

Thursday, February 22.

FIRST DIVISION.

CURRIE AND OTHERS, PETITIONERS.

*Process—Expenses—Merchant Shipping Amendment Act 1854 (17 and 18 Vict. c. 104), sec. 514—Merchant Shipping Amendment Act 1862 (25 and 26 Vict. c. 63), sec. 54.*

In a petition for limitation of liability under the 54th Section of the Merchant Shipping Amendment Act 1862, held that the petitioner was liable to the claimants in expenses, and that the amount thereof was to be determined according to the rules laid down in *Burrell v. Simpson*, July 10, 1877, 4 R. 1133.

Counsel for Petitioners—Dickson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for Claimants—Trayner—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

COURT OF JUSTICIARY.

Thursday, February 22.

GLASGOW CIRCUIT.

(Before Lord Craighill.)

DALGLISH & KERR v. ANDERSON.

*Process—Sheriff—Appeal against Small Debt Court Decision—Incompetency and Defect of Jurisdiction—Restrictions of Claim—Computation of Deductions—Small Debt Act 1837 (1 Vict. c. 41), secs. 2, 31.*

When an action brought in the Small Debt Court libels on an account amounting in full to more than the statutory limit of £12, but restricted so as to fall within the limit, and after proof certain items of the original account are disallowed, the sums so disallowed are to be deducted from the original amount, not from the sum concluded for, and the Sheriff may give decree in respect of any balance proved to be due which does not exceed the sum concluded for or the statutory limit.

By the Small Debt Act 1837 (1 Vict. c. 41), sec. 2, it is enacted that "it shall be lawful for any Sheriff in Scotland within his county to hear, try, and determine in a summary way . . . all civil causes, and all prosecutions for statutory penalties, as well as all maritime civil causes and proceedings that may be competently brought before him, wherein the debt, demand, or penalty in question shall not exceed the value of eight pounds, six shillings, and eightpence sterling (increased to £12 by the Sheriff Court Act 1853, 16 and 17 Vict. c. 80, sec. 26), exclusive of expenses and fees of extract: Provided always that the pursuer or prosecutor shall in all cases be held to have passed from and abandoned any remaining portion of any debt, demand, or penalty beyond the sum actually concluded for in any such cause or prosecution."

J. W. Anderson, merchant, London, and Andrew Paul, writer, Glasgow, his mandatory, sued Dalglish & Kerr, Blantyre Works, Blantyre, in the Small Debt Court of Lanarkshire at Hamilton, for the sum of £12 for goods supplied, &c., as per account produced. The account libelled on consisted of six items, five of which referred to furnishings of small individual amount, the sixth being a claim of damages stated at £15, 9s. 8d. The total amount of the account was £27, 14s. 8d., but this bore to be "restricted to £12." The defenders denied that any part of the account was due.

A proof was led on 24th October 1882, the result of which was that the Sheriff-Substitute (Birnie) disallowed several of the smaller items, amounting in all to £8, 19s. 3d., but gave decree for £12 in respect of the claim of £15, 9s. 8d. preferred in name of damages, which he held to be substantiated to the extent of £12 at least. Against this decision the defenders appealed to the Glasgow Circuit Court, on the ground that the Sheriff-Substitute had exceeded the statutory limits of his jurisdiction, and that the judgment was therefore incompetent.

It was argued on behalf of the appellant—(1) That the statutory limit of £12 did not merely determine the maximum sum for which the Sheriff could give decree, but also applied to the value of the claims which he was entitled to investigate and exercise his judgment upon; having disallowed items amounting to £8, 19s. 3d., he could not competently decern for more than a sum of £3, 0s. 9d. (2) The pursuer being held, by restricting his demand to £12, to have passed from and abandoned the remaining portion of his debt, the claims disallowed must be deducted from the existent demand for £12, and not from the non-existent and abandoned balance. (3) It is the duty of a litigant to anticipate the possibility of a defence, and therefore if he chooses to restrict his claim in order to sue by a summary and final procedure, he suffers no injustice in having all competent defences set against his restricted and not against his original demand. (4) The effect of deducting items disallowed from the unrestricted instead of from the restricted demand is to leave the defender without compensation or expenses, notwithstanding partial success in his defence. (5) Further, in a case such as the present, where the amount investigated exceeds in reality £25, the principle applied by the Sheriff-Substitute involves the possibility of a final decision affecting a sum which otherwise would admit of appeal on the merits; had this action been raised for the full amount in the ordinary Sheriff Court the defenders would have had a right of appeal in respect of the £12 decerned for by the Sheriff-Substitute, his decision as to which they maintained to be wrong on the merits.

Counsel for respondents was not called on.

LORD CRAIGHILL—This appeal is from the judgment of the Sheriff-Substitute of Lanarkshire pronounced in the Small Debt Court at Hamilton on a claim by the respondent for £27, 14s. 8d., restricted to £12 in order that it might be brought within the amount recoverable in the Small Debt Court. The ground of appeal is that the Sheriff-Substitute, though upon the proof sums were disallowed, did not deduct them from the £12 and limit his decree to the balance. The