plished. The scheme of the 15th section is this—the provision to be amended is recited, and then the amendment upon it is specified and enacted. Following upon this come the words "and the provisions of the said section, as amended by this section, shall be in force in Scotland and Ireland." In a word, we have first the amendment of the clause, and next the extension of the clause as amended to Scotland and Ireland, which is the result at which the Sheriff arrived. The case of the appellant presented to us was that the words "as amended" should be read as equivalent to the words "so far as amended;" and were this view to be adopted the result would be the suspender's conclusion. But I am of opinion, as already explained, that the proposed interpolation is inadmissible, because, in the first place, the language of the clause as it stands is unambiguous; in the second place, because the introduction of the words "so far" would not be to interpret, but to alter the clause; and, in the third place, there is nothing in the context which justifies the assumption that the appellant's reading of the clause was that which was intended by the enactment as expressed by the statute. For these reasons I propose to your Lordships that this appeal should be dismissed.

Lord Adam—It appears that the Act 5 Geo. IV. cap. 83, did not before the amendment of the criminal law apply to Scotland. The fourth section of that Act set forth thirteen provisions, and in the middle of the section we find the one under which the present suspender was here convicted. It is in these terms—"Every person going about as a gatherer or collector of alms, endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretence." Then going on, we come to the provision with regard to suspected persons "frequenting any river, highway, &c., with intent to commit felony," and it was thought advisable to alter and amend it, and it is to this extent altered and amended by the 15th section of the Act of 1871, that a more limited meaning is put on the words "highway or place adjacent" by inserting the words "or any highway, or any place adjacent to a street or highway;" and again it is altered and amended to this extent, that in proving the intent to commit felony it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case, and from his known character as proved to the Justices of the Peace or Court before whom or which he is brought, it appears to such Justice or Court that his intent was to commit a felony.

We then come to the clause which enacts that "the provisions of the said section as amended by this section shall be in force in Scotland and Ireland."

Now, *prima facie*, in the ordinary use of the language this means the whole provisions of the said section, and though I admit that there is room for doubt in the matter, yet I find that all the provisions are of the same class and category, and I can see no reason for not giving what I look on as the ordinary interpretation.

I am therefore of opinion that the Sheriff-Substitute is right, and that the provision under which the present complaint was brought is in force in Scotland.

Lord Young—I am of the same opinion. The language to be construed is this—"And the provisions of the said section, as amended by this section, shall be in force in Scotland and Ireland;" and the question is—Do the words "provisions of the said section" refer to the whole of the provisions of the 4th section of the Act of Geo. IV., or to one out of the thirteen, for there appear to be thirteen in all. Now, *prima facie*, the words mean the whole provisions; but if it should appear by reference to the whole of clause 15 of the Act of 1871, where the words occur, that the intention of the Legislature as seen from the terms and scope of the whole clause was clearly to extend only one, I should not feel hindered from giving effect to this by any difficulty I should find in the words. But I am not satisfied that it was clearly the intention of the Legislature to extend one only of the numerous provisions contained in section 14 of the Act of Geo. IV. The matter may be more or less doubtful (I think it is), but it is not sufficiently doubtful to entitle the Court to resist the words as used according to their ordinary plain meaning.

I therefore agree with both your Lordships that the appeal should be dismissed.

The Court refused the bill.

Counsel for Suspender—Guthrie. Agents—Stewart Gellatly & Campbell, S.S.C.

Counsel for Respondent—Lord Advocate (Balfour, Q.C.) — Innes — Brand. Agent — Charles Morton, W.S.

COURT OF SESSION.

Tuesday, January 9, 1883.

FIRST DIVISION.

[Sheriff of the Lothians.

CUNNINGHAM *v.* BLACK.

Process—Appeal—Competency—Value of Cause—Conclusions of Action.

In an appeal in an action at the instance of a landlord to have his tenant ordained to stock and plenish the subjects so as to give security for the current half-year's rent, the respondent (the tenant) objected to the competency of the appeal, on the ground that the amount of the half-year's rent was only £15. It appeared that the question to be decided depended upon whether the respondent was still bound by the lease, of which there were yet four years to run. *Held* that the appeal was competent.

Ebenezer Cunningham, farmer, Gorebridge, proprietor of a dwelling-house and workshop at Mossend there, raised this action in the Sheriff Court at Edinburgh against George Black, at one time a builder in Edinburgh. The prayer of the petition (which is fully quoted in the opinion of the Lord President) was to have the defender, as tenant of the subjects referred to, ordained to stock and replenish the subjects, and failing to do so to have him ejected therefrom.

The defender had entered into a five years' lease, commencing at Whitsunday 1880, of these premises, but after occupying them for a short time under the lease he abandoned them, and sent back the keys to the pursuer. On account of his failure to pay the rent due at Martinmas 1881, the pursuer took proceedings against him for sequestration for rent, and in the sale which followed most of the furniture and effects which had been brought by him into the premises were disposed of. In consequence of his alleged failure to replenish the subjects with other stock and effects, the present application was brought. The half-year's rent of the subjects, which was payable at Whitsunday 1881, and plenishing in security of which the pursuer demanded, was £15.

The defence was that the defender had been misled by the pursuer as to the nature and extent of the business done in the subjects, and that he had been obliged, on finding that the pursuer's representations were untrue, to abandon possession. He stated that he had left sufficient goods on the premises to meet the current half-year's rent, and also that he had proposed to resume occupation, but had been prevented by the pursuer from doing so.

After a proof relating to the questions raised by this defence, the Sheriff-Substitute (HAMILTON) found it not proved that the defender had proposed to resume occupation, and been prevented from doing so by the pursuer; and found in law that the lease was still binding upon the defender, and that the pursuer was entitled to enforce all the obligations under it. He therefore repelled all the defences, and ordained the defender to stock and plenish the premises, or find caution for the rent specified in the petition, *i.e.*, that payable at Whitsunday 1882, under certification that should he fail to do so warrant of ejection would be granted.

On appeal the Sheriff (DAVIDSON) recalled this interlocutor, found that the defender had ceased to occupy the subjects with the consent of the pursuer, and assoilzied him with expenses.

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

The defender objected to the competency of the appeal, on the ground that the value of the cause was only £15, as was shown by the conclusions of the petition, which only referred to one half-year's rent. The case of *Drummond* v. *Hunter*, January 12, 1869, 7 Macph. 347, founded on by the pursuer, was distinguishable.

Argued for the pursuer—Though the conclusions of the action were for security for one half-year's rent, the case involved the question whether a lease for five years was still binding. It was a case almost exactly like *Drummond*.

Authorities—*Singer Manufacturing Company*, May 14, 1881, 8 R. 695; *Aberdeen* v. *Wilson*, July 16, 1872, 10 Macph. 971; *Henry* v. *Morrison*, March 19, 1882, 8 R. 692.

At advising—

LORD PRESIDENT—The first matter to be considered in this case is, whether or not the appeal is competent? I am of opinion that it is competent, and further, that the real value of the cause is not to be determined by the amount of rent, security for which is prayed for in the first part of the prayer of the petition. But the prayer of the petition must be taken as a whole in order to understand the nature and extent of the question decided by the Sheriff-Substitute. It is in these terms:—"To ordain the defender forthwith to stock and replenish that dwelling-house, garden, workshop, stable and yard, situated at Mossend, near Gorebridge, belonging to the pursuer, and let to the defender by lease dated 17th June 1880 for the period from the term of Whitsunday 1880 to Whitsunday 1885, so as to afford sufficient security for payment of the half-year's rent to become payable at the term of Whitsunday next 1882, and failing the defender's so doing within a certain short space to be fixed by the Court, to grant warrant to summarily eject and remove the said defender, his sub-tenants, and dependents, furth and from the said dwelling-house, garden, workshop, stable, and yard, and thereafter to grant warrant to relet the said premises at what rent can be obtained therefor;" and then follows a reservation of the pursuer's claim for the half-year's rent.

Now, we have here a distinct alternative offered to the defender; either he is to replenish the subjects which were displenished by the sale following on the sequestration, or failing his so doing he is to be removed, and warrant is to be granted to the pursuer to relet the premises. In this way the question is fairly raised, whether or not there is a subsisting lease, and that, I think, is the real question for determination in this case; not the narrower one of the defender's liability for a half-year's rent of the premises, but whether or not the landlord has a tenant, and if so, whether the tenant is bound by a five years' lease.

The present question seems to me to be decided by the case of *Drummond* v. *Hunter*, which I consider to be a very sound judgment, while the other cases to which we are referred do not appear to me to have any application. *Aberdeen* v. *Wilson* is the standing authority in cases where the petition concludes for the delivery of certain subjects, or failing delivery for payment of a sum under £25, "or such other sum as shall be ascertained to be the price or value" of such articles. The Court held in that case that such a prayer is of sufficient value to sustain the competency of the appeal, and that holds good whether the sum is mentioned or not.

On the authority of *Drummond* v. *Hunter* I think this appeal is competent. But that case does not here apply. [*On the merits, his Lordship held that the defender had failed to show any reason why he should be liberated from the conditions of his lease.*]

LORD MURE—I concur with your Lordship in thinking that this case is ruled by that of *Drummond* v. *Hunter*, and I do not see that the rule laid down in that case is at all encroached on by the case of *Aberdeen* v. *Wilson*. The rule of law laid down in *Drummond* v. *Hunter* is, that when the true question in a case is whether there is really a subsisting lease, it is of no consequence that the sum concluded for in the prayer is under £25. In the present case the defender is called upon by the conclusions to do certain things under an existing lease, and failing his doing what is required of him he is to be ejected from the premises, and the lease to be held as terminated. That is substantially the nature of the action, and

the mere fact that what the pursuer asks for is security for a half-year's rent, which happens to amount to £15, cannot prevent either party bringing up the case upon appeal when the real value of the cause is above £25.

Lord Shand—I am of the same opinion. Though the conclusions are limited to security for a half-year's rent of the subjects, and that only amounts to £15, yet it cannot be said that that fixes the value of the cause as being under £25. No doubt, in the ordinary case it is usual to look at the conclusions of the summons in order to get at the true value of the cause, but the real question may not thus in every case be disclosed. Even supposing a sum less than £25 be expressly mentioned, if it appears that the real value is in excess of the sum concluded for, then the competency will be determined by the true value of the question.

In the present case, though £15 is the sum mentioned, yet it appears that the real question between the parties is one of much more value. I should, even in absence of authority, have come to the same decision as your Lordships, but in spite of Mr Shaw's attempt to distinguish this case from that of *Drummond*, I am clearly of opinion that the present case is very similar to, and falls to be decided in accordance with, the principles there laid down.

Lord Deas was absent.

The Court sustained the competency of the appeal, and on the merits recalled the interlocutor of the Sheriff and reverted to that of the Sheriff-Substitute.

Counsel for Pursuer—Thorburn. Agent—Andrew Wallace, Solicitor.

Counsel for Defender—Shaw. Agent—David Forsyth, S.S.C.

Wednesday, January 10.

FIRST DIVISION.

[Burgh Court of Stranraer.

M'LELLAND *v.* GARSON.

Process—Competency—Royal Burgh, Magistrates of.

A petition by a landlord to have his tenant ordained to plenish his house, and for warrant for his ejection in the event of his failing to do so, is competent in a Burgh Court.

Royal Burgh—Procedure in Burgh Court—Act of Sederunt 10*th March* 1849*—Appeal.*

Where the procedure prescribed by the above-mentioned Act of Sederunt had not been strictly complied with by the magistrates of a royal burgh—*held* that as the penalty of nullity was not prescribed to follow on the non-observance of its provisions, and as the party complaining of the non-observance had acquiesced in the procedure and taken a judgment on the merits, an appeal on the ground that the proceedings were incompetent fell to be refused.

Alexander M'Lelland, farmer, Balyett, was proprietor of a dwelling-house in Lewis Street, Stranraer. He brought this petition in the Burgh Court of the royal burgh of Stranraer against William Ross Garson, solicitor in Stranraer, whom he alleged to be tenant of this dwelling-house under a lease from August 1881 to Whitsunday 1884, to have him ordained to place furniture and plenishing in the dwelling-house equal in value at least to the year's rent, or find caution for the rent, and failing his doing so, for warrant for his ejection and warrant to relet the premises. A condescendence and note of pleas-in-law were annexed to the petition The respondent denied that he was tenant under the lease referred to, and averred that a stipulation with regard to repairs upon the house, which had been agreed on by the parties and inserted in the draft, had *per incuriam* been omitted from the lease. He averred further that it was not in good tenantable condition, and maintained that in these circumstances he was not liable for rent.

He pleaded that the Burgh Court had no jurisdiction in such an application, and also that the proper procedure being a special form provided by Act of Sederunt for such applications, and the petition not being in conformity therewith, it should be dismissed.

The Act of Sederunt 13th February 1845, as to records in the Courts of royal burghs and burghs of barony, provided (sec. 5), that in all summary applications to be presented in the Burgh Courts . . . "the petition shall state generally (as in the present form of a note of suspension before the Supreme Court) the subject of complaint, setting forth specifically in the prayer the remedy craved," and that there shall be annexed to the petition an articulate statement of facts with note of pleas-in-law.

The Act of Sederunt of 10th March 1849, as to prorogation and proofs in Burgh Courts, provides, (sec. 2) with regard to proofs "that the interlocutor allowing proof shall appoint the place where it is to be taken; and the Court shall in every instance, on due consideration of the circumstances of the case and of the matters to be remitted to probation, assign a time for commencing the proof, and another within which the same shall be reported, unless there be in any process some special cause for omitting all or any of these particulars, in which case such special cause shall be distinctly set forth in the deliverance."

The Magistrates repelled the preliminary pleas, and allowed a proof, after which they found that the respondent was tenant of the house under the lease, that it was in good tenantable condition, and that the respondent had failed to occupy and furnish it. They found in law that he was bound to occupy and plenish it, and ordained him to place such plenishing in it to the satisfaction of the Court, and that within eight days. The interlocutor allowing this proof fixed the date of proof, but did not state the place at which it was to be taken.

The defender appealed to the Court of Session, and argued that the proceedings in the Burgh Court were incompetent. It had no jurisdiction in questions of this kind at the present day, as it had been entirely superseded in such matters by the Sheriff Court. Its jurisdiction had been lost *non utendo*. Further, the interlocutor allowing