Friday, May 24.

FIRST DIVISION.

[Sheriff Court at Stirling.

THE GLASGOW GOLDSMITHS COMPANY *v.* MACKENZIE & COMPANY.

Sheriff—Process—Summary Proceedings—Gold and Silver Plate (Scotland) Act 1836 (6 *and* 7 *Will. IV, cap.* 69), *sec.* 22.

Penalties incurred under the Gold and Silver Plate (Scotland) Act 1836, sec. 22, can only be sued for in a summary way and not in an ordinary Sheriff Court action.

The Gold and Silver Plate (Scotland) Act 1836 (6 and 7 Will. IV, cap. 69) enacts—Section 22—"And be it further enacted that all penalties and forfeitures imposed by this Act shall be recovered by any person or persons who shall sue for the same before any two justices of the peace having jurisdiction within the county, city, burgh, or place in which the offence shall have been committed or where the alleged offender shall reside, or before the sheriff of any such county; and it shall be lawful for such justices or sheriff to proceed in a summary way, and to grant warrant for bringing the parties complained of immediately before them or him, and on proof by the confession of the offender, or on the oath of one or more credible witness or witnesses or other legal evidence, forthwith to determine and give judgment in such complaint; and if on conviction the penalties hereby imposed be not immediately paid, the said justices or sheriff are hereby empowered to grant warrant for the recovery thereof, and of the expenses decreed for, by poinding and sale, according to the law of Scotland; and in case such penalties shall not be forthwith paid upon conviction, and if by the confession of the offender, or the report of a sheriff's officer or constable, it shall appear that no sufficient goods or effects can be found within any place in the said county known to such officer or constable, then it shall be lawful for such justices or sheriff, by a warrant under their or his hand, to cause such offender or offenders to be committed to the common gaol or house of correction for the said county where the matter of complaint may arise, or for the nearest burgh in such county, there to remain without bail for such time as such justices or sheriff shall direct, not exceeding six calendar months, unless such penalties and all reasonable charges attending the recovery thereof shall be sooner paid and satisfied; and the penalties so paid or recovered shall belong, one-half thereof to the person or persons suing for the same, and the other half thereof to His Majesty, his heirs and successors: Provided always . . .; and the judgment of such sheriff . . . shall be final, and shall not be subject to review by advocation, suspension, reduction, or otherwise."

The Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65) enacts—Section 4—"This Act, so far as relating to summary procedure, shall apply to summary proceedings in respect of . . . (*b*) any offence or the recovery of a penalty under any statute which does not exclude summary procedure. . . ." Section 26—"All proceedings under this Act in respect of the contravention of any statute or order shall, unless the statute or order under which the prosecution is raised fix any other period, be commenced within six months after the contravention occurred. . . ."

The Glasgow Goldsmiths Company, incorporated by the Act 59 Geo. III, cap. 28, and having their office at 8 Princes Square, Glasgow, *pursuers*, raised an action in the Sheriff Court at Stirling against Mackenzie & Company, silversmiths, 12 George Street, Stirling, and John H. Mackenzie, the only known partner of the said firm, *defenders*. The claim or demand of the pursuers was—"(*First*) for forfeiture and payment by the defenders of the sum of six hundred pounds, being the amount of penalties incurred by them under section 2 of the Act 6 and 7 Will. IV, cap. 69, in respect of their having made six silver quaichs, and having used or struck on said quaichs marks other than the mark which they in terms of said section of said Act had sent to the Wardens of the Incorporation of Goldsmiths of Edinburgh, or to the Wardens of the Glasgow Goldsmiths Company as the mark to be stamped on articles made by them, . . . the defenders being liable in the sum of one hundred pounds for each of said offences; and (*Second*) for forfeiture and payment by the defenders of the further sum of six hundred pounds, being the amount of penalties incurred by them under section 18 of said Act 6 and 7 Will. 4, cap. 69, in respect of their having sold the said six silver quaichs without having first sent the same to the Assay Office of the said Incorporation of Goldsmiths of Edinburgh or of the said Glasgow Goldsmiths Company, as required by section 3 of said Act, . . . the defenders being liable in a sum not exceeding one hundred pounds for each quaich so sold."

The defenders pleaded, *inter alia*—"(1) The Court has no jurisdiction, in respect proceedings in the inferior courts for recovery of alleged penalties imposed by the statute founded on can only be brought in the Sheriff's Criminal Court under the Summary Jurisdiction (Scotland) Act 1908. (5) Prescription and limitation, under the Summary Jurisdiction (Scotland) Act 1908."

On 17th July 1911 the Sheriff-Substitute (MITCHELL) sustained the defenders' first plea and dismissed the action.

The pursuers appealed to the Sheriff (LEES), who on 24th October refused the appeal and adhered to the judgment of the Sheriff-Substitute.

The pursuers appealed to the Court of Session.

Argued for the pursuers—They admitted that if it was necessary to take summary proceedings that had not been done, and

that the statutory limitation of section 26 of the Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 95) would apply, as more than six months had expired since the contraventions, but they submitted that the portion of section 22 of the Gold and Silver Plate (Scotland) Act 1836 (6 and 7 Will. IV. cap. 69) from "it shall be lawful for such justices or sheriff" down to "unless such penalties . . . shall be sooner paid or satisfied" was permissive and alternative. It was to be observed that section 6 of the Summary Jurisdiction Act preserved the right of suing for penalties. The penalties incurred under the Gold and Silver Plate Act, like those under similar Acts, were civil debts and were recoverable by ordinary action—*Campbell* v. *Young*, February 24, 1835, 13 S. 535; *Dunlop* v. *Hart*, June 20, 1835, 13 S. 1173; *M'Donald* v. *Gray*, February 17, 1844, 2 Broun 107; *MacDonald* v. *Young*, January 20, 1862, 4 Irv. 154; *Caledonian Railway Company* v. *M'Gregor*, May 13, 1909, 46 S.L.R. 721; Moncrieff's Review in Criminal Cases, 273 and 279.

Argued for the defenders — The only method of procedure allowed under the Gold and Silver Plate Act, section 22, was by summary proceeding, and that had not been followed. Procedure by ordinary action was incompetent. Reference was made to *Glasgow City and District Railway Company* v. *Hutchison*, March 20, 1884, 5 Coup. 420.

LORD PRESIDENT—I think that the result to which the Sheriffs have come is right, although I am not quite certain that I have come to that conclusion on the same grounds as the Sheriffs did, because in their notes they have touched upon many topics which are not necessary for the disposal of the action.

The question must necessarily turn upon what is the true interpretation of section 22 of the Gold and Silver Plate Act. Now I think when one reads that section it is quite clear that the only procedure which is contemplated in that section is procedure of a summary character, and that it is not meant there to give ordinary civil action—it may be for very large sums of money—with a privative jurisdiction to the Sheriff Court or the Court of the Justices of the Peace. If that is so, the right view of the procedure that is contemplated by section 22 is that it was meant to be a summary application, and then all difficulty is really at an end. There might have been difficulties as to review under the earlier law, but under the existing law—as the result of the two statutes, the Sheriff Court Act of 1907 and the Summary Jurisdiction Act of 1908—it is quite clear that the proceedings must be taken under the forms of the Summary Jurisdiction Act, because there is nothing else left.

Now, admittedly, this procedure has not been taken under the form of the Summary Jurisdiction Act, and therefore I think the action fails, there being no warrant for the form in which it has been brought.

LORD JOHNSTON—I agree with your Lordship. I have come to the same conclusion as the Sheriffs, although I do not wish to be held as endorsing everything that they say on the subject. Section 22 gives right to sue for a penalty, and, as I read it, says that if you do sue you must sue in the following way, and that following way is a summary way. Whether the suit is civil or criminal we do not need to decide, but it certainly cannot be entertained under the ordinary civil procedure of the Sheriff Court.

LORD SKERRINGTON—I concur.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court dismissed the appeal.

Counsel for the Pursuers (Appellants)—The Solicitor-General (Anderson, K.C.)—Wark. Agents—Gill & Pringle, W.S.

Counsel for the Defenders (Respondents)—Morison, K.C.—T. G. Robertson. Agent—Dugald Maclean, Solicitor.

Wednesday, June 12.

FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Hawick.

MELROSE PARISH COUNCIL *v.* HAWICK PARISH COUNCIL.

Sheriff — Process — Appeal — Competency—Value of Cause—Continuing Liability no longer Involved—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, c.* 51), *sec.* 28.

In an action raised in the Sheriff Court by the parish of M. against the parish of H. for (1) repayment of a sum of £17 odd expended by them for behoof of Y., a patient in the district asylum, and (2) relief of future advances, the Sheriff assoilzied the defenders. At the date of the judgment Y. had recovered and had left the asylum. On the pursuers appealing to the Court of Session objection was taken to the competency of the appeal on the ground that as Y. had recovered no question of future liability was involved and that accordingly the value of the cause was beneath the statutory limit.

Held that the appeal was incompetent.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 28, enacts—"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 cause exceeds fifty pounds . . ."

Mrs Janet Young, wife of William Young, baker, Hawick, was admitted as a private patient into the Roxburgh District Asylum on 24th October 1910. Her board was paid by her husband up to 24th January 1911,