

done on the ship is ascertained at £348, 2s. 10d. The charge for transporting, docking, and undocking is £188, 14s. 10d. I do not think that this charge can be sustained in full. It is said that from local circumstances this is an unusually difficult and lengthy operation. The Lord Ordinary in his note where he mentions the matter states that he postpones consideration of it, but I do not find that he has remembered to deal with it. It appears to me that what the Admiralty are entitled to under this head is what may be reasonably held to be the cost, under ordinary circumstances, of taking such a vessel into dock, and that they are not entitled to charge for expenses caused by difficulties peculiar to their own dock where they choose to place their vessel for repairs. It is only possible to deal with such a matter in a jury manner, and I think one-half of the amount claimed is sufficient to allow under this head.

The charge of £180, 18s. 9d. for recoating the bottom we were told at the debate was now no longer contested.

Lastly, £620 is charged for the use of the dock at £20 a-day, which is what the Admiralty charge usually to non-naval vessels when they allow them into the Government dock. This is not, as I think, a sound contention. The part of the damages applicable to the expense of occupying a dry-dock must be estimated by consideration of the cost for which accommodation can be obtained by the owner of a vessel desirous to have it docked at reasonable charges. Now there is evidence which seems satisfactory that such accommodation can be obtained in many docks at £7, £10, £12, or £15 per day. And I do not think that the effect of this fact can be taken away by saying, as the Lord Ordinary does, that these charges are made small because the dock-owners desire to attract shipowners to have their repairing work done in their docks. That does not seem to me to make any difference. If docks can be got cheap, a defender who has to pay for docking of a ship injured by his fault is entitled to have it done at such charges as are usual in the docking of vessels for repairs. Therefore I am in favour of modifying the charge, and think that £12 per day is a reasonable sum to allow, which will amount to £372.

The whole damages will thus amount to £995, 9s., for which I would move that your Lordships grant decree.

LORD LOW, LORD ARDWALL, and LORD DUNDAS concurred.

The Court pronounced this interlocutor—

“ . . . Recal the interlocutor reclaimed against, and decern against the defenders for payment to the pursuers of the sum of £995, 9s. with interest thereon as craved. . . . ”

Counsel for the Pursuers (Respondents)—
 Lord Advocate (Ure, K.C.)—Hunter, K.C.
 —Pitman. Agent—Thomas Carmichael, S.S.C.

Counsel for the Defenders (Reclaimers)—
 Dean of Faculty (Dickson, K.C.)—Murray, K.C.—Lippe. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, March 17.

FIRST DIVISION.

[Sheriff of Lanarkshire.

STEVENSON AND OTHERS v. SHARP.

Sheriff—Appeal—Competency—Summary Cause—Value of Cause—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), secs. 3 (i) and 8.

The Sheriff Courts (Scotland) Act 1907 enacts—sec. 3 (i)—“ ‘Summary cause’ includes (1) actions . . . for payment of money exceeding twenty pounds and not exceeding fifty pounds, exclusive of interest and expenses . . . ” Sec. 8—“ . . . In a summary cause if the Sheriff on appeal is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then, or within seven days from the date of his interlocutor, grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final.” Sec. 28—“ Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute, or of a Sheriff, but that only if the value of the cause exceeds fifty pounds, and the interlocutor appealed against is a final judgment . . . ”

In a Sheriff Court action for payment of two sums of £26, 12s. *in cumulo*, being the interest due at Martinmas 1908 on two bonds and dispositions in security, payment of said interest having, as the pursuer averred, been undertaken by the defender in terms of a letter of obligation granted by him to pursuer’s agents, the Sheriff-Substitute assailed the defender. On 3rd July 1909 the Sheriff recalled that interlocutor and dismissed the action, and on 4th August 1909 granted the pursuer leave to appeal. In the Court of Session the defender objected to the competency of the appeal on the ground that the action was a summary cause and that the Sheriff had not stated any questions of law for appeal as required by section 8. *Held* that as it was apparent on the face of the initial writ that the action inferred a continuing obligation of greater value than £50, the cause was not a summary one in the sense of section 8, and objection *repelled*.

Duke of Argyll v. Muir, 1910 S.C. 96, *supra* p. 67, distinguished.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 8, enacts—“ In a summary cause the Sheriff shall order such procedure as he thinks requisite, and (with-

out a record of the evidence, unless on the motion of either party the Sheriff shall order that the evidence be recorded) shall dispose of the cause without delay by interlocutor containing findings in fact and in law. Where the evidence has been recorded the judgment of the Sheriff-Substitute upon fact and law may in ordinary form be brought under review of the Sheriff, but where the evidence has not been recorded, the findings in law only shall be subject to review. In a summary cause, if the Sheriff, on appeal, is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then, or within seven days from the date of his interlocutor, grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final."

Sections 3 (i) and 28 are quoted *supra* in rubric.

Miss Marjorie Stevenson, Kilsyth, and Fyfe, Maclean, & Company, writers, Glasgow, her agents, raised an action in the Sheriff Court at Glasgow against H. D. Sharp, house factor, Glasgow, in which they claimed payment of (*first*) the sum of £11, 8s. being the interest (less income-tax) due at Martinmas 1908 to the pursuer Miss Stevenson at the rate of 4 per cent. per annum on a bond and disposition in security for £600 over her property in Plantation, Glasgow; and (*second*) the sum of £15, 4s., being the interest (less income-tax) also due to the pursuer at Martinmas 1908 at the same rate on a bond and disposition in security for £800 over the same subjects, both of which sums, the pursuer averred, the defender had become liable for in terms of a letter of obligation granted by him to Fyfe, Maclean, & Company, her agents.

On 21st January 1909 the acting Sheriff-Substitute (WELSH) allowed a proof before answer, and on 25th May 1909, the proof having been taken and the evidence thereof recorded, the Sheriff-Substitute (FYFE) pronounced the following interlocutor:—"Finds in fact (1) that in July 1906 the late Mr James Burden was the proprietor of several properties in Glasgow, including a property in Maclean Street, Plantation; (2) that the said Mr Burden appointed the defender as his factor to manage the whole of his properties in Glasgow; (3) that the said James Burden had granted a bond and disposition in security for £1400 over his heritable subjects in Maclean Street, Plantation, under which bond the pursuer Marjorie Stevenson was the heritable creditor; (4) that interest was payable under said bond half-yearly at the rate of 4 per cent.; (5) that the other pursuers Fyfe, Maclean, & Company are pursuer's law agents; (6) that at the request of Fyfe, Maclean, & Company the defender, on 27th July 1906, addressed to them a letter in the following terms:—"Messrs Fyfe, Maclean, & Company, writers, Glasgow.—490 Paisley Road, Glasgow, 27th July 1906.—Dear Sirs,—James Burden.—In respect I have now got charge of the various properties belonging to Mr Burden,

I undertake to apply the rents in payment of the interest due to the bondholders in the order of their preference on the properties after payment of the feu-duties, ground-annuals, insurance, taxes, and repairs.—Yours truly, (sgd.) HENRY D. SHARP. William Black, 115 St Vincent Street, Glasgow, witness. Ralph E. May, 115 St Vincent Street, Glasgow, witness"; (7) that at that date pursuer's interest was not in arrears; (8) that the defender collected the rents of the property covered by pursuer's bond and disposition in security; (9) that the defender has collected the rents due at Martinmas 1908; (10) that the pursuer's interest, due at Martinmas 1908, is still unpaid: Finds in law that the defender's letter above quoted is not a personal obligation by him valid to support the present action: Therefore assoilzies the defender: Finds him entitled to expenses," &c.

On 27th May 1909 the pursuers appealed to the Sheriff, who on 29th July 1909 pronounced the following interlocutor:—"Finds in fact and in law in terms of the interlocutor of 25th May last; *quoad ultra* recalls said interlocutor and dismisses the action, and decerns: Finds the defender entitled to expenses, including those of the appeal; allows an account to be given in, and remits to the Auditor of Court to tax the same, and report; and to the Sheriff-Substitute to decern for the taxed amount: Sanctions the employment of one counsel."

On 4th August 1909 the Sheriff granted leave to appeal.

The pursuers having lodged their appeal the defender objected to the competency thereof, and argued—The cause was a summary one, and the Sheriff not having stated any questions of law in his interlocutor as required by the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 8, the appeal was incompetent—*Duke of Argyll v. Muir*, 1910 S.C. 96, 47 S.L.R. 67.

Argued for the pursuers—The appeal was competent. The cause was not a summary one, and if it was, leave had been granted, and that was sufficient, taken with the fact that there was an important question of law to be decided.

At advising—

LORD JOHNSTON—This case bears to be distinguished from that of the *Duke of Argyll v. Muir*, 1910 S.C. 96, in respect that the interlocutor complained of is not an interlocutory but a final judgment. The reasoning applied in sustaining the appeal in that case is therefore not applicable to the present.

This case was argued to this Court on the assumption that, like the *Duke of Argyll's* case, the action in which the appeal was taken was, in the sense of the Sheriff Courts Act 1907, a summary cause. So viewed, the case presents some points of difficulty, which I admit must sooner or later be entertained and disposed of, in applying this new code of Sheriff Court procedure to current litigation. But I venture to inquire, first, whether the present really is a summary cause? By the

interpretation clause of the Act (section 3) a summary clause is, so far as we are here concerned, an action for payment of money exceeding £20 and not exceeding £50. Now in the *Duke of Argyll's* case the sole and whole conclusion of the action was for payment of £30 in money; and on the face of the summons, therefore, I thought and still think that the action fulfilled the criterion of a summary cause. It was only when the defences were tabled that it came to be seen that, if the matter raised by the defences was to be entertained in that summary cause, a very large question involving a great deal more than the mere sum of £30 in money would have to be decided. But that did not affect the applicability of the statutory definition. The present case, however, is quite distinguishable. On the face of the summons, or of what is now to be called the initial writ, it is apparent that the case is not merely one for recovery of a certain sum of money above £20 and under £50, but one to determine a continuing obligation, and virtually involving declarator of the meaning and effect of an obligatory document.

The claim of the pursuer is for payment of two sums making *in cumulo* £26, 12s., being the interest due at Martinmas 1908 on two bonds and dispositions in security over certain subjects in M'Lean Street, Plantation, Glasgow, belonging to the late James Burden held by the pursuer, "payment of said interest having been undertaken by the defender in terms of letter of obligation granted by him to that effect" to Messrs Fyfe, M'Lean, & Company, agents for the pursuer. When the letter on which this claim is founded is looked at, it is at once apparent that it governs not merely the pursuer's claim of interest for the half-year ending Martinmas 1908, but that for subsequent half-years. The pursuer cannot succeed in her claim without obtaining a favourable interpretation of the letter of obligation founded on. If the pursuer is well founded in her claim, the interpretation which she seeks to have placed upon this letter imports a continuing obligation so long as the defender's present relation to the property continues. If necessary this is made still more clear by a subsequent passage in the initial writ, whereby the pursuer reserves her "whole other rights and interests under said letter of obligation with reference to the said two bonds and dispositions in security" respectively. Accordingly I do not think that the present is a claim for £26, 12s. merely, or the action a summary cause in the sense of the statute; and this being apparent on the face of the initial writ, and not dependent upon matters raised in defence, I think that the case falls to be distinguished from that of *Duke of Argyll v. Muir*, and that we are not concerned with the application of the 8th section of the statute. The action is then an ordinary action, and the right of appeal is dependent upon section 28, which provides that "subject to the provisions of this Act it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but

that only if the value of the cause exceeds £50 and the interlocutor appealed against is," *inter alia*, a final judgment. The judgment appealed against is a final judgment, and though the sum concluded for is only £26, 12s., inasmuch as the decision which involves the interpretation of the obligatory document in question affects future termly payments of the same amount, there is no doubt that, following authority, the value of the cause is more than £50, and that the appeal is therefore competent. The Sheriff has, *ob majorem cautelam*, granted leave to appeal, but that was unnecessary and may be taken *pro non scripto*.

In conclusion I would advert for a moment to section 9 of the statute, which at first sight makes the Sheriff sole judge of the value of the cause. But in the collocation in which that section is found I think it clear that its provision applies only to proper summary causes, and does not preclude the inherent right of the Court of Session, when necessary, to determine the value of a cause for the purposes of appeal.

LORD KINNEAR intimated that the LORD PRESIDENT, who was absent, concurred in the judgment proposed by Lord Johnston.

LORD KINNEAR—I also agree, subject only to a reservation as to what my learned brother said about my own opinion in the case of the *Duke of Argyll*. I agree that that case is distinguishable, and therefore I do not think it is necessary to examine in detail the precise effect of the judgment, although it may be necessary to do so in some future case which may not be so distinguishable as this. Otherwise I entirely concur in Lord Johnston's judgment.

The Court repelled the defender's objections to the competency of the appeal.

Counsel for the Pursuers and Appellants—Cooper, K.C.—Stevenson. Agent—Campbell Fail, S.S.C.

Counsel for the Defender and Respondent—M'Kechnie, K.C.—Mackenzie Stuart. Agent—Alexander Ramsay, S.S.C.

Thursday, March 17.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

BEUCKER v. ABERDEEN STEAM
TRAWLING AND FISHING COMPANY,
LIMITED.

Ship—Collision—Regulations for Preventing Collisions at Sea, Articles 19, 21, and Note, 27, and 29—Observance of Regulations—Onus when Regulations Departed from.

Article 19 of the Regulations for Preventing Collisions at Sea (in force since 1st July 1897) provides—"When two steam vessels are crossing, so as