Tuesday, June 16.

EXTRA DIVISION.

[Sheriff Court at Perth.

THE CITY OF GLASGOW *v.* GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED.

Sheriff—Process—Appeal—"Final Judgment"—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *secs.* 3 (*h*) *and* 28—*Sheriff Courts (Scotland) Act* 1913 (2 *and* 3 *Geo. V, cap.* 28), *sec.* 2—*Court of Session Act* 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 53.

In an action in the Sheriff Court in which a number of defenders were called the Sheriff pronounced an interlocutor sustaining an appeal by the pursuers from the Sheriff-Substitute, repelling the pleas-in-law for the compearing defenders, and remitting the cause to the Sheriff - Substitute. The compearing defenders having appealed to the Court of Session, *held* that the interlocutor was a final judgment, and therefore appealable, in respect that there was a proper competition in the case in which the appellants were one of the parties, and that by the interlocutor under appeal the whole of their pleas and contentions were finally disposed of.

The Sheriff Courts (Scotland) Act 1907 (7 Edward VII, cap. 51), as amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28) enacts:—Section 3—"In construing this Act (unless where the context is repugnant to such construction), . . . (*h*) 'final judgment' means an interlocutor which, by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for." Section 28—"(1) Subject to the provisions of this Act it shall be competent to appeal to the Court of Session against a judgment either of a Sheriff or of a Sheriff-Substitute if the interlocutor appealed against is a final judgment or is an interlocutor—(*a*) Granting interim decree for payment of money other than a decree for expenses; or (*b*) sisting an action; or (*c*) refusing a reponing note; or (*d*) against which the Sheriff or Sheriff-Substitute, either *ex proprio motu* or on the motion of any party, grants leave to appeal."

The Court of Session Act 1868 (31 and 32 Vict. cap. 100) enacts:—Section 53—"It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary which, either by itself, or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced upon all the questions of law or fact raised in the cause; but it shall not prevent a cause from being held as so decided that expenses, if found due, have not been taxed, modified, or decerned for: And for the purpose of determining the competency of appeals to the Court of Session, this provision shall be applicable to the causes in the Sheriff and other inferior courts, the name of the Sheriff or other inferior judge or court being read, instead of the words 'the Lord Ordinary,' and the name of the Sheriff Court or other inferior court being read instead of the words 'Outer House.'"

The Lord Provost, Magistrates, and Councillors of the City of Glasgow, *pursuers*, brought an action in the Sheriff Court at Perth, against Masterton & Williamson, horse-hirers, Mill Street, Perth, *arrestees*, and James Macleish, plumber, 15 Mill Street, Perth, *defenders*, for satisfaction of a decree previously obtained against them in the Sheriff Court for the delivery of certain articles. The General Accident Fire and Life Assurance Corporation, Limited, General Buildings, Perth, subsequently sisted themselves as *defenders* in the action.

On 17th December 1912 the Sheriff-Substitute (SYM) *refused* to grant the warrant craved, and the pursuers appealed to the Sheriff (JOHNSTON), who on 20th June 1913 pronounced the following interlocutor:—"Sustains the appeal: Recals the Sheriff-Substitute's interlocutor of 17th December 1912: Finds that the articles referred to in the initial writ were delivered in security of prior debt to the minuters the General Accident Corporation Limited, within sixty days of the notour bankruptcy of the debtor, and that the security is invalid: Repels the pleas-in-law for the said General Accident Corporation, Limited: Finds no expenses due to or by the said Corporation, and remits the cause to the Sheriff-Substitute."

The defenders, the General Accident Fire and Life Assurance Corporation, Limited, appealed.

The respondents objected to the competency of the appeal, and argued—The Sheriff's interlocutor was not appealable, in respect that it was not a final judgment as defined in the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 81), secs. 3 (*h*), or an interlocutor of procedure appealable by section 28, as amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), sec. 2. The interlocutor was final merely *quoad* the appellants, but did not dispose of the merits of the case. There was an absence of an operative decree, which made the judgment an interlocutory one merely—*Governors of Strichen Endowments* v. *Diverall*, November 13, 1891, 19 R. 79 (L.P. Robertson at 80), 29 S.L.R. 102.

Argued for the appellants—The interlocutor of the Sheriff was a final judgment, the case being directly ruled by the *Duke of Roxburghe and Others*, May 26, 1875, 2 R. 715, in respect that the interlocutor was final as regards the only parties who had appealed. It disposed of one of the parties in a competition—*Governors of Strichen Endowments* v. *Diverall* (*supra*); Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 53. The whole defences of the

appellants had been disposed of by the interlocutor—*Malcolm* v. *M'Intyre*, October 19, 1877, 5 R. 22, 15 S.L.R. 8. When the real question between the parties had been determined, the continuing of the cause did not render the interlocutor any the less final —*M'Ewan* v. *Sharp*, January 13, 1899, 1 F. 393, 36 S.L.R. 292; *Turner's Trustees* v. *Steel*, January 9, 1900, 2 F. 363, 37 S.L.R. 250.

At advising—

LORD DUNDAS—An objection was taken to the competency of this appeal. The action was brought by the Lord Provost and Magistrates of Glasgow against (1) the firm of Masterman & Williamson, as arrestees, and (2) a certain James Macleish as principal debtor. The appellants, the General Accident, Fire, and Life Assurance Corporation, Limited, compeared by minute and were sisted as defenders. The real competition, or at all events the serious competition, in the case is between them and the pursuers. In the interlocutor appealed against the Sheriff "sustains the appeal; recals the Sheriff-Substitutes interlocutor of 17th December 1912; finds that the articles referred to in the initial writ were delivered in security of prior debt to the minuters, the General Accident Corporation, Limited, within sixty days of the notour bankruptcy of the debtor, and that the security is invalid; repels the pleas-in-law for the said General Accident Corporation, Limited; finds no expenses due to or by the said Corporation, and remits the cause to the Sheriff-Substitute." The question is, whether that interlocutor is open to appeal. That depends upon various statutory provisions, the first being section 28 of the Sheriff Courts (Scotland) Act 1907 as it now stands amended by the recent Sheriff Courts (Scotland) Act 1913. There one finds that "Subject to the provisions of this Act it shall be competent to appeal to the Court of Session against a judgment either of a Sheriff or of a Sheriff-Substitute if the interlocutor appealed against is a final judgment or is an interlocutor" of one or other of four classes which are specified, and which admittedly do not cover the interlocutor with which we are dealing. The question therefore so far is, does this interlocutor fall within the words "final judgment"? "Final judgment" is defined in section 3, sub-section (*h*), of the Act of 1907, which is not altered by the Act of 1913—"'Final judgment' means an interlocutor which by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for." We must further also have regard to section 53 of the Court of Session Act of 1868, which has not been in any way touched or repealed by recent legislation, and which, although in terms applicable to Court of Session procedure, is by the concluding words made applicable also to appeals from the inferior courts. Section 53 says—"It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary, which either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced upon all the questions of law or fact raised in the cause;" and then it goes on to deal with the matter of expenses.

Now these being the relevant sections, the question for our decision is whether the interlocutor before us is an appealable interlocutor? I think it is. It is quite true that the learned Sheriff's interlocutor does not pronounce an operative decree in terms of either of the alternative craves of the petition. But his interlocutor does deal with the validity or invalidity of the appellants' security; it holds it to be invalid, and repels all their pleas. Further, the interlocutor deals with the matter of expenses as between the appellants and the pursuers. They have, so far as I see, no further interest or place in the litigation. It is true that there is a remit of the case back to the Sheriff-Substitute; but in spite of that, for all I know, there may be no further procedure in the case. At all events, the appellants are forced out of the case in the Court below; and it seems to me that if they cannot appeal now they will never be able to do so. The competition in which they are concerned has been, in my judgment, finally disposed of in the Court below. I am for repelling the objection and proceeding to hear the case on the merits.

LORD MACKENZIE—I am of the same opinion. The ground upon which I consider that the appeal is competent is that there was a proper competition in which the appellants were one of the parties, and that by the interlocutor under appeal the whole of their pleas and contentions are finally disposed of. No subsequent interlocutor can affect their rights in any way; they are finally put out of the case. Now unless we are to consider the term "final judgment" in the Sheriff Courts Act in a narrower sense than when one is dealing with an interlocutor of the Court of Session, then it is a final judgment, because it finally disposes of one of the parties in the competition. I think we are entitled to have regard to the terms of section 53 of the Court of Session Act of 1868 in order to enable us to put a proper construction upon the term "final judgment" in section 28 (1) of the Sheriff Courts Act.

LORD CULLEN—I entirely concur.

The Court repelled the objections.

Counsel for the Pursuers (Respondents)—Constable, K.C.—J. G. Jameson. Agents—Bonar, Hunter, & Johnstone, W.S.

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