Saturday, January 21.

FIRST DIVISION.

[Lord Ashmore, Ordinary on the Bills.

BROWN & CRITCHLEY, LIMITED, *v.* DECORATIVE ART JOURNALS COMPANY, LIMITED.

Jurisdiction—Sheriff—Company—Registered Office—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 6 (*b*)—*Companies (Consolidation) Act* 1908 (8 *Edw. VII, cap.* 69), *sec.* 62.

Process—Sheriff—Citation—Company—Citation at Place of Business outwith Sheriffdom—Companies (Consolidation) Act 1908 (8 *Edw. VII, cap.* 69), *sec.* 116.

Process—Review—Competency—Suspension—Value of the Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *sec.* 7.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), as amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), enacts—section 6—"Any action competent in the Sheriff Court may be brought within the jurisdiction of the Sheriff. . . . (*b*) Where the defender carries on business and has a place of business within the jurisdiction, and is cited either personally or at such place of business." Section 7—"Subject to the provisions of this Act and of the Small Debt Acts all causes not exceeding fifty pounds in value, exclusive of interest and expenses, competent in the Sheriff Court shall be brought and followed forth in the Sheriff Court only, and shall not be subject to review by the Court of Session. . . ." First Schedule, Rule 10—"Any warrant of citation . . . may in any competent manner be lawfully executed within the jurisdiction of any Sheriff without indorsation by the sheriff clerk of that jurisdiction, and if executed by an officer may be so executed by an officer of the court which granted the warrant . . . or by an officer of the jurisdiction within which it is to be executed."

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—section 62 (1)—"Every company shall have a registered office to which all communications and notices may be addressed." Section 116—"A document may be served on a company by leaving it at or sending it by post to the registered office of the company."

An action brought in sheriffdom A against a company having its registered office there was served upon the company at a place of business possessed by it in sheriffdom B. Decree in absence having been obtained for a sum of £44, 4s., with interest and expenses, the pursuers charged on the decree, serving the charge at the place of business. The days of charge expired without payment, and the pursuers presented a petition for winding up the company. A note of suspension of the decree and charge was thereupon presented by the company in the Bill Chamber. The sum in the decree together with interest and expenses did not exceed £50. *Held* (1) that in respect that the registered office of the company was in sheriffdom A the Sheriff had, at common law, jurisdiction antecedent to and independent of citation; (2) that the citation at the place of business in sheriffdom B, though irregular, was not null and void; and (3) that therefore the decree in absence not being fundamentally null, and the value of the cause not exceeding £50, the suspension in the Bill Chamber was incompetent.

Brown & Critchley, Limited, colour, paint, and varnish manufacturers, Lenzie, and having their registered office at 104 West George street, Glasgow, *complainers*, presented a note of suspension in the Bill Chamber against the Decorative Art Journals Company, Limited, 9 Albert Square, Manchester, *respondents*, in which they prayed the Court to suspend a decree against them obtained by the respondents in the Sheriff Court of Lanarkshire at Glasgow on 23rd September 1921, and a charge thereon.

From the averments of the parties it appeared that the registered office of the complainers, who were a private company incorporated under the Companies Acts 1908-1917, was in the sheriffdom of Lanarkshire, while their place of business at Lenzie was in the sheriffdom of Dumbarton. The respondents, who were advertisers in Manchester, brought an action against the complainers in the Sheriff Court of Lanarkshire at Glasgow. In the writ the complainers were designed as colour, paint, and varnish merchants, Lenzie, near Glasgow, and service was made upon them at their premises in Lenzie and not at their registered office in Glasgow. When the writ was served the respondents did not know that the complainers' registered office was in Glasgow. The complainers made no appearance in the action and on 23rd September 1921 the respondents obtained decree in absence for £44, 4s. with interest from 10th September 1921 and £5, 3s. 8d. expenses. The respondents then extracted the decree and charged upon it, the decree and charge designing the complainers as they were designed in the writ. The charge was served at the business premises in Lenzie by a sheriff officer who believed at the time that the premises were in Lanarkshire. When the days of the charge had expired without payment the respondents presented a petition to the Court of Session to have the complainers' company wound up and a liquidator appointed. The complainers, who had in fact received both the service copy of the writ and of the charge but had taken no steps to challenge them, then brought the note of suspension.

They *pleaded*—"1. Said pretended charge having proceeded upon a pretended decree in a process in which there was no jurisdiction against the complainers, the com-

plainers are entitled to have the same suspended. 2. The said pretended decree and pretended charge being in the circumstances incompetent, irregular, and illegal, decree should be pronounced in terms of the note, with expenses to the complainers."

The respondents pleaded, *inter alia*—"1. The note as laid is incompetent and should accordingly be dismissed. 2. The complainers' averments being irrelevant and insufficient to support the prayer of the note, the note should be dismissed. 3. The said decree having been pronounced by a Court of competent jurisdiction, and the charge following thereon having been validly executed, the note should be refused."

On 30th November 1921 the Lord Ordinary (ASHMORE) refused the note.

Opinion. — "In this action the complainers, a limited company having their registered office in Glasgow, ask for the suspension of a decree for £44, 4s. of principal obtained against them at the instance of the respondents, and of the relative charge for payment following on the decree.

"The complainers' case, stated generally, is that the decree and the charge were and are irregular and illegal. The particular grounds on which suspension is sought are these—(*a*) That the decree was incompetently obtained in the Sheriff Court of the county of Lanark at Glasgow in an action in which that Court had no jurisdiction in respect that in order to constitute the jurisdiction the complainers ought to have been cited at their registered office in Glasgow, whereas in point of fact they were cited at their branch business premises at Lenzie in the county of Dumbarton; and (*b*) that the charge following on the decree was in like manner incompetently served, not at complainers' registered office but at their said premises at Lenzie.

"Counsel for the complainers argued that the citation of the complainers and the service of the charge were disconform to the following statutory provisions, viz. — (1) The provisions of section 6 (*b*) of the Sheriff Courts (Scotland) Act 1907, which confers jurisdiction on the Sheriff Court in an action against a defender who carries on business and has a place of business within the jurisdiction, provided he is cited 'either personally or at said place of business,' and (2) the provisions of section 116 of the Companies (Consolidation) Act 1908 as to the service of documents on a limited company to the effect that a document 'may' be served on a company by leaving it or sending it by post to the registered office of the company.

"The respondents in their answers state that the boundary line between the counties of Lanark and Dumbarton where it passes through Lenzie is obscure, and they do not admit that in point of fact the complainers' premises at Lenzie are within the county of Dumbarton. Further, they aver that the complainers duly received both the citation and the charge and took no steps to challenge the validity of either; and they maintain in law that the present suspension is incompetent and that the complainers' averments are irrelevant.

"Counsel for the respondents in support of these pleas of incompetency and irrelevancy founded on the following statutory provisions, viz.—(*a*) The provisions of section 5 (5) of the Sheriff Courts Act of 1907 conferring jurisdiction on the Sheriff as regards suspensions of charges under decrees of the Court when the debt, exclusive of interest and expenses, does not exceed £50; (*b*) the mandatory provisions of section 7 of the same Act to the effect that all causes not exceeding £50 in value, exclusive of interest and expenses, 'shall' be brought and followed forth in the Sheriff Court only, and 'shall not be subject to review by the Court of Session'; and (*c*) the provisions of Rule 123 of the First Schedule to the same Act to the effect that where a charge has been given on a decree granted by the Sheriff for payment of any sum of money not exceeding £50, exclusive of interest and expenses, the person so charged 'may' apply in the Sheriff Court of his domicile for suspension on caution of the charge.

"The following cases were cited by the complainers' counsel in support of his argument:—(As to the necessity for citation at the place of business within the Sheriffdom)—*M'Bey* v. *Knight*, 1879, 7 R. 255, and *Corporation of Glasgow* v. *Johnston*, 1915 S.C. 555 (opinion of Lord Mackenzie at p. 565, to the effect that "the antecedent to valid citation is that the Court has jurisdiction to issue the summons"). (As to the necessity in virtue of section 116 of the Companies Consolidation Act 1908 for service at the registered office of the company)—*Wood* v. *Anderston Foundry*, 1887, 36 W.R. 918, and *Pearks, Gunston, & Tee, Limited* v. *Richardson*, [1902] 1 K.B. 91. (As to the competency of suspending in the Court of Session when the proceedings in the Sheriff Court are fundamentally null)—*Manson* v. *Smith*, 1871, 9 Macph. 492; *O'Malley* v. *Strathern*, 1920 S.C. (J.C.) 74.

"The following cases were cited by the respondents' counsel:—(As to the incompetency of suspension in this Court)—*Bryson* v. *Belhaven Engineering and Motors, Limited*, 1908, 15 S.L.T. 1043 (a decision in the Bill Chamber by Lord Guthrie), and *Dickson & Walker* v. *John Mitchell & Company*, 1910 S.C. 139. (As to the complainers being personally barred from objecting to irregularities of citation and service)—*Fraser* v. *Reid*, 1826, 4 S. 773.

"I have come to the conclusion that the suspension is incompetent.

"I base my opinion to that effect mainly on the following considerations:—(1) I think that section 7 of the Sheriff Courts Act 1907 expressly confers on the Sheriff Court a private jurisdiction in such an action as this in which the value of the cause is under £50, and excludes review by the Court of Session of the Sheriff Court decree complained of. (2) I think that Rule 123 of the First Schedule to the Act of 1907, to the effect that a suspension of a charge under a Sheriff Court decree for less than £50 'may' be brought in the Sheriff Court of the domicile of the person charged although in itself *prima facie* merely permissive,

must be read along with the mandatory provisions of section 7 of the Act for the purpose of determining the present question of jurisdiction, and that so read the jurisdiction of the Sheriff Court as regards the subject-matter of this case is really exclusive. The contrary view for which the complainers' counsel contended would mean that in suspensions of charges in Sheriff Court decrees for less than £50 there is concurrent or cumulative jurisdiction in the Sheriff Court and the Court of Session. I do not think that such a construction of the combined statutory provisions is well founded—contrast Ersk. Inst., i, 2, 10, with i, 3, 20. (3) In my opinion the present case is not governed by the authority of any of the numerous and varied cases in which a court of superior jurisdiction, apart from any express power of review, or even in spite of an express exclusion of review, has intervened in special circumstances to give a remedy against the decision or the procedure of a court of inferior jurisdiction, as, for example, when the inferior court has acted without jurisdiction, or when the proceedings complained of have been otherwise fundamentally irregular or null.

"It is not practicable to state affirmatively the conditions under which a jurisdiction of the kind referred to, extraordinary and exceptional in its nature, can or will be exercised, for the cases which have been decided, while illustrating the application of the general principle in the particular circumstances of each case, do not afford any absolute definition of the scope of the general principle.

"I think, however, that the following proposition—negative in its character and limited in its application—is consistent with all the decisions and is well founded in principle, viz., that the intervention of the Court of superior jurisdiction in cases of the kind referred to will not be held to be justified when a statutory remedy appropriate in the circumstances of the particular case is available in the inferior court and has not been exhausted.

"For the various reasons which I have given I shall refuse the note of suspension as incompetent."

The complainers reclaimed, and argued—The Sheriff Court action and the charge had not been served upon the complainers at a place of business within the sheriffdom. Such service was a necessary element in founding jurisdiction in the case of a company. The decree had therefore been pronounced by a Court which had no jurisdiction over the complainers and was null and void—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), secs. 5 (5) and 6 (*b*), and First Schedule, Rules 11 and 13; *Corporation of Glasgow* v. *Johnston*, 1915 S.C. 555, 52 S.L.R. 434; Balfour's Practicks, p. 408; *Manson* v. *Smith*, 1871, 9 Macph. 492, 8 S.L.R. 346; *Aitcheson* v. *M'Donald*, 1911 S.C. 174, 48 S.L.R. 185. The Sheriff Courts (Scotland) Act 1907 provided a complete code on the question of jurisdiction, and the fact that the registered office of the complainers was within the sheriffdom could not affect the matter—*M'Bey* v. *Knight*, 1879, 7 R. 255, 17 S.L.R. 130. Further, as a registered company the complainers should have been cited at the registered office, and the omission of the respondents so to cite them created a fundamental nullity—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), secs. 62 (1) and 116; Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 62; Buckley on the Companies Acts (9th ed.), p. 268; Maclaren's Court of Session Practice, p. 339; Gore-Brown's Handbook on Joint Stock Companies, p. 16; *Wood* v. *Anderston Foundry Company*, 1888, 36 W.R. 918; *Pearks, Gunston, & Tee, Limited* v. *Richardson*, [1902] 1 K.B. 91; *Watkins* v. *Scottish Imperial Insurance Company, Limited*, 1889, 23 Q.B.D. 285; *National Gas Engine Company, Limited* v. *Estate Engineering Company, Limited*, (1913) 2 I.R. 474. If the decree and charge were fundamentally null they could be suspended in the Court of Session irrespective of the value of the cause—*Christie Bros.* v. *Remington Typewriting Company*, 1912, 1 S.L.T. 123. In an analogous case under section 75 of the Summary Jurisdiction Act 1908 this principle had been approved — *O'Malley* v. *Strathern*, 1920 S.C. (J.) 75, *per* Lord Justice-General at p. 79, 57 S.L.R. 640. But here the value of the cause was more than £50. Besides the sum in the decree, the importance of the case to the complainers arising from all the circumstances, including the attack on their credit and the petition for winding-up, was to be considered in estimating the value—*Dickson & Walker* v. *John Mitchell & Company*, 1910 S.C. 139, *per* Lord President at p. 145, 47 S.L.R. 110; *Henry* v. *Morrison*, 1881, 8 R. 692, 18 S.L.R. 438; *Thomson* v. *Barclay*, 1883, 10 R. 694, 20 S.L.R. 440.

Argued for the respondents—There was no nullity here either in respect of want of jurisdiction or defective citation. The complainers' registered office in Glasgow was their place of business and domicile, and subjected them to the jurisdiction of the Sheriff of Lanarkshire irrespective of the place of citation—Companies (Consolidation) Act 1908, sec. 62; Duncan and Dykes, Civil Jurisdiction, pp. 33 and 34; Lindley on Company Law, vol. i, p. 54; *Laidlaw* v. *Provident Plate Glass Insurance Company, Limited*, 1890, 17 R. 544, 27 S.L.R. 354. The citation might be irregular but it was not null. If the complainers had appeared, the defect would have been remedied—Sheriff Courts (Scotland) Act 1907, First Schedule, Rule 13. But section 116 of the Companies (Consolidation) Act 1908 was not imperative, and service at a place other than a registered office was good at common law. Rule 10 of the First Schedule provides for service on all kinds of persons outwith the jurisdiction. The only cases in which, under the Sheriff Courts (Scotland) Act 1907, the citation might cause a nullity were those relating to the performance of a contract or the commission of a delict in the jurisdiction. In those cases citation in the sheriffdom was necessary to create jurisdiction—section 6 (*f*) and (*i*). It was admitted that the complainers had received both the citation and the charge. Their

contention therefore, if it were sound, was merely technical, and they were in a very unfavourable position for insisting on it. But if the citation was merely irregular, the suspension was incompetent in respect that the value of the cause did not exceed £50—Sheriff Courts (Scotland) Act 1907, section 5 (5) and 7, and First Schedule, Rules 123 to 125; *Dickson & Walker* v. *Mitchell & Company, sup. cit.*; *Bryson* v. *The Belhaven Engineering and Motors, Limited*, 1908, 15 S.L.T. 1043. The value of the cause was the amount due under the decree by payment of which the complainers could at any moment have stopped further proceedings. Further, the decree had not been implemented, and the remedy of reponing was still open to the complainers — Sheriff Courts (Scotland) Act 1907, First Schedule, Rules 27 and 33. Counsel also referred to the Sheriff Courts (Scotland) Act 1838 (1 and 2 Vict. cap. 119), section 34, and the Citation (Scotland) Act 1882 (45 and 46 Vict. cap. 77), section 3.

At advising—

LORD PRESIDENT—The suspenders, who are colour makers carrying on business as such at Lenzie, are a limited company registered in Scotland under the Companies Act 1908, and have their registered office in Glasgow. In connection with the business carried on at Lenzie, the suspenders incurred a debt for advertising to the Decorative Art Journals Company, Limited. This debt being less than £50 in amount formed the subject of a decree in absence against the suspenders at the instance of the Decorative Art Journals Company, obtained in an action brought by the latter before the Sheriff Court of Lanarkshire. Upon this decree a charge was executed, and on the expiry of its *induciæ* the Decorative Art Journals Company presented a petition for liquidation of the suspenders' company. The suspenders then instituted the present action in the Court of Session for suspension both of the decree in absence and of the charge.

The first ground of suspension is that the Sheriff Court of Lanarkshire had no jurisdiction in the action in which the decree in absence was pronounced. The plea arises out of the following circumstances:—Lenzie, or at any rate that part of Lenzie in which the suspenders' business premises are situated, is alleged to be—and must at this stage of the case be taken truly to be—in the sheriffdom of Stirling, Dumbarton, and Clackmannan. It was there that the citation, upon which the action in the Sheriff Court of Lanarkshire was raised, was executed by registered letter, and it was there also that the charge on the decree in absence was executed by messenger. The suspenders found on section 6 of the Sheriff Courts Act 1907. That enactment purports to give an exhaustive definition of the jurisdiction of the Sheriff Courts, and the only part of it capable of being applied to the suspenders' company in the circumstances which prevailed when the action was raised is sub-head (*b*). That sub-head confers jurisdiction in any action competent in the Sheriff Court over a defender when three circumstances concur—(1) That the defender carries on business within the sheriffdom, (2) that the defender has a place of business within the sheriffdom, and (3) that the defender is cited at that place of business within the sheriffdom. I omit reference to the alternative of personal citation as being inapplicable to a limited company. Assuming, without deciding that the registered office of a limited company is, within the meaning of sub-head (*b*), a place of business in which business of the company is carried on, the suspenders' company might have been made subject to the jurisdiction of the Sheriff Court of Lanarkshire by citation at the registered office in Glasgow. No such citation was, however, made. It is clear that if the action had been raised in the Sheriff Court of Stirling, Dumbarton, and Clackmannan, citation at the place of business in Lenzie, where in my opinion the company undoubtedly carried on business within the meaning of the sub-head (*b*), would have conferred jurisdiction on that Sheriff Court. But then neither of the two possible lines of procedure thus presented was followed. The suspenders accordingly contend that the Sheriff Court of Lanarkshire (in which the action was actually brought) had no jurisdiction, and so far as the Act of 1907 is concerned they are right. Whether and how far, if at all, the principles of the common law with regard to jurisdiction in the case of partnerships and companies survive, or can consist with the enactments in section 6 of the Act of 1907, it is unnecessary in the circumstances of this case to inquire. Those principles of the common law were not destroyed by the Sheriff Courts Act 1876—see *Hughes* v. *J. & W. Stewart*, 1907 S.C. 791; but it does not follow that they survive the more ambitious provisions of the Act of 1907. The far-reaching effects of the latter statute in the matter of jurisdiction are illustrated by the case of *Hay's Trustees* v. *London and North-Western Railway Company*, 1909 S.C. 707. But in the case of a company owing its corporate existence to registration under the provisions of the Companies Acts, I cannot read section 6 of the Sheriff Courts Act 1907 as having the effect of obliterating for the purposes of jurisdiction in the Sheriff Courts the domicile which is conferred on a limited company formed under the Companies Acts by the situation of its registered office. It is unfortunately true, as was observed in the case of *Dickson & Walker* v. *Mitchell & Company* (1910 S.C. 139, at p. 144), that the Sheriff Courts Act 1907 is so drawn as to make it often exceedingly difficult to give effect to even the easily perceived intention of the framer of its clauses. But I find it incredible, in the absence of any express reference to limited companies, that the intention was to exclude a jurisdiction founded on the statutory constitution and attributes of a company formed under public statutes such as the Companies Act 1908; and I therefore hold that notwithstanding section 6 the suspenders' company was subject to the jurisdiction of the Sheriff Court

of Lanarkshire in respect that it had its registered office in Glasgow.

The second ground of suspension is that, assuming jurisdiction in the Sheriff Court of Lanarkshire, citation in the sheriffdom of Stirling, Dumbarton, and Clackmannan was not only irregular but null and void; that accordingly there was no process before the Sheriff Court of Lanarkshire in which a decree in absence could be pronounced; and that therefore both the decree and the charge which followed on it were void and *funditus* null. No separate point was taken with regard to the charge as distinct from the decree. No reason was suggested why execution of the warrant of citation should not have been made at the registered office of the suspenders' company in Glasgow within the sheriffdom of Lanarkshire. Section 116 of the Companies Act 1908 does not, however, make service on a limited company at a place other than the registered office incompetent. On the other hand Rule 10 of the First Schedule of the Sheriff Courts Act 1907 does not have the effect of authorising the citation of a defender who has a domicile in the jurisdiction, any and everywhere out of the jurisdiction according to the caprice of the person who has obtained the warrant. If the circumstances are such that the defender though amenable to the jurisdiction requires to be cited out of it, that is another matter, and Rule 10 provides full facilities for it. The execution of the citation at the suspenders' place of business in the sheriffdom of Stirling, Dumbarton, and Clackmannan was thus undoubtedly irregular. But was it null and void? I think that if the present suspenders had appeared in the Sheriff Court of Lanarkshire in answer to the citation which they admittedly received at Lenzie the irregularity would have been cured by virtue of Rule 13, for if the former part of this opinion is well founded the case was not one in which citation was a condition of the jurisdiction of the Sheriff Court of Lanarkshire. This seems to me to show that the irregularity did not amount to a nullity, because a case of nullity—a case for example in which there was no execution of the citation at all—never could be cured under Rule 13.

If, then, the Sheriff Court of Lanarkshire had jurisdiction, and if the decree in absence cannot be put out of account on the ground of fundamental nullity, section 7 of the Sheriff Courts Act 1907 makes this suspension incompetent unless the value of the cause can be shown to exceed £50. Admittedly the amount in the decree and in the charge did not exceed that sum. But it was contended for the suspenders that the value of the suspension must be measured in relation to the situation which the decree and charge have brought about in virtue of section 130 of the Companies Act 1908 and by the presentation of the petition in this Court for the winding up of their company. These considerations, however, are extrinsic not only of the decree but also of the grounds of liability which were founded on in support of the decree. They are not, in other words, part of the subject of the action in which the decree was obtained. Their importance to the suspenders cannot be allowed to affect the assessment of the value of the cause, which therefore remains less than £50.

I think accordingly that the Lord Ordinary was right in refusing the note, although I have not followed the same course of reasoning as that by which the Lord Ordinary reached his conclusion. Sub-section (5) of section 5 of the Sheriff Courts Act 1907, and Rules 123-125 of the First Schedule to that Act, on which the Lord Ordinary founds, are limited, in terms at least, to suspensions of charges or threatened charges, and do not in terms apply to decrees. I express no opinion on the question whether these enactments have the effect of giving a Sheriff-Substitute power to review his own decree or the decree of another Sheriff-Substitute in a different sheriffdom. I observe that at least one learned commentator has expressed doubts regarding a construction which would produce results so "anomalous and contrary to every preconceived notion" (Wallace's Practice of the Sheriff Court, p. 460). As, however, the case can in my view be satisfactorily disposed of on other grounds, it is unnecessary to decide the question whether the suspenders had under those rules a competent remedy, their neglect of which deprived them of the right to resort to a Court of superior jurisdiction.

LORD MACKENZIE—The doctrine upon which the reclaimers found is that there was here a fundamental nullity, because the enactment contained in section 6 (*b*) of the Sheriff Courts Act of 1907 (as amended by the Sheriff Courts Act of 1913) has not been complied with. This assumes that in order to constitute jurisdiction it was necessary there should be the appropriate citation. There was, however, at common law, inherent jurisdiction in the sheriffdom of Lanarkshire at Glasgow, where the action was brought. The registered office of the company was there, and looking to the terms of section 62 of the Companies Act of 1908 this was the domicile of the company. In *Hughes v. J. & W. Stewart* (1907 S.C. 791) the pursuer did not require to found on section 46 of the Sheriff Courts Act of 1876. Here, in my opinion, the pursuers did not require for the purpose of constituting jurisdiction to bring themselves within section 6 (*b*) of the Sheriff Courts Act of 1907. It is true that there was an irregularity in the citation if it be the case that the place of business at Lenzie was outwith the sheriffdom of Lanarkshire, about which there is controversy. But irregularity in citation where there is jurisdiction antecedent to and independent of appropriate citation does not amount to fundamental nullity. In certain cases, of which those falling under section 6 (*f*) and (*i*) are examples, if there is not personal citation within the sheriffdom there is no jurisdiction. There is, however, nothing in the common law of Scotland to make citation at the registered office necessary to constitute jurisdiction, and this ought not to be inferred from section 116 of the Companies Act of 1908.

The reclaimers fail to show that this falls within the category of cases in which the proceedings were null *ab origine*. This suspension is therefore incompetent unless the value of the cause exceeds £50. Upon this point the value of the cause must be held to be under £50, for we can only have regard to the subject-matter of the action in which the decree was obtained.

LORD SKERRINGTON—I concur.

LORD CULLEN was not present.

The Court adhered.

Counsel for the Complainers—Mackay, K.C.—Aitcheson. Agent—R. S. Rutherford, Solicitor.

Counsel for the Respondents—Mitchell, K.C.—Gilchrist. Agents—Fraser, Davidson & Whyte, W.S.

Thursday, February 16.

FIRST DIVISION.

[Exchequer Cause.

DONALD *v.* INLAND REVENUE.

Revenue—Income Tax—Seasonal Tenancy of Grazings—Income Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 63, *Schedule B, and sec.* 100, *Schedule D, First, Third, and Sixth Cases—Income Tax Act* 1853 (16 *and* 17 *Vict. cap.* 34), *sec.* 2, *Schedules B and D.*

The tenant of a farm was also lessee from May to November of the right to the grass or grazing on two grass parks which he used for grazing young stock brought from his farm and taken back to it at the end of the season to replace old stock that had been sold. He was assessed under Schedule B of the Income Tax Act of 1853 in respect of his occupation of the farm, and under Schedule D in respect of the profits of the grazings, the profits being estimated in the absence of a return according to the rental or double rental of the grass parks. *Held* (1) that the assessment under Schedule B did not cover the profits of the grass parks, (2) that the farmer was assessable in respect of these profits under Schedule D, and (3) that in the absence of evidence as to the amount of the profits there was no ground for interfering with the assessment made by the Commissioners.

The Income Tax Act 1853 enacts—Section 2—"For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting such duties respectively, the said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several schedules contained in this Act—that is to say"—Schedule B—"For or in respect of the occupation of such lands, tenements, hereditaments, and heritages as aforesaid, and to be charged for every twenty shillings of the annual value thereof." Schedule D—"For or in respect of the annual profits or gains arising or accruing . . . from any kind of property whatever, and for and in respect of the annual profits or gains arising or accruing to any person . . . from any profession, trade, employment, or vocation . . . to be charged for every twenty shillings of the annual amount of such profit or gain."

The first, third, and sixth cases under Schedule D of the Income Tax Act 1842 which were applicable to the above schedules are as follows:—*First case*—"Duties to be charged in respect of any trade, manufacture, adventure, or concern in the nature of trade not contained in any other schedule of this Act." *Third case*—"The duty to be charged in respect of profits of an uncertain annual value not charged in Schedule A." *Sixth case*—"The duty to be charged in respect of any annual profits or gains not falling under any of the foregoing rules and not charged by virtue of any other of the schedules contained in this Act."

William Donald, farmer, Parkieston, Newmilns, *appellant*, being dissatisfied with the decision of the Commissioners for the General Purposes of the Income Tax Acts at Ayr sustaining assessments in the sums of £56 and £32, appealed by way of Stated Case in which A. Thomson, Surveyor of Taxes, Ayr, was *respondent*.

The assessments were made under Schedule D of the Income Tax Acts for the years 1917-18 and 1918-19 respectively, and were charged as profits arising from his tenancy of grass parks, of which he was lessee from May to November in the years 1916 and 1917.

The Case set forth—"The following *facts* were found proved or admitted:—1. The appellant is tenant of Parkieston Farm at an annual rent of £211. 2. From May to November in each of the years 1916 and 1917 he took in addition certain grass parks at the season rents of £56 and £16 respectively. He used these fields for the grazing of young dairy stock brought from his own farm of Parkieston, which at the end of the season were taken back into stock on his own farm to replace older stock sold during the season. 3. The assessment under Schedule B in respect of the occupation of these grass parks was made each year on the landlord as occupier in terms of Rule 3, No. iv, Schedule A, sec. 60, of the Income Tax Act 1842 (5 and 6 Vict. cap. 35), but relief was given to him under section 27 of the Finance Act 1896 (59 and 60 Vict. cap. 28). 4. Assessment under Schedule B was made on the appellant each year in respect of his occupation of the farm of Parkieston, and no appeal is made against that assessment under Schedule B, but only against the further assessments under Schedule D made in respect of the estimated profits derived from his tenancy of the said grass parks. 5. The appellant stated that he was unable to give particulars to enable the actual profits (if any) to be ascertained. The Additional Commissioners had estimated the