subject, and can see its whole bearings. The *bona fides* of all concerned is perfectly clear. Even if we had not the evidence of Mr Howe, the agent, I should still think anything but *bona fides* out of the question. There were still about eleven years of the lease to run, and the proprietrix thus gave up a sum of more than seven hundred pounds. It was not likely she would do this in order merely to affect the teind of future years; the thing would be absurd. If, then, the transaction was in *bona fides*, as I have no doubt it was here, there remains no difficulty as to what should be held as the constant rent.

LORDS ARDMILLAN and KINLOCH concurred.

Agent for the Reclaimer—A. Beveridge, S.S.C.
Agent for the Respondent—A. Howe, W.S.

Tuesday, November 22.

RIDDLE *v.* MITCHELL.

Reparation—Damages for Wrongous Sequestration—Process—Relevancy. Circumstances in which it was *held* that no sufficient and relevant averments had been made to support an action of damages for wrongous sequestration for rent—the rent being admittedly due at Martinmas, and the sequestration process having been raised on 17th November—the only allegation made in support of the action being "that according to the universal custom of the district, and in the understanding of parties, the rent was not due till 22d November."

This was an appeal from the Steward-court of Kirkcudbright in an action of damages for wrongous sequestration for rent.

The summons concluded that the defender ought "to be decerned to pay to the pursuer the sum of £50 sterling in name of damages and *solatium* for the gross wrong, and manifest and unjustifiable injuries which the pursuer has sustained in his reputation, character, and feelings, in consequence of the defender, who is proprietor of a house and garden situated in Port Street of Dalbeattie aforesaid, which he let to the pursuer, for the year from Whitsunday 1869 to Whitsunday 1870, at the rent of £6, 10s. for the year, and which the pursuer obtained possession of on 26th May 1869, and has since occupied as tenant thereof accordingly, having most nimiously and oppressively, illegally and unwarrantably, and groundlessly and injuriously, as well as wrongfully and maliciously, and without probable cause, raised a small-debt summons of sequestration on the 17th of November 1869, before my Circuit Small-Debt Court at Castle Douglas, at his own instance against the pursuer, on the allegations that he was due to the defender the sum of £3, 5s. as the rent of said house and garden from Whitsunday 1869 to Martinmas in that year, and that the pursuer refused or delayed to pay said rent, which allegations were false, as no part of said rent was due or exigible either by law or according to the universal custom of the district, and in the said stewartry, and the understanding of parties, till 22d November 1869 for the half-year preceding—not expired till that date from said date of entry—and the pursuer had never been asked for and had never refused to pay said rent."

The defence was that the action was irrelevant and incompetent, and contained no statement to warrant the conclusions. The pursuer's statements were denied, and counter statements made.

The Steward-Substitute (JOHNSTON) found the summons relevant and competent, and allowed a proof of the respective averments of parties on these among other grounds, that if the pursuer in this case can show (1) that in the custom of the country the date of payment is fourteen days after the legal term day; and (2) that in the understanding of parties the rent was to be paid according to the custom of the country; he will establish the fact that the sequestration was taken out too soon, and was therefore illegal.

The case was appealed to the Sheriff (HECTOR), who sustained the appeal, and recalled the above interlocutor of the Steward-Substitute. The following are the terms of his interlocutor:—"Finds that, according to the statement in this summons of damages, there was let to the pursuer by the defender a house and garden, situated in Port Street, Dalbeattie, for the year ensuing Whitsunday 1869, at the yearly rent of £6, 10s., and the pursuer occupied the premises in pursuance of said lease; Finds that, according to law, the first half of the said rent, being £3, 5s., became due on 11th November 1869, being Martinmas term-day; and the pursuer has not made averments specific or relevant, and sufficient to the effect of importing or implying an agreement or understanding by the defender that said half-year's rent was not to be payable until 22d November, as now pretended by the pursuer; Finds it not alleged by the pursuer that he made or tendered payment of the said rent before 17th November 1869, when the Small-Debt Court summons, containing warrant to inventory and sequestrate, was raised against him; Finds that the said action and warrant were competent and lawful at the instance of the defender, and in conformity with the provisions of the Small-Debt Act, 1 Vict., cap. 41, § 5, and relative schedule B thereto subjoined; Finds that the pursuer has averred that the defender caused the said warrant to inventory and sequestrate to be executed on 18th November, but finds that, although it was competent for the pursuer to have appeared in the small-debt action to which he was cited, and to have shown cause against the defender's claims therein, he has not averred in this summons of damages that he did so, or obtained any judgment therein to the effect that the foresaid rent had not become payable at or before the date of said action or warrant; Finds that summons of damages was raised on 6th April last (1870), and that the pursuer has not recorded averments relevant or sufficient to support the same, or to be admitted to probation."

The pursuer appealed to the First Division of the Court of Session.

MAIR for him.

CHAS. SCOTT for the respondent.

At advising—

LORD PRESIDENT—I have no doubt about the way in which this case should be decided. The sole ground on which it was alleged that the sequestration was illegally laid on was that the rent was not yet due. The rent in question was admittedly due at the term of Martinmas, and Martinmas means the 11th of November, unless it can be shewn that the usual term day is not intended. All that the pursuer avers is, that according to the universal custom of the country, and in the said stewartry, and the understanding of parties, the rent was not due till the 22d November. That

is not a sufficiently relevant statement to support the conclusions of the summons, and had there existed such a custom, it must have been known to the Sheriff of the county, and would surely have been adduced as a defence in the process of sequestration itself. I am therefore for adhering to the Sheriff's interlocutor, and refusing this appeal.

The other Judges concurred.

Appeal refused.

Agent for Appellant—Wm. Officer, S.S.C.
Agent for Respondent—Stewart, S.S.C.

Tuesday, November 22.

MACBRAIR *v.* SMALL.

Agent and Client—Employment of Agent—Mandate. A party having granted a mandate to certain agents to act for him in an action of multiplepoinding, and "generally in relation to a succession" in which he was interested, *held* liable for the amount of the business account incurred in defending the multiplepoinding, and also an action of declarator raised subsequent to it.

This was an action at the instance of D. J. Macbrair, S.S.C., in Edinburgh, against Alexander Small, formerly farmer at Burnfoot, New Monkland, to recover the amount of a business account incurred by Small to the pursuer as his law-agent in two actions, one of multiplepoinding and the other of declarator, which actions were subsequently conjoined and taken out of Court on a compromise on 24th February 1870 (7 Scot. Law Rep., 332). The question was, whether the defender had employed the pursuer through Messrs Moody, M'Clures, & Hannay, writers in Glasgow, to act as his agent in these actions. After the actions had proceeded for some time, and claims and defences had been lodged in the conjoined processes by the pursuer, both for the defender and for James Scott, grain merchant, Glasgow, a creditor of the defender, to whom he had assigned his right in the succession which was the subject of the litigation, a minute was entered into, and signed by counsel for the parties, whereby the cases were compromised and settled. But on 14th January last the defender appeared by another counsel and agent, and disclaimed having authorised any proceedings to be taken in his name, and especially that there had been any authority to compromise the case. A minute and answers having been ordered, and a proof led before Lord Ardmillan, the case was again heard in February, when, at the suggestion of the Court, a new minute of compromise was entered into, under which the defender got £125, his wife a provision of £1000, under the Conjugal Rights Act, and Scott the balance of the fund *in medio*. When this present action was raised it was agreed by the parties to hold the above-mentioned proof in the question of disclamation as the proof in the case. In the course of said proof a mandate by the defender in favour of the Glasgow agents was produced, authorising them to act for him in the action of multiplepoinding, but not making mention of the action of declarator, being dated before that action was raised. The said mandate, however, also authorised the agents to act as law-agents for the defender "generally in relation to the succession," which was the subject of litigation.

On considering the record and proof, the Lord Ordinary (GIFFORD) found that the pursuer had sufficiently proved that the defender, through his Glasgow agents, employed the pursuer to act as his agent, and that upon this employment the account sued for was incurred. His Lordship proceeded upon the ground that a sufficient written mandate in favour of the Glasgow agents was produced, and that the employment was fully instructed by parole evidence also. Employment by Scott was not inconsistent with employment by the defender too—the interests of both being up to a certain point the same, and the radical interest in the whole litigation with the defender.

The defender reclaimed.

MILLAR, Q.C., and STRACHAN, for him, argued—That the mandate, in any view, only referred to the action of multiplepoinding; and that as the agents had sacrificed the defender's interest to that of their other client Scott, who was the real litigant, and had the sole interest to defend the actions, the mandate fell, not having been acted upon in the sense in which it was granted.

FRASER and GUTHRIE, for the pursuer, were not called upon.

At advising—

LORD PRESIDENT—My Lords, I think that the Lord Ordinary deserves very great credit for arriving so clearly at a conclusion in this case, although he was not conversant with the previous litigation which had taken place. But we know all about it, and have a perfect recollection of the circumstances. There is clear evidence of agency. I consider that the written mandate is quite enough, without any parole evidence, to establish the employment of the Glasgow agents by the defender. That being so, the case is at an end, because the only objection to paying the account is, that the agent was not employed. No doubt there are statements that the agent sacrificed his client, the defender's interest, attending in preference to Scott's interest. That, if true, might possibly give rise to a claim of damages, but if that claim arises the agent will have an opportunity of explaining, and, if necessary, defending, his conduct, which he certainly has not in the present process. I have no doubt that the joint-minute of compromise was prepared with a view to the best interests of all the parties. For these reasons, I am of opinion that the Lord Ordinary's interlocutor should be sustained.

LORD DEAS—I agree with your Lordship. There is here distinct written evidence of legal employment, strengthened by parole evidence. And not only is there unquestionably evidence of employment by the defender, but it is clear that the agents both in Glasgow and Edinburgh accepted this employment in good faith. As regards any claim of damages, I can see no grounds for it. We saw the whole case when it was before us, and the minute of compromise was prepared very much at the suggestion of the Court. The result of the case to the defender was that he practically got the whole fund—£1000 went to his wife, who was then making a claim of aliment against him, which was thereby discharged; £125 went to himself, and the balance went to his creditor Scott in payment of a debt for which he would otherwise have been liable. There seems to me, therefore, to be no grounds at all for resisting this action, and I agree with your Lordship that the Lord Ordinary's interlocutor should be adhered to.

LORD ARDMILLAN concurred.