Northern Chronicle Oct 20 - 1886

another term of years, and this he refused to do, but indicated a willingness to remain on yearly tenure; that the result of the conversation was that he understood he was to continue on such tenure, nothing whatever being said about the notice of removal. Some words, however, passed as to the applicant afterwards signing a document, and it appears that he subsequently received an intimation that his landlord desired to meet him, but explained that he was away when the intimation came, and that he did not attend. The case of the applicant, therefore, stands thus, that there was initiated against him a process of removal and ejection, which was not followed up, that his landlord conferred with him verbally in such a way as to lead him to suppose that notwithstanding the notice of removal, he was to continue on yearly tenure, and that in exact accordance with such supposition the respondent failed to comply or attempt to comply with the estate regulation as to appraising the quantity of green crop. In these circumstances the Commissioners have no difficulty in reaching the conclusion that when the Crofters Act came into operation on 25th June last, the applicant occupied his holding by tacit relocation on yearly tenure, and is, therefore, a crofter within the meaning of the Act. Along with this case of John Mackenzie, Loanmore, there was taken for the sake of convenience the case of John Mackenzie, Tulloch. Mr Sutherland maintained, reasoning on the same lines, that the Crofters Holdings Act did not apply to his case, he being under a written contract of lease. The said contract of lease was produced to and examined by the Commissioners. It is a lease of a holding or piece of land alleged to consist of 21 acres of arable land, and 1 acre 1 rood of outrun, and to be held on a rent of £25 7s. From the application it appears that Mackenzie is conjoined with a certain Donald Mackenzie, and if in respect of that conjunction Mr Sutherland desires to raise any legal question, he is not precluded by this judgment from doing so, as it is pronounced solely with reference to the question raised on a written lease for one year. The holding was occupied or used by the applicant immediately before 25th June last, the date as above mentioned of the passing of the Act, and the applicant, it has been ascertained, and indeed, it was not disputed, resides at present at his holding. The lease is for one year, and no longer, and the applicant is thus, under it, tenant of the holding from year to year; but tenant of a holding from year to year, in a crofting parish, who resides on his holding and pays a rent not exceeding £30 in money, is, under the 134th section of the Crofters' Holdings Act, "a crofter." The Commissoners were thus of opinion that the contract of lease founded on by the respondent in this application of John Mackenzie, Tulloch, had not the effect of excluding the applicant from the Act, and that they were bound to proceed with it and in due course to dispose of the application.

Whatever may be the legal merits of the decision, there can be no question of its popularity among the crofters and their friends. It is regarded in the light of a great victory over Skibo, and one not very confidently expected. Skibo did not intimate an appeal to a court of law, as he had threatened on the previous day, but contented himself with drawing attention to a mistake made by the Sheriff in a date, which was immaterial to the judgment. The remainder of the day was devoted to the Balblair applications. None of the evidence possessed any special interest. The applicants were men of middle age, who had either been long resident on the estate, or were born on the croft for which they claimed. At least two of the witnesses could speak of their grandfather's tenancy in last century. John Mackay, Drimlea, produced a bundle of receipts for rent beginning with 1793, in which year his father entered on possession of the croft. The land was then "in the state in which it was created," and the rental was only 4s for the seven acres and a share of common pasture. In 1808, by which time some of the land had been reclaimed, the rent had increased to 10s, and it had gradually risen to £5.

FRIDAY.

For the first half of to-day the proceedings were somewhat tedious and uninteresting. The only one of the Balblair applications to which any importance attached, was one in which Finlay Gunn, a blacksmith at Ballachraggan, asked the Court to fix a fair rent for the smithy croft. At the instance of Mrs Hadwen, Mr Macleay contended that the applicant was not a crofter within the meaning of the Crofters' Act. The Act provides that it shall not apply to any holding let to a person who is in the landlord's employ or the tenant of a landlord, "nor to any innkeeper or tradesman placed in the district by the landlord for the benefits of the landlord," and Gunn's evidence was taken in order that the Commissioners may be able to determine whether he comes under its operation. Gunn, 71 years of age, and so deaf that his son had to communicate with him, stated that he went to Ballachraggan 41 years ago, having previously been in business at Bonar-Bridge. He was encouraged to start a smithy not by the landlord but by a grieve to Mr Dampster and the tenant of Balblair. Some years after he obtained a croft, and he had paid rent to the proprietor of Balblair since Mr Hadwen purchased the estate in 1862. He did the estate work, but was also employed by people on the adjoining properties. Arguing from these facts, Mr Macleay said there was no doubt Gunn came to the property previous to Mr Hadwen purchasing it, but he had admitted in his evidence that he went in consequence of communications made to him by the grieve of the previous proprietor and his brother, who was a tenant on the place. A rent was charged by Mr Hadwen for the smithy and the small portion of land attached to it, and it was in respect of Gunn being the blacksmith of the district that that rent was put upon him, and not in respect of his being a crofter. He was the only blacksmith in the district, and he had told them that he got nearly all the work on the estate. There were various considerations why the blacksmith should not get the benefit of the Crofters' Act. A blacksmith might not be acceptable to the tenantry, and if he got the benefit of the Act, it would be impossible to remove him. He thought the intention of the Legislature was that, if there was a blacksmith in the district, he should, in a certain measure, be under the charge and control, not only of the landlord, but also of the tenants. At Mr Macleay's instance the case was continued till Thursday for farther evidence. The Court now took up the first batch of the Skibo applications. Eight crofters, residing in the township of Tulloch, combined in one application for fair rents, and stated in the schedule that they were joint-tenants of 500 acres common pasture. This statement was repudiated by the proprietor, who presently entertained the Court to a system of cross-examination for which nobody was prepared. The first witness was Robert Barclay, a middle-aged, well-attired, and intelligent looking man. His grandfather began the family tenancy of the croft while this century was young, and witness was paying the same rent for one-half of the croft as was paid for the whole previous to its division in 1855. Skibo's cross questioning was characterised by persistency and determination.

Skibo—Having been warned out of your land in 1876, and having taken a new lease from me, when did you get possession of this common hill pasture?—We were never put out of it. The cattle were going there, and were never kept back.

When did you take this hill containing 500 acres of common pasture?—Witness did not answer.

Who have you paid rent for the hill pasture to?—I never paid.

Do you seriously mean to say that you are at the present moment tenant of a holding on the estate of Skibo which carries with it a joint right to 500 acres of hill pasture? Witness did not seem to understand the question very clearly, and suggested that he would prefer to have it put in Gaelic.

Mr Sutherland objected to the examination being taken in Gaelic. He had a good deal to do with Barclay, and he assured the Commission that he spoke good English.

The question being repeated in English, Barclay replied —I have all along put a mule on the common hill pasture, and we want to have it as we had before.

Sheriff Brand—What do you mean by "the pasture that we had before."

As we had it in the times of our grandfathers and fathers.

Mr Sutherland—Are you tenant of a holding on the estate of Skibo, part of which consists of common pasture to the extent of 500 acres, other tenants having the right to said pasture also?

Our cattle are running on that pasture.

Mr Sutherland—I must ask you to say yes or no.

Witness intimated that he did not understand the question.

Sheriff Brand—I must say that my impression is that you understand the question distinctly enough

Mr Sutherland—Every tenant on the estate was warned out in 1875, in order to get rid of these questions about the hill pasture which had troubled previous proprietors. If this man took this afterwards, he knows perfectly well who he took it from. He never took it from me, and I never heard of this claim until the other day.

The question was repeated to the witness, and his reply was—"I canna answer the question."

Was it part of your tenancy with me that you should graze cattle on that hill?—No, sir.

Will you now say whether you are tenant of such a holding as you describe in your application?—We put our cattle on the hill pasture and they were never put off.

By Mr Macintyre—When you entered on your new lease in 1876, did you consider you were deprived of the right you formerly enjoyed of putting cattle to the hill? —No.

Sheriff Brand—He noticed no difference on his pasture in consequence of the lease.

Questioned again by Mr Sutherland, witness said that the pasture was not let to him under the lease, and that, except the lease, he had no other bargain with the proprietor. Mr Sutherland renewed the question which the witness had already refused to answer by "Yes" or "No," but the only reply elicited was that the witness, father, grandfather, and the whole of the tenants had put the cattle on the pasture, and it was never taken from them.

Another of the Tulloch crofters, Alexander Chisholm, was then put into the witness box. His answers regarding the hill pasture were similar to Barclay's. The applicants had always used the hill, lease or no lease, and never having been checked they considered that Skibo had quietly acknowledged their right to the pasture.

SATURDAY.

The weather being wet and stormy there was a very sparse attendance of the public when the Court opened this morning. Half an hour was spent in the study of plans of the Skibo estate before Alexander Chisholm, Tulloch, was asked to step into the witness box for cross-examination. The cross-examiner was, of course, Skibo, and for the next hour and a half the unfortunate crofter was subjected to a catechising such as few *bona fide* lawyers are capable of administering. The questions principally referred to the hill of Tulloch, to which the applicants for fair rent lay claim as part of their tenancy. Setting out with the statement that he knew of no common pasture on his estate, he asked the applicant to explain how he and others came into possession of the

Balblair