

the pursuer to uplift said last-mentioned sum and interest: Appoints him thereafter to lodge a state, embracing interest, showing the sum due him, and for which he asks decree: Reserves all questions of expenses, including the expense of stamping the document No 54 of process, and decerns *ad interim*."

Now, it is quite plain that this is not a competent appeal against a final judgment, for this is not in any sense a final judgment; the conclusions of the action are not exhausted; the precise amount due by the defender to the pursuer has not been ascertained, and cannot be ascertained until the state has been lodged which was ordered by the Sheriff; and further, the question of expenses has not been disposed of. It is said, however, that the defender is entitled to appeal, because this is equivalent to an interim decree for payment, and the appellant founds on the case of *Baird v. Barton*, in which it was held that a warrant on a judicial factor to pay rent to a landlord was equivalent to an interim decree in a question as to the competency of the appeal. This case is not precisely similar to the case of *Baird*, but still there would be difficulty in sustaining the respondent's objection to the competency.

On the one hand, if the appeal is refused as incompetent, the pursuer would get into his own hands the sum of £113, 16s. 9d. without the defender having any opportunity of bringing under review the interlocutor by which he was enabled to get it. This, I think, would be inconsistent with the right of appeal from the Sheriff which always exists when the question involved is of a certain amount.

On the other hand, if the question of the payment of this £113, 16s. 9d. is to be determined with reference to the merits of the case, that would be in effect to treat this as a final interlocutor, which it is not.

It appears to me that the solution of the difficulty is to hold that the defender is entitled to bring up this interlocutor, to the effect of enabling the Court to determine whether the warrant for payment should have been granted *in hoc statu*, and that course of procedure will be in accordance with what was done in *Baird's* case. Therefore the question under this appeal will be, whether the warrant should have been granted at the time the Sheriff did grant it?

LORD DEAS concurred.

LORD MURE—I think this is substantially an interim decree for payment of a sum of money, and in consequence that on the decisions the appeal is competent.

LORD SHAND concurred.

The Court then heard counsel on the appeal, and pronounced the following interlocutor:—

"The Lords having considered the competency of the appeal, and heard counsel for the parties on the question, Sustain the appeal as competent in so far as it brings under review that part of the Sheriff's interlocutor which grants warrant to the pursuer to uplift the sum of £113, 16s. 9d. sterling; and having heard counsel on said appeal, refuse the same: Adhere to the interlocutor appealed against, and decern: Reserve the question of expenses."

Counsel for Pursuer (Respondent)—M'Lennan.
Agent—William Gunn, S.S.C.

Counsel for Defender (Appellant)—Watt.
Agents—Sutherland & Clapperton, W.S.

Wednesday, January 9.

FIRST DIVISION.

SPECIAL CASE—BEATTIE AND OTHERS.

Process—Special Case—Death of Party.

This was a Special Case, one of the parties to which died after the case had been sent to the roll. A note was then presented to the Court for the purpose of having the representatives of the deceased sisted as parties to the case. The Court *refused* to sist, and, on the ground that a Special Case is of the nature of a contract, *held* that the proper course was for the representatives of the deceased themselves, or counsel instructed for them, to sign the Case.

Counsel for First Parties—Pearson. Agents—J. & F. Anderson, W.S.

Counsel for Second Parties—Dickson. Agents—Curror & Cowper, S.S.C.

Wednesday, January 9.

SECOND DIVISION.

ANDERSON AND ANOTHER, PETITIONERS.

Process—Bankruptcy—Lost Process—Competency—Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 15.

A sequestration having been awarded by the Lord Ordinary on the Bills, the petition, the affidavit of the concurring creditor, the deliverance on the petition, and the certified copy thereof, were all destroyed by an accidental fire. Thereafter the first statutory meeting was held on the date appointed by the Lord Ordinary's deliverance, and a trustee elected. The bankrupt, concurring creditor, and trustee thereupon presented a petition to the Inner House praying the Court to authorise the minute of the meeting and other productions to be received into process in order that the trustee's election might be confirmed and the sequestration proceeded with. The Court (*div.* Lord Rutherford Clark) *refused* the petition as incompetent.

Question (*per* Lord Young), Whether there was, in addition to a proving of the tenor, a remedy under sec. 15 of the Court of Session Act, by application to the Lord Ordinary.

The estates of William Murray Anderson, spirit salesman in Govan, were, on 19th December 1883, on the petition of himself and certain concurring creditors, sequestrated by the Lord Ordinary officiating on the Bills, under the Bankruptcy Act. By the deliverance awarding sequestration the Lord Ordinary appointed a meeting of the creditors for the election of a trustee and commissioners, and remitted the process to the Sheriff of Lanarkshire at Glasgow, to proceed in terms of