*Wednesday, June 24.*

## FIRST DIVISION.

[Sheriff of Forfarshire.

## THE STANDARD SHIPOWNERS MUTUAL FREIGHT, ETC., ASSOCIATION, LIMITED *v.* TAYLOR.

*Process—Appeal from Sheriff Court—Competency—Value of Cause—Debts Recovery Act* 1867 (30 *and* 31 *Vict. cap.* 96), *secs.* 12 *and* 13.

Where in an action brought under the Debts Recovery Act 1867 it appears that the petitory conclusions are the limit of the question for judgment, and the pursuer fails to show that any question involving a larger sum than that concluded for is presented for determination, the value of the cause must be taken to be the amount of the sum sued for.

*Held*, in accordance with this principle, that where in such an action the sum sued for was under £25, the judgment of the Sheriff was final under sec. 12 of the Debts Recovery Act 1867.

*Drummond* v. *Hunter*, January 12, 1869, 7 Macph. 347, *approved* and *distinguished*.

*Opinion* (*per* Lord Kinnear) that in any process competent under the Debts Recovery Act 1867, sec. 2, the value of the cause must be the highest sum for which decree can be given.

On 15th July 1895 the Standard Shipowners Mutual Freight, Dead Freight, Demurrage, and Defence Association, Limited, raised an action in the Sheriff Court of Forfarshire at Dundee, under the Debts Recovery (Scotland) Act 1867 (30 and 31 Vict. cap. 96), against Robert Taylor, shipowner, Dundee, for payment of the sum of £12, 4s. 6d., "being amount of call made by the pursuers upon the defender and other members of the Association towards meeting their liabilities for the year 1894-95, and annual membership fees for the year to 20th February 1896."

The defender denied liability for the sums sued for, and denied having been a member of the pursuers' association for the years 1894-95 and 1895-96. At the same time he tendered payment of £8 as the amount of "calls for 1894-95 policy."

On 26th February 1896 the Sheriff-Substitute (SMITH) pronounced an interlocutor finding it to be admitted by the defender that he authorised his name to be entered as a member of the Association for the years 1893-94 and 1894-95, finding it proved that the defender did not expressly or knowingly enter the Association for the year 1895-96; and assoilzieing the defender from the pursuers' claim for £4, 4s., applicable to the year 1895-96.

On 19th May 1896 the Sheriff (J. C. THOMSON) affirmed the interlocutor of the Sheriff-Substitute.

The pursuers appealed to the Court of Session.

The Debts Recovery (Scotland) Act 1867 (30 and 31 Vict. cap. 96), sec. 2, enacts that "it shall be lawful for any Sheriff in Scotland, within his sheriffdom, to hear, try, and determine in a summary way . . . all actions of debt that may competently be brought before him for house maills, men's ordinaries . . . and other the like debts, wherein the debt shall exceed the value of £12 sterling . . . but shall not exceed the value of £50 . . . provided always that the pursuer shall in all cases be held to have passed from and abandoned any remaining portion of any such debt beyond the sum actually concluded for in any such action."

Sections 12 and 13 make provision for appeal to the Court of Session, "where the cause exceeds the value of twenty-five pounds sterling."

In the Court of Session the pursuers printed, though they had not lodged in process, certain accounts rendered by them to the defender, bearing to establish his liability for calls to the extent of £32 in 1894-95, and for a further sum in 1895-96, the total amount alleged to be due being £60, 4s.

Argued for the pursuers and appellants—The appeal was competent. Though the sum sued for was only £12 odds, the question of the defender's membership of the Association, and therefore of his continuing liability, was involved, which made appeal to the Court of Session competent—*Brydon* v. *Macfarlane*, November 2, 1864, 3 Macph. 7; *Drummond* v. *Hunter*, January 12, 1869, 7 Macph. 347, where Lord Barcaple had laid down the true principle for determining such questions—see also *Cunningham* v. *Black*, January 9, 1883, 10 R. 441; *Den* v. *Lumsden*, November 10, 1891, 19 R. 77. The only conflicting case was *Welsh* v. *Duncan*, July 19, 1893, 20 R. 1014. The pursuers had sufficiently instructed that the pecuniary obligations incurred by the defender in respect of membership for 1894-96 amounted to more than £25. If the interlocutor of the Sheriff was not appealable, the question of the defender's liability was *res judicata* in any action for calls due for 1895-96 which the pursuers might make.

Argued for the defender and respondent—The appeal was incompetent. No question of continuing liability was involved. The true analogy was furnished by such cases as *Macfarlane* v. *Friendly Society of Stornoway*, January 27, 1870, 8 Macph. 438; *Dickson* v. *Bryan*, May 14, 1889, 16 R. 673; *North British Railway Company* v. *M'Arthur*, November 5, 1889, 17 R. 30; *Heddle* v. *Gow*, November 26, 1880, 18 S.L.R. 96. The true test was, what sum appears on the face of the summons, or, what is the smallest sum upon payment of which by the defender the pursuer is excluded from his action? The pursuers had not established that even continuing liability involved a sum larger than £25, nor was the decree appealed against one *ad factum præstandum*, as in *Aberdeen* v. *Wilson*, July 16, 1872, 10 Macph. 971, where the decision was only carried by a bare majority. The

pursuers here were in this dilemma—either their action was competent under the Debts Recovery Act 1867, in which case they must be held under sec. 2 to have abandoned all claim for a larger sum than £12; or, if their contention was right, and the Sheriff's interlocutor was appealable, the original action was incompetent under the Debts Recovery Act. The case of the *Duke of Sutherland* v. *Reed*, December 18, 1890, 18 R. 252, showed that what the Sheriff had decided would not be *res judicata* in any future action.

LORD PRESIDENT—I should be prepared to give effect to the principle laid down in the case of *Drummond* in cases to which it is clearly applicable. It seems to me to be a very intelligible view which is stated by Lord Barcaple, and one capable of being applied with precision to similar cases. The principle I understand to be this—*prima facie*, the value of the cause is to be found on the face of the summons, but it may turn out that no decree can be given for the sum concluded for in the summons without determining a question which involves a larger pecuniary amount than £25.

When I turn to the present case I find that it is deficient in the facts postulated for the application of that principle. It is quite true that there is a general contention as to the membership of the pursuers' association, and that that problem had to be solved by the Sheriff in order to give decree for the sum concluded for. But then it does not appear that the amount involved directly in the determining of that question is more than £25. We were referred to documents not in process, and it was admitted that, unless we look at them, there is no material before the Court for instructing a greater amount than £25, as depending on any proposition which must form a basis of judgment. Therefore I think that the facts of this case do not bring it within the principle of *Drummond*.

It is to be observed that this is a purely petitory action, and it is also to be observed that the rights involved in the determination of the main question for judgment—whatever the amount yielded by them—could yield nothing but money. Accordingly it seems to me that the appellant here, as the basis of his right to appeal, ought to have been able, but is unable, to instruct that more than £25 was involved in the larger question tabled for the decision of the Court. On these grounds I think this appeal is incompetent.

LORD M'LAREN—I should be against a very strict construction of the clauses of this Act of Parliament, which limit the right of appeal upon grounds depending on the value of the action, because the expressions used in the statute are, I think, of an intentionally indefinite character, leaving a margin which may be defined by judicial decisions. I think the criterion proposed by Lord Barcaple in the case of *Drummond* does not go in the least beyond what the language of the statute would justify. Where it clearly appears from the pursuers' statement, taken in connection with his petitory conclusions, that the petitory conclusions are not the limit of the question for judgment, but merely represent the amount actually due under a continuing obligation, the decision of the Sheriff is not final in such a case.

I should have been willing to extend that principle to this case if I had thought that it could have been brought within the scope of the decisions as to actions *ad factum præstandum*. But I rather think that the ground on which such actions are appealable is that the value does not admit of pecuniary estimation at all, and therefore that the statute does not exclude the right of appeal. But in this case, so far as we are able to discover, the consequent liability of the defender in respect of his subscription is a thing that admits of pecuniary estimation. We are told that it is known, and that it exceeds the value of £25. Now, as no steps have been taken to amend the record so as to make it appear that there is a question behind which would raise the value of the action above the limit of £25, I agree that there are not materials within the case for applying the rule of *Drummond*. The lease in *Drummond* was for five years, and it was an arithmetical result that the value of the question involved in the decision exceeded the statutory limit. But here the obligation to pay calls is wholly indefinite as to amount, and we do not find it averred, nor does it appear on the face of the proceedings, that the sums involved are in amount beyond £25.

LORD KINNEAR—I agree with your Lordships.

The only process competent under the second section of the Act is a summary process for the payment of a debt, and therefore we must look at this petition as being simply a petitory action for payment of a debt. If that be so, then I think that the value of the cause must be the highest sum for which decree could be given.

I agree with your Lordships that there is nothing more to be found in this action than a conclusion for payment of a sum of £12 odds. It may be that the Sheriff's findings go beyond the conclusions of the action—I do not say whether this is so or not—but if it be so, then neither party can be prejudiced by that.

LORD ADAM was absent.

The Court dismissed the appeal.

Counsel for Pursuers and Appellants—D.-F. Asher, Q.C.—Salvesen. Agent—J. Smith Clark, S.S.C.

Counsel for Defender and Respondent—Kennedy—W. Thomson. Agents—Macpherson & Mackay, S.S.C.