IN THE SCOTTISH LAND COURT
under
THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT, 1991

Council:	Fife	Record No:	SLC/45/21
Applicant:	Duncan Alexander Waddell Black		
Respondents:	The Trustees acting under Deed of Trust by Major Michael Duncan David Crichton Stuart of Falkland	Form:	General
Subject:	Woodmill Farm		

Edinburgh, 28 March 2024. The Land Court have issued the following order in the above application:-

Edinburgh, 28 March 2024 The Land Court, having considered the evidence heard, the productions lodged and counsel's submissions, under reference to the note appended hereto, (FIRST) SUSTAIN the applicant's second plea-in-law and the respondents' first plea-in-law, the former only to the extent set out in this order; (SECOND), in terms of section 116(2) of the Land Reform (Scotland) Act 2016, of consent, APPROVE, for the purposes of section 45 of the Agricultural Holdings (Scotland) Act 2003, the carrying out of the tenant's improvements colour-coded green in the Schedule of Improvements, a copy of which is attached and subscribed as relative hereto, (THIRD) additionally, APPROVE the tenant's improvement by way of drainage shown in the southern part of Field 3 on the plan annexed and subscribed as relative hereto, (FOURTH) *quoad ultra* REPEL parties' pleas-in-law and REFUSE the application and (FIFTH) ALLOW parties a period of 21 days from the date of intimation hereof to lodge motions and submissions on expenses.

"RODERICK J MACLEOD"	"JOHN A SMITH"
Member of Court	**Member of Court**

NOTE

[1] This is an application for an order in terms of section 116 of the Land Reform (Scotland) Act 2016 ("the 2016 Act") approving certain tenant's improvements carried out to the holding of Woodmill Farm, Falkland, Fife, as relevant improvements for the purposes of section 45 of the Agricultural Holdings (Scotland) Act 2003 ("the 2003 Act"). The tenant applicant is Mr Duncan Alexander Weddell Black and the respondents are the Trustees acting under a Deed of Trust by Major Michael Duncan David Crichton Stuart of Falkland dated 10 November and registered in the Books of Council and Session on 20 April 1965. We heard the case at Edinburgh on 5 - 7 December 2023, when the applicant was represented by Mr Robert Sutherland and the respondents by Mr Michael Upton, both advocates. We heard evidence from Mr Black himself and Mr James Hair, his Chartered Accountant, on behalf of the applicant, and from Mr Guy Wedderburn, their Factor, on behalf of the respondents. We do not consider it necessary to set it out at length since there was little in the way of factual conflicts to resolve. Instead the relevant evidence will be recounted when we come to deal with such conflicts as there were.

The "Amnesty" provisions

[2] Section 116 is part of the "amnesty" provisions of the 2016 Act, whereby tenants who would otherwise have lost their entitlement to compensation for improvements made under, *inter alia*, the Agricultural Holdings (Scotland) Act 1991 ("the 1991 Act") could, nevertheless, become entitled to such compensation by service on their landlords of an "amnesty notice"

within a restricted period ("the amnesty period"; section 114), now expired. In terms of section 115 of the 2016 Act, a landlord on whom such a notice was served was entitled to object to it within two months of its receipt. Where a notice of objection was served, the tenant was entitled, by section 116, to apply to this court for approval of the improvements for the purposes of section 34 of the 1991 Act or, as the case may be, section 45 of the 2003 Act. That procedure having been gone through, the court's approval of certain amnesty improvements is what Mr Black seeks in this case.

The facts

[3] The case involves two leases, the second back-dated to abut the first but with a real-time interlude between them. The first was a lease under the Agricultural Holdings (Scotland) Act 1949 (but now governed by the 1991 Act and referred to hereinafter as "the 1991 Act lease") to a limited partnership comprised of Ninian Crichton Stuart, as the limited partner, and Henry Taylor Black, Crawford Porter Black and the applicant as the general partners. Henry Taylor Black, Crawford Porter Black and the applicant are brothers.

[4] It was for a period from 28 November 1989 to 28 November 1990 and from year to year thereafter. This continued until 28 November 2003, when a notice of termination of the limited partnership served by the limited partner on 8 October 2002 took effect.

[5] This notice of termination was met by a notice served by the general partners under section 72(6) of the 2003 Act stating that they intended to become tenants under the lease in their own right. That in turn prompted the respondents to apply to this court in January 2004 (application SLC/10/04) seeking either an order to the effect that the Black brothers' notice was null, void and of no effect, or, in the alternative, that section 72(6) of the 2003 Act did not apply

and had never applied. That application was never determined and was dismissed with consent of both parties on 6 March 2007.

[6] That was because, by that time, parties had agreed the terms of a second lease which was executed on 18 August, 4, 13 and 28 September and 2 and 30 October 2006 but backdated to 28 November 2003. This was a lease of the farm on a limited duration tenancy under the 2003 Act and was entered into between those then acting under the said Deed of Trust, as landlords, and the Firm of Woodmill Farm and the applicant and the said Henry Taylor Black and Crawford Porter Black as partners of and trustees for that firm, as tenants. That lease (the "LDT lease") was for a period of 20 years from 28 November 2003 until 28 November 2023.

[7] That lease contained a provision that, in the event of his brothers resigning from the firm, the lease would continue with the applicant as sole tenant. That happened on 7 November 2014 and, since then, the applicant has been tenant in his own right. An agreement that his sons would be taken into the lease as joint tenants with their father was never implemented and Mr Black has remained sole tenant.

Real time summary

[8] Although the LDT entered into in 2006 was backdated to 28 November 2003, the history of the applicant's involvement with the holding can, in real time, be divided into four parts:

(i) that between 28 November 1989 and 28 November 2003 when he was, along with his brothers, a general partner in a limited partnership, the limited partnership being the tenant;

(ii) that between the termination of the limited partnership on 28 November 2003 and the entering into of the LDT in October 2006, when the applicant and his

brothers were joint tenants by virtue of the provisions of section 72 of the 2003 Act;

(iii) that from the commencement of the LDT, with the partnership of Woodmill Farm as tenant in October 2006, until 7 November 2014, when his brothers resigned from the partnership; and

(iv) that from 7 November 2014 until the present, during which the applicant has been the sole tenant.

The issues in the case

[9] Over the years certain improvements were carried out by the tenants and, on the evidence, we are satisfied that, for practical purposes, they were carried out and paid for by the applicant, who was at all times the only person who farmed Woodmill. He explained that his brothers had been made partners only to provide the respondents with the comfort that he had the backing of the Black family's wider farming business. The legal question in the case is whether he is now entitled to compensation for improvements which were carried out before 28 November 2003, that is to say during the 1991 Act tenancy. *Esto* he is not, the applicant has a plea of personal bar directed at preventing the respondents from resisting his claim. There is also a factual question in the case as to whether any compensation to which the applicant may be entitled includes certain drainage work which he carried out. We deal with these issues in turn.

The legal issues

[10] Subsections (1) and (4) of section 45 of the 2003 Act provide as follows:

> "(1) Subject to sections 48 and 49, a tenant of a short limited duration tenancy, a limited duration tenancy or a modern limited duration tenancy is entitled, on quitting the land on termination of the tenancy, to compensation from the landlord

in respect of any improvements to which this subsection applies carried out by the tenant.

…

(4) Where a tenant has remained in occupation of the land during two or more tenancies, the tenant is not deprived of any right to compensation under subsection (1) by reason only that the improvements were not carried out during the tenancy on the termination of which the tenant quits the land."

Submissions on the legal issues

For the applicant

[11] Mr Sutherland referred us to the decision of this Court (Lord McGhie and Mr D J Houston) in *Telfer* v *Buccleuch Estates* 2006 SLCR (1) 131 which dealt with similar provisions in the 1991 Act. Although in that case, the court found that the equivalent provisions to section 45(1) and (4) of the 2003 Act, being section 34(1) and (5) of the 1991 Act, were not wide enough to cover a situation in which the tenancy had changed from joint to single in successive leases, Mr Sutherland emphasised what the court said (at pages 15 and 17) to the effect that, had the joint tenants continued in business together as partners, there would have been no problem about entertaining Mr Gordon Telfer's claim to compensation in his own right, even although the improvements had been authorised and carried out by himself and his father as joint tenants. In this case, he submitted, the improvements had been authorised by the limited partnership, which was the tenant, and the applicant, as a partner in the partnership, was in a position akin to a joint tenant. On the basis of what the court had said about one of a number of joint tenants being entitled to claim compensation for improvements approved by the joint tenants, the applicant here was entitled to claim compensation for improvements authorised by the limited partnership.

[12] As to personal bar, he submitted that, on the strength of certain things which had happened before or during the negotiation of the LDT, Mr Black had been persuaded to agree to the new lease without insisting on a valuation and settlement of the limited partnership's claim for compensation for improvements at that time. The matters being referred to were, first, a letter, production 31, from the landlords' solicitors to the applicant's solicitor dated 19 December 2004, which makes reference, first, to Mr Black being entitled to compensation at waygo for the improvement of a potato store and the construction of some lean-to sheds and, second, an agreement (hereinafter referred to as "the Rent Abatement Agreement" or "the RAA") as to rent abatement as a means of compensating the applicant for the cost of drainage work agreed in or about 1999, which had not been reimbursed by the landlords. It was agreed that the period of this abatement would run into the new lease. Mr Sutherland submitted that the applicant would be unfairly prejudiced by the respondents' change of position as to whether he was entitled to compensation for improvements carried out during the 1991 Act tenancy. The respondents were, therefore, personally barred from asserting that he was not entitled to compensation for improvements carried out during that tenancy.

For the respondents

[13] Mr Upton reviewed the history of matters. The result of the LDT being backdated was that the rights and obligations of the parties had been governed by that lease since 28 November 2003. It superseded the statutory arrangements which had been in place until the LDT had been concluded. It extinguished the status of the brothers as tenants under section 72(6); otherwise they would still be tenants under that provision. By agreeing to the tenant under the LDT being the partnership and agreeing to the LDT being backdated to 28 November 2003, the Black brothers had departed from the statutory status they had held

during the period between the two leases. The furthest Mr Sutherland's logic took him was that a section 72 tenant might have a claim for improvements carried out by the preceding limited partnership. That was an interesting question but in this case that status had been superseded by the backdated LDT.

[14] Section 45(4) dealt with changes in the tenancy, not changes in the tenant. The *Telfer* case was not materially distinct; if anything the present case was *a fortiori* of *Telfer.* The tenant under the LDT was not the same entity as the limited partnership which had been tenant under the first lease.

[15] As to personal bar, the only representations made by the respondents were contained in the productions 31 and 34, the former being the letter from the respondents' agents referring, *inter alia,* to "Duncan" being entitled to compensation for improving the potato shed and erecting some lean-to sheds and the latter being a back-letter from the respondents' Estate Office, but signed on their behalf by their said agents, and counter-signed by Mr Black, agreeing, *inter alia*, the extension of the rent abatement period for a period of 1.33 years beyond 28 November 2003. Assumptions, beliefs or understandings did not, by themselves, translate into contractual rights and obligations; *Baillie Estates Limited* v *Du Pont (UK) Limited* [2009] CSIH 95, at para [26]. All that the applicant was entitled to in terms of the LDT was "such compensation as the Tenant at outgo shall be entitled to in terms of the [2003] Act"; clause 12.2.

[16] Mr Upton went on to make the following additional points on personal bar:

(i) The necessary "certain state of facts" referred to in Lord Chancellor Birkenhead's definition of personal bar in *Gatty* v *McLaine* 1921 SC (HL) 1 at page 7 was missing here.

(ii) For personal bar to operate, what is founded upon as a representation has to be construed objectively, not subjectively; Wm *Grant & Sons Ltd* v *Glen Catrine Bonded Warehouse Ltd* 2001 SC 901 at para [4] of the opinion of Lord Nimmo Smith; *Ben Cleuch Estates Ltd* v *Scottish Enterprise* 2008 SC 252 at para [87] of the opinion of the court.

(iii) It was not possible from the applicant's pleadings to know what representations were being founded upon; the back-letter (production 31) was an agreement, not a representation.

(iv) There was no prejudice to the applicant.

(v) Personal Bar is a shield and not a sword; it cannot create rights, it can only cut down or qualify a right; *Advice Centre for Mortgages Ltd* v *McNicoll* 2006 SLT 901, *per* Lord Drummond Young at para [17], Lord Hodge's quotation from Reid & Blackie's *Personal Bar* (2006) at 5.21 in *Shaw* v *James Scott Builders & Company* [2010] CSOH 68 at para [64]; *Baronetcy of Pringle of Stichill* [2016] UKPC 16 *per* Lord Hodge, giving the advice of the Judicial Committee of the Privy Council, at para [64].

Resolving the legal issues

[17] The justice of the applicant's case is easily understood. If he was the only person actively farming Woodmill and if he was the only person who instigated, executed and paid for the improvements, it seems right that he should be compensated for them. In enacting section 45(4) of the 2003 Act, the Scottish Parliament recognised the injustice of a tenant losing entitlement to compensation for repairs simply because the lease on which he originally held the subjects had been superseded by a later lease. The question is whether what Parliament

then did went far enough to cover someone who did not hold the leases in his own right but as a partner in two successive partnerships.

[18] The right to compensation for improvements under the 1991 Act is set out at section 34(1), which reads:

> "(1) Subject to subsections (2) to (4), (7) and (8) below, and to sections 36 and 39 to 42 of this Act, a tenant of an agricultural holding shall be entitled, on quitting the holding at the termination of the tenancy, to compensation from the landlord in respect of improvements carried out by the tenant."

[19] The definition of tenant is contained in section 85(1):

> "85(1) the holder of land under a lease of an agricultural holding and includes the executor, assignee, legatee, disponee, guardian, tutor or curator bonis of a tenant or the trustee or interim trustee in the sequestration of a tenant's estate."

[20] Until it was terminated on 28 November 2003, the holder of Woodmill under the 1991 Act tenancy was the limited partnership, not the applicant. On its termination it would have been entitled to compensation for improvements it had carried out and a claim to that effect could have been prosecuted after the dissolution of the partnership under the powers of general partners in a limited partnership to wind up the affairs of the partnership; section 6(3) of the Limited Partnerships Act 1907.

[21] Beyond that, a question arises as to whether matters are to be analysed on the basis of what happened in real time or in terms of the LDT which, although entered into only in 2006, was backdated to 28 November 2003. Clause 2 of the LDT provides that the lease would be for 20 years from 28 November 2003. That represents, in our view, an agreement by the parties that their relationship was to be governed by the LDT from that date. That means that the 1991 Act lease was superseded by the LDT as of that date. (We do not think anything turns on the fact that 28 November, as well as being the start of the LDT, was also the date of expiry of the 1991 Act lease.) The tenant under the LDT was another, differently constituted,

partnership. The new tenant was not the same legal entity as that under the 1991 Act and, not, therefore, entitled to compensation for improvements carried out under it. That being the case, the applicant could not, derivatively, acquire a right to compensation from the partnership when he himself became sole tenant.

[22] Lest we are wrong about the effect of backdating, and the position falls to be governed by what actually happened at the time, what actually happened was that, having invoked the protection of section 72(6) of the 2003 Act, the general partners became joint tenants in their own right. They then became the "holders" of Woodmill under the 1991 Act lease. Did they then acquire (or retain) a right to compensation for improvements carried out by the limited partnership, other than as part of the winding up of that partnership? This is where Mr Sutherland prays in aid the view expressed by this court in *Telfer* (at p 15) that, where there are joint tenants, the fact that one or more of them withdraws from the lease does not prevent a remaining joint tenant claiming compensation. That, however, begs the question whether the joint tenants had a right to compensation in their own right in the first place. In our view they did not, simply because they had not been the tenant when the improvements were carried out. The limited partnership was a distinct and separate entity from its individual partners and the situation is not to be equiparated with the situation of one of several former joint tenants making a claim for compensation about which the court was hypothesising in *Telfer*.

[23] In our view, therefore, whichever way the period between 28 November 2003 and the entering into of the LDT is analysed, the result is the same: the applicant's primary case fails.

Personal bar

[24] As part of the negotiation of the LDT tenancy, on 29 December 2004 a letter, production 31, was sent by the landlords' then solicitors to the applicant's accountant, James Hair. It refers to a meeting which had taken place on 16 December and picks up on some of the points then discussed. Some of these points arise from terms of the draft lease then under discussion and some from a proposed back-letter which was to complement the lease. The back-letter points include (i) a request for confirmation from Mr Black of the costs of unspecified drainage works, (ii) consent to the applicant "fixing up" the roof of the workshop, for which he would be entitled to compensation at waygo, and (iii) a provision that the applicant would be entitled to compensation at waygo for the costs of improving the potato store and of lean-to sheds which he had already built.

[25] Production 34, dated 26 July 2006, is the signed back-letter. It provides (i) that the unexpired portion of the rent abatement period of 5.33 year period which had been agreed in respect of unspecified drainage works and which had commenced on 28 November 1999 would be carried over into the new lease, (ii) that the applicant would be allowed to use the workshop and repair its roof at his own expense and (iii) that he would be allowed to make improvements to the potato shed at his own expense. The unexpired portion of the rent abatement period, as at the date of termination of the 1991 Act lease, amounted to 1.33 years and the rent remained at its abated level for that length of time beyond the (retrospective) date of commencement of the LDT. In other words what had been agreed under the 1991 Act and what had happened in real time was reflected in the terms of the LDT. Otherwise, the LDT lease says nothing about improvements effected under the 1991 Act lease.

[26] The applicant made it clear in his evidence that he believed that the whole matter of compensation for improvements was being carried over into the LDT and that there was no

need for a settling of claims at the end of the 1991 Act tenancy. Mr Wedderburn was unable to say what the respondents' position was either at November 2003 or, later, while the LDT was being negotiated, because he only became Factor in 2013. He had to rely on the documentary evidence, being productions 31 and 34. What is not in dispute, however, is that the respondents knew that improvements had taken place under the 1991 Act lease for which compensation might be sought at waygo. We say that because the applicant was in the habit of sending Mr Jim Donald of Bidwells, who were then acting as the respondents' Factors, quotations and receipts for work done. It is also not in dispute that the respondents never questioned the applicant's right to compensation for these improvements until the amnesty notice was served. Instead the whole tenor of what happened suggests that both parties were happy for such claims to be deferred until the expiry of the LDT.

[27] In considering Mr Sutherland's submissions on personal bar, our first task is to assess whether, objectively, someone in Mr Black's position in 2003 would have been entitled to believe that the respondents intended that any compensation claims he had would be deferred until the end of LDT. That would depend on what a reasonable person on a fair reading of productions 31 and 34 would make of them. Mr Upton objected that what the back-letter contained were contract terms and that contract terms could not be relied upon as representations on which to found personal bar but he did not develop that submission and, for our part, we do not see why the applicant was not entitled to derive an understanding of the respondents' wider position as to compensation for improvements from what the back-letter said. Accordingly, we reject that submission and go on to consider whether the documentation, including the back-letter, contains anything amounting to a representation for the purposes of personal bar.

[28] Although that documentation is scant and falls a long way short of an unequivocal representation that claims would be deferred to the end of the LDT, in our opinion a reasonable person would be justified in taking the view the applicant took. That another reasonable person might reach a different conclusion on the same evidence does not detract from that. Principally, we rely on the treatment of the rent abatement for that conclusion. It was seamlessly carried into the new lease. But there was also the fact that there was express recognition of entitlement to compensation for the lean-to sheds he had constructed, albeit that did not find its way into the back-letter and that the *inclusio unius est exclusio alterius* principle might support the opposite conclusion.

[29] Having been justified in that belief, the applicant was also justified in acting upon it, which he did by not making a claim (as one of the general partners) at the end of the 1991 Act tenancy. That was something which he did to his prejudice and in reliance on the respondents' behaviour when negotiating the new lease.

[30] However, where the applicant's reliance on personal bar breaks down is that the doctrine operates as a shield and not a sword. It does not create rights; it merely modifies the rights another person might have. In this case it would operate to prevent the respondents resisting his claim but it would not confer upon him a right which the law does not otherwise recognise; the right to compensation for improvements made under a tenancy in which he was not the tenant. Reference is made to the authorities cited by Mr Upton at paragraph 16 above and particularly to what was said by Lord Hodge in *Shaw v James Scott & Co Ltd* at para [64].

[31] Accordingly, having failed on his principal case and on his personal bar argument, the legal issue falls to be resolved in favour of the respondents. The applicant is not entitled to compensation for improvements carried out under the 1991 Act tenancy.

The factual issue

[32] The amnesty notice listed approximately 170 different improvements. A small number of those were removed by agreement between the parties but the vast majority were agreed to be tenant's improvements although entitlement to compensation for some of these is subject to the challenge that they were carried out pre-2003 and therefore ineligible in terms of the legal issue which we have just discussed. At proof all that remained in dispute, as far as the facts are concerned, was some drainage work carried on in fields 3 and 6. That dispute has now been further narrowed by our decision on the legal issue, excluding pre-2003 improvements. On that basis, all of the work done in field 6 and the northernmost set of works in field 3 are excluded and all that remains as potentially eligible is the more southerly work in field 3. Whether it is eligible depends on whether it was part of the RAA.

[33] The RAA came about following an agreement between parties in 1999 that the applicant would carry out certain drainage work at Woodmill. An estimate for these works was obtained by the applicant from John Meiklem of Meiklem Drainage and Groundwork on 15 February 1999. It (productions 19 and 22) was for drainage work proposed to be done in fields 9, 13 and 14, extending to approximately 9,220 metres of new drains at a cost of £11,894.50. It was agreed that the applicant would be reimbursed for that expenditure by way of an abatement of rent. As already narrated, the agreed abatement ran for the full period, beyond the expiry of the 1991 Act lease and into the period of the backdated LDT. The question is whether the RAA covered the more southerly drainage work in field 3.

The documentary evidence

[34] Five invoices from Meiklem Drainage and Groundwork have been produced:

(i) On 13 August 1999 two invoices, one dated 2 April 1999 in the sum of £5,864, and the other of an indecipherable date in the sum of £196.55, a total of £6,060.55. These were for work done in fields 9, 13 and 14.

(ii) On 25 April 2000 an invoice in the sum of £1,645.46. There is a dispute as to which fields this invoice refers to, the respondents saying field 14 and the applicant field 5. The copy lodged in court has a post-it note of unknown authorship stuck to it which says "£7,706 thus far. ie over 3 years rent increase paid", which Mr Wedderburn took to mean that it was for work carried out under the rent abatement agreement.

(iii) On 27 February 2002 a further invoice was received by Bidwells in the sum of £1,331.94, for work done in field 9. The copy lodged in court has a handwritten note, again of unknown (but different) origin, which says "Some of the drainage work carried out by Duncan Black in lieu of rent". Again, this was taken by Mr Wedderburn to mean the work was covered by the rent abatement agreement.

(iv) On 18 January 2003 an invoice for £2,608.10 for work done in fields 3 and 6.

[35] The total of these invoices is £11,646.05 and the total length of drainage installed amounts to 6,441.70 metres. The proximity of these totals, and particularly of the cost, to the figures stated in the Meiklem estimate persuades Mr Wedderburn to the view that all of the work invoiced was covered by the rent abatement agreement and that, no other invoices having been produced, nothing more by way of compensation for drainage work is due. The applicant, on the other hand, claims (a) that these invoices include work not carried out as part of the rent abatement agreement, and (b) that he carried out other work, not covered by these invoices, which were likewise not covered by the RAA.

Resolving the conflict

[36] The RAA was entered into to compensate the applicant for the work covered by the Meiklem estimate. What is to be deduced from that is that additional drainage work was not intended to be covered by the RAA. The fact that the Meiklem estimate does not include any of the work for which the applicant now claims compensation strongly supports his position. On the other hand, if these are left out of the reckoning for RAA purposes, it means that the work done under the RAA fell significantly short of what was envisaged in the Meiklem estimate.

[37] It is that consideration which has led Mr Wedderburn to assume that the intention must have been – or must have become – that the work for which the applicant now claims would be covered by the RAA. Otherwise, he would be overcompensated.

[38] The evidential problem here arises from poor record-keeping by both parties. Post-it stickers of uncertain authorship are no substitute for the careful and detailed record which both parties should have kept as to what was covered by the RAA and what was not. In that situation it was possible for parties to develop different understandings on that question and we think that is what probably happened here.

[39] Having considered matters carefully, we have resolved the evidential conflict in favour of the applicant. That is for the following reasons:

(i) taking the Meiklem estimate as the best evidence of what was to be covered by the RAA, it favours the applicant;

(ii) the applicant was able to give first-hand evidence of what happened, whereas Mr Wedderburn was not;

(iii) whereas there is certainly a rationale to Mr Wedderburn's position, ultimately it is no more than speculation and must give way to stronger evidence from better-placed sources;

(iv) the applicant's evidence that other work was done in fields 9, 13 and 14 which were set against the RAA, albeit he has been unable to produce invoices for such work; and

(v) the absence, spoken to by the applicant, of any complaint from the respondents or anyone on their behalf, that the applicant had not done the work for which he had been given credit under the RAA.

[40] Having preferred the evidence of the applicant for these reasons, we hold that the work done in the southern part of field 3 was not carried out under the RAA and, therefore, falls to be taken into account for the purposes of compensation. Before approving it for the purposes of section 45 of the 2003 Act, however, we are required to be satisfied (a) that the landlord has benefited or will benefit from it and (b) that, in all the circumstances it is just and equitable that the applicant be compensated for it. The respondents have not argued the contrary and we have no difficulty in accepting both of these propositions. It is always in the interests of the landlord of an agricultural tenancy that the land is properly drained and, the work having been done by or on behalf of the applicant, it is just and equitable that he be compensated for it. Because of our earlier ruling on the legal issue, however, it is the only improvement, of those not agreed between parties, which falls to be so approved.

[41] Mr Upton invited us to make findings as to when other drainage work was carried out in other fields and both counsel suggested that, once we had made our ruling on the legal issues they could produce a revised Schedule of Improvements. However, we have seen no need for that. The schedule already produced (production 5) shows the factual matters in

dispute to be confined to fields 3 and 6 and it has, therefore, not been necessary to go beyond that.

Result

[42] The result is that the only disputed improvement which we approve is the drainage in the southern part of field 3.

Pleas-in-law

[43] We have sustained the applicant's second plea-in-law to the extent of approving the agreed improvements plus the work down in the southern part of field 3. We have sustained the first plea-in-law for the respondents. *Quoad ultra* we have repelled parties pleas-in-law, in the case of the first and third pleas-in-law for the applicant because they are without merit and in the case of the respondents' second, third, fourth, fifth, sixth, seventh and eighth pleas because they are, variously, without merit, (2, 5, 7 and 8), superseded (3 and 4) or unnecessary (6).

Expenses

[44] We have allowed 21 days for written motions and submissions on expenses.

of which intimation is hereby made.

"LAURA MERRICK"

Depute Clerk of Court