the said C. D. has quitted the farm lately held by him as tenant of the said A. B., And whereas the said C. D. has claimed against the said A. B. under the Agricultural Holdings (England) Acts, 1883 to 1900, for compensation for improvements effected on the said farm by him and for acts of husbandry and other matters, And whereas the said A. B. has claimed against the said C. D. for waste and breach of contract, It is hereby mutually agreed between the said A. B. and the said C. D. that there shall not be any arbitration between them under the said Acts, And that the said A. B. shall pay to the said C. D. £ in full satisfaction of all compensation and other sums payable to him under the said Acts or otherwise, after allowing for the claim made by the said A. B. as aforesaid, in the following instalments

(*a*) To be given by registered letter not later than seven days after the appointment of the arbitrator or arbitrators.

Forms.

(that is to say), £ on Michaelmas Day, 19 , and £ on the 1st of January, 19 , And that the said A. B. shall be at liberty to deduct the balance of £ being rent owing to him by the said C. D. from the said sum of £ , and shall make no further claim against the said C. D. in respect of waste or breach of contract.

As witness the hands of the above parties.

(*Signed*) A. B.
C. D.

---

21. *Clause providing that all Disputes and Claims shall be decided by Two Arbitrators under the Acts.*

Sect. 2, sub-s. (5) (1900).

Any dispute or question which may arise between the parties hereto respecting their rights and liabilities hereunder or in relation to the tenancy hereby created, and any claim under the Agricultural Holdings (England) Acts, 1883 to 1900, or which may otherwise arise on the determination of the tenancy, whether made by the landlord or tenant, shall not be referred to a single arbitrator, but shall be referred to the arbitration of two arbitrators or an umpire, as provided by Part 2 of the Second Schedule to the Agricultural Holdings Act, 1900, and such arbitration shall proceed and be regulated in all respects by the rules of the said schedule so far as applicable thereto.

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22. *Agreement that Claims on either side shall be settled by a Reference under the Arbitration Act,* 1889.

Sect. 2, sub-s. (8) (1900).

It is hereby agreed that all claims, disputes, and differences arising between us or our respective representatives during the continuance of or on the determination of the contract of tenancy between us, whether such claims, disputes, or differences arise under the Agricultural Holdings (England) Acts, 1883 to 1900, or otherwise, shall be referred to two arbitrators or their umpire (*or* to a sole arbitrator), pursuant to the Arbitration Act, 1889, and that

the said Act, or any statutory modification or re-enactment thereof for the time being in force, shall apply in all respects to any arbitration between us. Forms.

Dated . . (*Signed*) A. B.
C. D.

---

23. *Short Form providing that Claims under the Acts shall be referred to Two Arbitrators or an Umpire under Part 2 of the Second Schedule.*

We hereby agree that the arbitration between us under the Agricultural Holdings (England) Acts, 1883 to 1900, shall not be before a single arbitrator. Sched. 2, Part 2, r. 1.

Dated . (*Signed*) A. B.
C. D.

---

24. *Agreement appointing a Single Arbitrator.*

We hereby agree that E. F., of , shall be and he is hereby appointed arbitrator in the arbitration between us under the Agricultural Holdings (England) Acts, 1883 to 1900. Sched. 2, Part 1, r. 1.

Dated . (*Signed*) A. B.
C. D.

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25. *Notice requiring Arbitrator to act.*

To E. F. (*arbitrator*).

Take notice that I require you to act within seven days from the receipt of this notice in the matter of the arbitration between C. D. and myself under the Agricultural Holdings (England) Acts, 1883 to 1900, in which you have been appointed arbitrator. Sched. 2, Part 1, r. 2.

Dated . (*Signed*) A. B.

Forms.

26. *Appointment of Arbitrator by Landlord or Tenant.*

Sched. 2, Part 2, r. 1.

To E. F. (*arbitrator*), of, &c.

I, A. B. (*landlord* or *tenant*), hereby appoint you arbitrator under Schedule II. Part 2 of the Agricultural Holdings Act, 1900, for the purpose of making an award under the Agricultural Holdings (England) Acts, 1883 to 1900, in respect of the compensation claimed by C. D. (*tenant*) from me (*or* by me from C. D. [*landlord*]) in respect of his (my) tenancy of Farm, and in respect of all other claims under the said Acts.

Dated . (*Signed*) A. B.

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27. *Notice of Appointment of Arbitrator.*

Sched. 2, Part 2, r. 3.

To A. B. (*landlord*).

Take notice that I have appointed E. F., of, &c., arbitrator for the purpose of making an award under the Agricultural Holdings (England) Acts, 1883 to 1900, in respect of the compensation claimed by me from you in respect of my late tenancy of Farm.

(*Add, if necessary*) And I require you to appoint within fourteen days from the receipt of this notice an arbitrator to act with the above-mentioned E. F. in the matter of the arbitration between us.

Dated . (*Signed*) C. D.

---

28. *Appointment of Umpire.*

Sched. 2, Part 2, r. 5.

To M. N. (*umpire*), of, &c.

We, E. F. and G. H. (*arbitrators*), appointed under the Agricultural Holdings (England) Acts, 1883 to 1900, in the matter of an arbitration between A. B., of, &c., and C. D., under the said Acts, hereby appoint you umpire in the same matter.

Dated . (*Signed*) E. F.
G. H.

29. *Request to appoint Umpire.*

To E. F. and G. H. (*arbitrators*).

I, A. B., of, &c., hereby request you within seven days from the receipt of this notice to appoint an umpire in pursuance of Rule 7 of Part 2 of the Second Schedule to the Agricultural Holdings Act, 1900, in the matter of the arbitration between me and C. D. under the Agricultural Holdings (England) Acts, 1883 to 1900. Sched. 2, Part 2, r. 7.

Dated . (*Signed*) A. B.

---

30. *Extension of Time for making Award.*

Agricultural Holdings (England) Acts, 1883 to 1900. Sched. 2, Part 2, r. 10.

In the matter of an arbitration between A. B. and C. D.

We, M. N. and P. Q., the arbitrators appointed in the above arbitration, hereby enlarge the time for making our Award therein to the day of 19 .

Dated . (*Signed*) M. N.
P. Q.

---

31. *Form of Oath for Witness before Arbitrator.*

You shall true answer make to all such questions as shall be asked you touching the matters in question in this arbitration. So help you God.

---

32. *Form of Affirmation for Witness objecting to be sworn.*

I solemnly, sincerely and truly affirm and declare that I will true answer make to all such questions as shall be asked me touching the matters in question in this arbitration.

Rules.

III.

COUNTY COURT RULES AND FORMS.

ORDER OF THE LORD CHANCELLOR, DATED NOVEMBER 27, 1900, AS TO COSTS.

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the twenty-seventh section of the Agricultural Holdings (England) Act, 1883, hereby prescribe the following scales of costs for proceedings in the County Court under the Agricultural Holdings (England) Acts, 1883 to 1900, and of costs to be taxed by registrars of County Courts under the said Acts, (that is to say):

1. Costs of proceedings in the County Court under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the County Court as the judge shall direct, and in default of such direction they shall be taxed under column B of such scales.

2. Costs of and incidental to an arbitration and award awarded by an arbitrator under the said Acts shall be taxed according to such one of the scales of costs applicable to actions in the County Court as the arbitrator shall direct, and in default of such direction they shall be taxed under column B of such scales (*a*).

Dated this 27th day of November, 1900.

(*a*) Column B of the higher scale of County Court Costs relates generally to cases where the subject-matter or sum recovered exceeds 20*l*. and does not exceed 50*l*. See Annual County Courts Practice, 1901, vol. i., p. 315.

Rules.

THE COUNTY COURT RULES (NOVEMBER) 1900.

Dated November 27, 1900.

These Rules shall be read and construed as if they were contained in the County Court Rules, 1889. The forms in the Appendix shall be used as if they were contained in the Appendix to the County Court Rules, 1889, and when it is so expressed shall be used instead of the corresponding forms contained in such last-mentioned Appendix, or in the Appendix to any County Court Rules of subsequent date, as the case may be.

Where any Rule or form hereby annulled is referred to in any of the County Court Rules, 1889, or in any County Court Rules of subsequent date, or the Appendices thereto, the reference to such Rule or form shall be construed as referring to the Rule or form prescribed to be used in lieu thereof.

ORDER XLA.

The Agricultural Holdings (England) Acts, 1883 to 1900, &c.

Order XL., and Forms 311A, 312, and 312A, are hereby annulled, and the following Order and forms shall stand in lieu thereof:— Ord. XLA.

1.—(1.) An application for the appointment or change of a guardian of an infant or person of unsound mind not so found by inquisition for the purposes of the Agricultural Holdings (England) Acts, 1883 to 1900 (in this Order referred to as the said Acts), shall be intituled in the matter of the Acts and of the arbitration or intended arbitration, and shall be made in accordance with the rules for the time being in force as to interlocutory applications. Appointment or change of guardian for purpose of Agricultural Holdings Acts. 46 & 47 Vict. c. 61, s. 25.

(2.) Any such application shall be supported by affidavit, and accompanied by a written consent of the proposed guardian to act as such. Affidavit. [*Conf.* Forms 64A, 64B.]

Rules.

Applications ex parte.

Applications on notice. [*Conf.* Ord. VIIA, r. 1 (5), and Forms 64E, 64F, 64G.]

(3.) An application on behalf of an infant or person of unsound mind for the appointment of a guardian may be made *ex parte*.

(4.) An application by any other person interested for the appointment of a guardian of an infant or person of unsound mind shall be made to the judge on notice in writing; and woman, shall be made to the judge on notice in writing; and such notice, together with a copy of the affidavit in support of the application, shall three clear days at least before the day in such notice named for hearing the application be served on the person with whom or under whose care such infant or person of unsound mind is residing, and also, in the case of an infant not residing with or under the care of his father or guardian, on the father or guardian (if any) of such infant: Provided that the registrar may dispense with such last-mentioned service. Service may be effected in accordance with the provisions of section 28 of the Agricultural Holdings (England) Act, 1883.

(5.) An application for the removal or change of a guardian shall be made to the judge on notice in writing, which shall be served on the guardian proposed to be removed or changed, or his solicitor, in accordance with the last preceding paragraph.

Application for order to state case. 63 & 64 Vict. c. 50, Sched. 2, Part 1, par. 9. Form 311B.

2.—(1.) An application to the judge under the said Acts for an order directing an arbitrator to state in the form of a special case for the opinion of the Court any question of law arising in the course of the arbitration shall be made in Court on notice in writing, which shall be intituled in the matter of the Acts and of the arbitration, and shall state concisely the question of law which the applicant desires to be stated for the opinion of the Court, and shall be supported by an affidavit setting forth the facts of the case and the question of law arising thereon.

(2.) The application and affidavit shall be filed with the registrar, and shall be marked by the registrar with a reference number, and all subsequent proceedings shall bear the reference number.

(3.) Copies of the application and affidavit shall be

Rules.

served by the applicant on the parties to the arbitration, and on the arbitrator, or on their respective solicitors (if any), ten clear days at least before the hearing of the application, unless the judge or registrar shall give leave for shorter service, in which case a copy of the order giving such leave shall be served with the copy of the application. Such service may be effected in accordance with the provisions of section 28 of the Agricultural Holdings (England) Act, 1883; and service on any party who does not appear on the hearing of the application shall be proved before an order is made.

(4.) Any affidavit intended to be used by any party in opposition to the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if leave has been given for short service of the notice of the application, in such reasonable time before the hearing as the date of service of such notice will allow.

(5.) A deponent to an affidavit shall on notice from the other side served in accordance with paragraph 3 attend the hearing for cross examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

(6.) The order of the judge on the application shall be settled and signed by the registrar, and shall be sealed and filed, and signed copies thereof shall be served on the arbitrator in accordance with the provisions of section 28 of the Agricultural Holdings (England) Act, 1883, and on all other persons affected thereby in accordance with Rule 5 of Order XXIII. (*b*).

Statement of case. 63 & 64 Vict. c. 50, Sched. 2, Part 1, par. 9. [*Conf.* R. S. C. Ord. XXXIV., r. 1.]

3.—(1.) Where an arbitrator under the said Acts states in the form of a special case for the opinion of the Court any question of law arising in the course of the arbitration (whether on his own motion or in pursuance of a direction of the Court to that effect), such case shall be intituled in the matter of the Acts and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall

(*b*) Rule 5 of Order XXIII. provides for the preparation by the registrar and delivery to the bailiff for service of judgments and orders,

Rules.

state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of such case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Signing and filing.

(2.) Such special case shall be signed by the arbitrator, and may be filed by the arbitrator or any of the parties to the arbitration with the registrar, and a copy shall be filed therewith for the use of the judge; and such case shall be marked by the registrar with a reference number (which, where a case is stated in pursuance of an order of the Court to that effect, shall be the same as that on the application for such direction) and all subsequent proceedings shall bear the reference number.

Fixing day for hearing. [Ord. XL., r. 5.] [*Conf.* R. S. C. Ord. XXXIV., r. 6.] Form 311c.

(3.) On a case being filed the registrar shall transmit a copy thereof to the judge, who shall, as soon as conveniently may be, appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. Such day shall be so fixed as to allow such notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day; and such notices may be served in accordance with the provisions of sect. 28 of the Agricultural Holdings (England) Act, 1883.

Copies of case.

(4.) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Order on hearing. Form 311d.

(5.) On the hearing of the case an order in accordance with the opinion of the judge shall be settled and signed by the registrar, and shall be sealed and filed, and signed copies thereof shall be served on all parties to the arbitration in accordance with Rule 5 of Order XXIII.; and a signed copy thereof shall be sent in like manner to the arbitrator, for him to proceed in accordance with the opinion of the judge.

Remitting case for re-statement.

(7.) The judge may remit the case to the arbitrator for re-statement or further statement.

Rules.

4.—(1.) When application is made to the Court under the said Acts for the removal of an arbitrator on the ground of his misconduct, or for an order setting aside an award on the ground of misconduct of the arbitrator, or on the ground that the arbitration or award has been improperly procured, the party making the application shall be called "the applicant"; and all other parties to the arbitration, and the arbitrator, shall be made parties to the application, and shall be called "the respondents."

Application for removal of arbitrator, or to set aside award. 63 & 64 Vict. c. 50, Sched. 2, Part 1, pars. 6, 13.

(2.) Proceedings shall be commenced by filing an application, intituled in the matter of the Acts and of the arbitration, which shall be entered and numbered as a plaint.

Proceedings, how commenced. Form 311E.

(3.) Particulars shall be appended or annexed to the application, containing

Particulars and affidavit.

(a) A concise statement of the relief or order which the applicant claims, and of the grounds on which the application is made:

(b) The full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor:

and the application shall be supported by an affidavit setting forth the circumstances in which and the grounds on which the application is made.

(4.) The applicant shall deliver to the registrar with the application, particulars, and affidavit a copy thereof for the judge, and a copy for each respondent to be served; and where the application is to set aside an award, the applicant shall file a copy of the award for the use of the judge.

Copies for judge and respondents.

(5.) On the filing of the application the registrar shall fix the hearing thereof before the judge for any Court appointed to be held within twenty-eight days from the date of the application, but the date of hearing shall be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed.

Fixing day of hearing by registrar.

(6.) If there is no such Court available, the registrar shall send notice of the application to the judge, who shall, as soon as conveniently may be, appoint a day and place for the hearing of the application. Such day shall

Fixing day and place of hearing by judge.

Rules.

be so fixed as to allow the copies of the application, particulars, and affidavit to be served on the respondents at least ten clear days before the date so fixed. The place of hearing shall be the place at which the Court is held, or, if the judge so orders, any other convenient Court of which he is judge.

Notice to parties. Forms 311F, 311G.

(7.) On the day for the hearing of the application being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the application will be heard, and shall issue the copies of the application, particulars, and affidavit, under the seal of the Court, for service on the respondents, together with notices signed by the registrar himself and under the seal of the Court, stating the place at which and the day and hour on and at which the application will be heard, and that if the respondents do not attend in person or by their solicitors, such order will be made and proceedings taken as the judge may think just and expedient.

Service on respondents.

(8.) The copies and notices mentioned in the last preceding paragraph shall be served on each respondent not less than ten clear days before the day fixed for the hearing, unless such respondent, or his solicitor on his behalf, agrees to accept shorter service.

Service on respondents. [Ord. VII., r. 30.]

(9.) Such copies and notices may be served—

(a) By a bailiff of a Court;

or, at the request of the applicant or his solicitor,

(b) By the applicant, or some clerk or servant in his permanent or exclusive employ; or

(c) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

Mode of service.

(10.) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of section 28 of the Agricultural Holdings (England) Act, 1883.

Where service effected otherwise than by bailiff. [Ord. VII., r. 31.]

(11.) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service endorsed thereon, shall within three clear days next after the date of service, or such further time as

Rules.

may be allowed by the registrar of the Court issuing such document, be delivered or transmitted to such registrar by the applicant or his solicitor. The applicant or his solicitor shall also deliver or transmit to the registrar an affidavit of the service of such document, according to Form 21 in the Appendix (*a*), with such variations as the circumstances of the case shall require. Form 21.

(12.) Any affidavit intended to be used by any respondent on the hearing of the application shall be filed and a copy thereof shall be served on the applicant or his solicitor four clear days at least before the hearing of the application, or, if short service of the notice of the application has been accepted, in such reasonable time before the hearing as the date of service will allow.

(13.) A deponent to an affidavit shall on notice from the other side served in accordance with the provisions of section 28 of the Agricultural Holdings (England) Act, 1883, attend the hearing for cross-examination; and witnesses may be orally examined on the hearing of the application in the same manner as on the hearing of an action.

Procedure on application.

(14.) Subject to the special provisions of this rule, the procedure on an application shall be the same as the procedure in an action commenced in the Court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such application accordingly; and in the application of such provisions and rules the application shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the application shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

Order.

(15.) The order of the judge on any application shall be settled and signed by the registrar, and shall be sealed and filed, and signed copies thereof shall be served on all

(*a*) Form 21 is a form of affidavit of service of a default summons. See Annual County Courts Practice, 1901, vol. i., p. 851.

Rules.

persons affected thereby in accordance with Rule 5 of Order XXIII. (*a*); and such order shall be enforceable in the same manner as a judgment or order of the Court.

Where hearing is to take place in another Court.

(16.) Where the hearing is to take place at another Court, the registrar of the Court in which the proceeding is pending shall forthwith send notice to the registrar of such other Court that the judge has ordered the hearing to take place there; and he shall, in sufficient time before the hearing, transmit the papers to the registrar of the Court at which the hearing is to take place, who shall act at the hearing for such first mentioned registrar, and shall, after the hearing, return the papers to him, with a minute of the order made; and such order shall be settled, signed, sealed, filed, served, and proceeded on in the Court in which the proceeding is pending in like manner as if the hearing had taken place there.

Application for taxation of costs of arbitration. 63 & 64 Vict. c. 50, Sched. 2, Part 1, par. 14. [*Conf.* Form 352.]

5.—(1.) An application to the registrar to tax the costs of and incidental to an arbitration and award under the said Acts shall be made in writing, and shall state on whose behalf the application is made.

Notice of time and place for taxation. [*Conf.* Form 353.]

(2.) On receipt of such application the registrar shall fix a place and time for proceeding with such taxation, and shall give or send by post notice in writing to the applicant and to the parties whose costs are to be taxed, signed by the registrar himself and under the seal of the Court, stating the place, day, and hour at and on which the taxation will be proceeded with, and requiring the parties to attend and produce documents and be examined, and warning them that if they do not attend either in person or by their solicitors such order will be made and proceedings taken as to the registrar shall seem fit. Such notices shall be given or sent four days at least before the day fixed for the taxation.

Certificate of taxation.

(3.) On the completion of the taxation, or, in the case of review by the judge, after such review, the registrar shall give or send by post to each party a certificate of the result of the taxation, stating the amount at which the costs have been allowed.

(*a*) See note to Rule 2 (6) of this Order, *ante*, p. 143.

Rules.

6. An application to the judge to review any taxation by the registrar shall be made on notice in writing in accordance with the rules for the time being in force as to interlocutory applications.

Review of taxation by judge. 63 & 64 Vict. c. 50, Sched. 2, Part 1, par. 14.

7.—(1.) An application to the judge under the said Acts, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, for an order that money awarded to be paid for compensation, costs, or otherwise, shall be recoverable as money ordered by a County Court under its ordinary jurisdiction to be paid is recoverable, shall be made in Court on notice in writing, which shall be intituled in the matter of the Acts and of the arbitration; and on filing the application the applicant shall produce to the registrar the original award (or a duplicate thereof) and shall file a copy thereof, together with an affidavit intituled as above, verifying both the original and the copy award, and the amount remaining due thereunder.

Application for recovery of money awarded to be paid for compensation, &c. Form 312B.

(2.) Where the application is for the recovery of or includes the recovery of any money awarded to be paid for costs, the affidavit shall state the amount at which such costs have been agreed upon or allowed on taxation, and that a demand for payment of such amount, with, in the case of taxation, a copy of the certificate of the result of the taxation, has been served on the party against whom the application is made fourteen days at least before the date of the application. Service of such demand may be effected in accordance with the provisions of section 28 of the Agricultural Holdings (England) Act, 1883.

(3.) The application shall not be numbered as a plaint, but shall be marked by the registrar with a reference number as a commencement of proceedings, and all subsequent proceedings shall bear the reference number.

(4.) A copy of the application and affidavit shall be served on the party against whom the application is made, and proof of such service shall be made, in accordance with paragraph 3 of Rule 2 of this Order; and the provisions of paragraphs 4 and 5 of the last mentioned rule shall apply to proceedings on an application under this rule.

Rules.

Form 312c.

(5.) The order of the judge on the application shall be settled and signed by the registrar, and shall be sealed and filed, and signed copies thereof shall be served on all persons affected thereby in accordance with Rule 5 of Order XXIII.; and such order shall be enforceable in the same manner as a judgment or order of the Court.

Proceedings for recovery of money agreed to be paid under 46 & 47 Vict. c. 61, s. 24; 50 & 51 Vict. c. 26, s. 17; 63 & 64 Vict. c. 50, s. 2 (3); or for settlement of disputes under 46 & 47 Vict. c. 61, s. 46.

8. Proceedings for the recovery of money agreed to be paid for compensation, costs, or otherwise, under the said Acts, or the Allotment and Cottage Gardens Compensation for Crops Act, 1887, or for the settlement of a dispute under section 46 of the Agricultural Holdings (England) Act, 1883, shall be by action commenced by plaint and summons in the ordinary way. Particulars of demand shall be filed in any such action, and shall state concisely the nature of the claim or dispute, and the relief or order which the plaintiff claims.

Forms.

COUNTY COURT FORMS.

311B.

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Ord. XLA, r. 2.

Application for Order directing Statement of Case.

In the County Court of holden at .

[*Reference Number*]

In the matter of the Agricultural Holdings (England) Acts, 1883 to 1900, and

In the matter of an Arbitration between

A. B.,
of &c., Tenant,

and

C. D.,
of &c., Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of , 19 , at the hour

Forms.

of o'clock in the noon, on behalf of the above-named , for an order directing Mr. , the arbitrator appointed in the above-mentioned arbitration, to state in the form of a special case for the opinion of the Court the following question of law arising in the course of the arbitration, viz.,

[*State the question of law.*]

And further take notice, that an affidavit of filed herewith [*in the notice served on any party substitute for these words* a copy whereof is served herewith] will be read in support of the application.

Dated this day of , 19 .

(Signed)
Applicant
[*or* Applicant's Solicitor].

To the Registrar of the Court
and to [*the other parties to the arbitration and the arbitrator, naming them*].

311c.

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Ord. XLA, r. 3 (3).

Notice of Day upon which Special Case will be heard.

In the County Court of holden at .

[*Heading as in Special Case.*]

TAKE NOTICE, that the judge of this Court will hear the special case stated by Mr. , the arbitrator appointed in the above-mentioned matter, at a Court to be holden at on the day of , 19 , at the hour of in the noon; and that if you do not attend in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office, and upon prepayment of the costs of such copy.

Dated this day of 19 .

Registrar.

To
[*the parties to the arbitration*].

Forms.

311D.

Ord. XLA, r. 3 (6).

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Order on Hearing of Special Case.

[*Heading as in Special Case.*]

The special case stated by Mr. , the arbitrator appointed in the above-mentioned matter [if stated pursuant *to an order of the judge, add* in pursuance of an order of the judge made in the above-mentioned matter on the day of 19] coming on for hearing this day:

Now, upon reading the said case, and upon hearing the above-mentioned *A. B.* [*or* Mr. , solicitor [*or* of counsel] for the above-named *A. B.*] and the above-named *C. D.* [*or* Mr. , solicitor [*or* of counsel] for the above-named *C. D.*] [*or if either party does not appear*, no one appearing for the above-named *A. B.* [*or C. D.*]], and upon debate of the matter, the judge of this Court doth declare his opinion on the question of law stated for the opinion of the Court as follows:—

[*State Opinion.*]

And it is ordered that a copy of this order be sent by the registrar to the said Mr. , for him to proceed in accordance with the opinion so declared as aforesaid.

[*Add directions as to costs, if any.*]

Dated this day of 19 .

Registrar.

To

[*the parties to the arbitration and the arbitrator*].

311E.

Forms.

Ord. XLA, r. 4 (2).

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Application for Removal of Arbitrator, or to set aside Award.

In the County Court of holden at .

. . No. of Plaint .

In the matter of the Agricultural Holdings (England) Acts, 1883 to 1900,

and

In the matter of an Arbitration between

A. B.
of, &c., Tenant,

and

C. D.,
of, &c., Landlord.

Application is hereby made on behalf of the above-named

(1) For the removal of Mr. , the arbitrator appointed in the above-mentioned arbitration, on the ground of his misconduct.

Particulars are hereto appended [*or* annexed].

[*or* (2) To set aside the award made by Mr. , the arbitrator appointed in the above-mentioned arbitration, on the day of , on the ground of the misconduct of the said Mr. [*or* on the ground that the said arbitration [*or* award] was improperly procured].]

Particulars are hereto appended [*or* annexed].

An affidavit of in support of the application is filed herewith.

Application is hereby made to the Court to fix a day for the hearing of the said application.

The names and addresses of the applicant and his solicitor are:—

Of the applicant
Of his solicitor

The names and addresses of the respondents to be served with this application are

Dated this day of 19 .

(Signed)

Applicant
[*or* Applicant's Solicitor].

Forms.

311F.

Ord. XLA, r. 4 (7).

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Notice to Applicant of Day upon which Application will be heard.

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this Court will hear the application in this matter [*state place of hearing*] on the day of 19 , at the hour of in the noon.

Dated this day of 19 .

To Registrar.
of

311G.

Ord. XLA, r. 4 (7).

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Notice to Respondents of Day upon which Application will be heard.

[*Heading as in Application.*]

TAKE NOTICE, that the judge of this Court will hear the application, a sealed copy of which, with the particulars thereunto appended [*or* annexed] and a sealed copy of an affidavit filed in support thereof, is served herewith at [*state place of hearing*] on the day of 19 , at the hour of in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of 19 .

To Registrar.
of

[*naming all the respondents*].

Forms.

Ord. XLa, r. 7 (1).

312B.

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

Application for Order for Recovery of Money awarded to be paid.

In the County Court of holden at .

[*Reference number* .]

In the matter of the Agricultural Holdings (England) Acts, 1883 to 1900 [*or* in the matter of the Allotments and Cottage Gardens Compensation for Crops Act, 1887]

and

In the matter of an Arbitration between

A. B.
of, &c., Tenant,

and

C. D.,
of, &c., Landlord.

TAKE NOTICE, that application will be made to the judge at on the day of 19 , at the hour of in the noon, on behalf of the above-named *A. B.* for an order that the sum of *l.*, being the total amount [*or* the balance of the total amount] of (1) a sum of *l.* which by an award made in the above-mentioned matter on the day of 19 , was awarded to be paid by the above-named *C. D.* to the above-named *A. B.* , and of (2) a further sum of *l.* for costs which by the said award were awarded to be paid by the said *C. D.* to the said *A. B.* , and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of *l.*, and which said first-mentioned sum of *l.* remains unpaid, shall be recoverable as money ordered by the Court under its ordinary jurisdiction to be paid is recoverable ;

And further take notice, that an affidavit of filed herewith [*in the notice to be served on the opposite party, substitute for the words* a copy whereof is served herewith] will be read in support of the application.

Dated this day of 19 .

(Signed)

Applicant
[*or* Applicant's Solicitor].

To the Registrar of the Court
and to [*naming the party against whom the application is made*].

Forms.

312c.

THE AGRICULTURAL HOLDINGS (ENGLAND) ACTS, 1883 TO 1900.

Ord. XLa, r. 7 (5).

THE ALLOTMENTS AND COTTAGE GARDENS COMPENSATION FOR CROPS ACT, 1887.

Order for Recovery of Money awarded to be paid.

[*Title as in Application.*]

Upon the application of , and upon reading an award made in the above-mentioned matter on the day of 19 , and an affidavit of sworn on the day of 19 , and filed on the day of 19 , and upon hearing [*the opposite party*] [*or if the opposite party does not appear* and no one appearing for [*the opposite party*] though proof has been made of his having been duly served with notice of this application];

It is ordered by the judge of this Court that the above-named *A. B.* do recover from the above-named *C. D.* the sum of *l.*, being the total amount [*or* the balance of the total amount] of (1) a sum of *l.* which by the said award was awarded to be paid by the above-named *C. D.* to the above-named *A. B.* , and of (2) a further sum of *l.* for costs which by the said award were awarded to be paid by the said *C. D.* to the said *A. B.* , and which costs were subsequently agreed upon [*or* allowed on taxation] at the sum of *l.*, and which said first-mentioned sum of *l.* remains unpaid, together with the sum of *l.* for the costs of this application; and that in default of payment of the said sums of *l.* and *l.* by the said *C. D.* to the said *A. B.* within days from the date of this order, the said sums or so much thereof as shall remain unpaid shall be recoverable as money ordered by this Court under its ordinary jurisdiction to be paid is recoverable.

Dated this day of 19 .

Registrar.

[*As the forms relating to Agricultural Holdings will seldom be required, they are not to be printed, but are to be written on foolscap paper.*]

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