On the case being again called, the appellants argued—The merits of the competition had been disposed of by the interlocutor of the Sheriff-Substitute. Any further interlocutors that remained to be pronounced were merely for the purpose of giving effect to that interlocutor, and as the question of expenses had been disposed of by the Sheriff, the conditions contained in the 53rd section of the Court of Session Act had been satisfied. Further, in a case like the present where the respondents did not object to the competency of the appeal, the Court would not be so ready to reject an appeal on the ground of incompetency—*Reddie's Trustees* v. *Lindsay*, March 7, 1890, 17 R. 558.

At advising—

LORD PRESIDENT—This is certainly a fine case, but I am bound to say that the Sheriff-Substitute's interlocutor of 1st August does not appear to me to be appealable. There remains yet to be pronounced an effective and operative decree, and the Sheriff's interlocutor merely lays down principles for the determination of the case. It is true that these principles are not complex, but the omission of an operative decree makes the judgment one of an interlocutory character, and while the judgment is of that character any appeal appears to me to be excluded by the Act of Parliament. The parties may yet put the matter right, and therefore the difficulty is probably not a very substantial one. The Act of Parliament, in my opinion, lays down definite limits to the right of appeal, and this case does not fall within these limits.

LORD ADAM concurred.

LORD M'LAREN—If the Sheriff-Substitute had formally pronounced a decree repelling the claim of the appellant, that is, virtually absolving the other claimants from the conclusions involved in the claim of this appellant, then I should have been of opinion that his judgment was appealable, because the appellant would then have been out of Court, and so far as he was concerned the merits of the action would have been disposed of. I think that is a specialty recognised by the statute in the case of competitions. The parties, however, instead of going to the Sheriff and getting a sham judgment, should have gone to the Sheriff-Substitute and got a decree which they might have brought before us. I am sorry that the expenses of the appeal have been thrown away, but I think we have no option and must dismiss the appeal.

LORD KINNEAR concurred.

The Court dismissed the appeal as incompetent.

Counsel for the Appellant—Morison. Agent—Alex. Morison, S.S.C.

Counsel for the Respondents—Cook. Agents—Kinmont & Maxwell, W.S.

Saturday, November 14.

FIRST DIVISION.

MACGILLIVRAY *v.* MACKINTOSH.

(*Ante*, vol. xxviii., p. 488, *et supra*, p. 56.)

Expenses — Compensation — Agent-Disburser.

Where in an action of damages for breach of promise raised in a Sheriff Court two appeals were taken to the Court of Session, one upon the merits of the cause, and another at a later stage against the competency of a decree for expenses pronounced in the Sheriff Court, the Court *refused* to pronounce decree in name of the agent-disburser for expenses to which the pursuer had been found entitled in the second appeal, a larger sum of expenses for which the defender had obtained decree in the first appeal being still unpaid.

Expense of having Auditor's Report Approved.

A defender obtained decree for expenses, and at a later stage of the same case the pursuer was found entitled to expenses. After the pursuer's account was taxed by the Auditor the defender offered to credit him with the amount of his account under deduction of the expenses of approval and decree, and only to claim payment of a balance due to her. This offer was refused by the pursuer, who enrolled the case and moved for decree in name of the agent-disburser. The Court, holding that the defender was entitled to have the one account set off against the other, *refused* to allow the pursuer the expenses of approval and decree.

This was an action of damages for breach of promise of marriage brought in the Sheriff Court at Nairn by Hugh Macgillivray against Margaret Mackintosh. On 9th October 1890 the Sheriff pronounced an interlocutor, in which after certain findings he assoilzied the defender. The pursuer appealed to the First Division, who on 17th March 1891 affirmed certain of the findings in the interlocutor of the Sheriff, assoilzied the defender, and found the pursuer liable in the expenses in this Court. The amount of the defender's account as taxed and decerned for was £25, 15s. 6d. The pursuer again appealed to the First Division against certain interlocutors pronounced in the Sheriff Court subsequent to 17th March 1891, decerning in favour of the defender for the expenses incurred by her in the Sheriff Court. In this appeal the pursuer was successful, and was found entitled to expenses in this Court and the Sheriff Court subsequent to 17th March 1891. These expenses having been taxed at £24, 17s. 8d., the defender's agents wrote to the agent for pursuer offering to give the pursuer credit for the taxed amount of his account, less £2, 18s.

allowed as the expense of getting the Auditor's report approved, and decree for the taxed amount pronounced, and only to claim for the balance of £3, 16s. 10d. due to the defender. The pursuer declined this offer and enrolled the case in order to have the Auditor's report approved.

The defender submitted that in respect of the offer made by her, the sum of £2, 18s. should be deducted from the pursuer's account, and referred to the case of *Allan* v. *Allan's Trustees*, July 1, 1851, 13 D. 1270.

The pursuer moved for decree in name of the agent-disburser, and referred to the following cases—*Paterson* v. *Wilson*, December 20, 1883, 11 R. 358; *Stuart* v. *Moss*, February 6, 1886, 13 R. 572; *Strain* v. *Strain*, March 7, 1890, 17 R. 566.

At advising—

LORD ADAM—I think the rule is that if there are separate actions between the same parties, as in the cases quoted by Mr Rhind, the agent in the one case is entitled to decree in his own name as disburser, and the other party is not allowed to set off expenses decerned for in his favour in the other action, but it is also, I think, equally established that in the same action when one party has obtained a decree for part of the expenses of the action, the agent of the opposite party is not entitled to obtain decree in his own name for expenses to which his client has been found entitled. The one account is always set off against the other.

Here there were not two separate actions, but only one action, and the accounts must be set off against one another. It makes, I think, no difference that the two accounts of expenses were incurred upon separate appeals.

LORD M'LAREN—The only consideration which occurs to my mind to lead me to think that the rule that compensation should not hold in the case of different actions is a convenient one, is because the second action is not necessarily tried by the same judge as the first, and the judge in the second action may have no knowledge what was done in the former action. Therefore the attempt to set off the expenses in the one action against the expenses in the other might involve an inquiry quite unsuited to a motion for expenses. When both accounts are incurred in the same action the Court can deal with the whole subject of expenses, and without risk of injustice may set-off the one account against the other as seems consistent with the known principle of compensation.

LORD KINNEAR—I am of the same opinion. I think the rule is quite fixed that compensation may be pleaded where cross accounts occur in the same action, and not where they occur in different actions. In addition to the reason suggested by Lord M'Laren, there seems to me to be another reason for the rule in the fact that the agent-disburser's right to take decree in his own name cannot be cut down by extrinsic claims of compensation between the adverse parties, and the debt arising from decree for expenses in another action is clearly an extrinsic debt.

The Court approved of the Auditor's report upon the pursuer and appellant's account of expenses, No. 33 of process, and decerned in favour of the appellant for the taxed amount thereof, less £2, 18s., being the charges in said account for making the motion for approval of the Auditor's report and decerniture, in respect that before enrolment of the motion the taxed amount of the account was tendered by the respondent to the appellant.

Counsel for Pursuer—Rhind. Agent—William Officer, S.S.C.

Counsel for Defender—Baillie. Agents Watt & Anderson, S.S.C.

Tuesday, November 17.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GREAT BRITAIN STEAMSHIP PREMIUM ASSOCIATION AND OTHERS *v.* WHITE.

Revenue—Stamp Duty—Sea Insurance—Policy Including a Number of Vessels—Customs and Inland Revenue Act 1870 (30 *Vict. c.* 23), *sec.* 4, *Sched.* (*B*)—*Interpretation of Statutes Act* 1889 (52 *and* 53 *Vict. c.* 63), *sec.* 1.

Schedule (B) of the Customs and Inland Revenue Act 1870 imposes a stamp duty of 3d "for every policy of sea insurance for time in respect of every full sum of £100, and in respect of any fractional part of £100 thereby insured." Section 4 defines "sea insurance" as meaning, *inter alia*, "insurance made upon any ship or vessel." Section 1 of the Interpretation of Statutes Act 1889 provides that in any Act passed after 1850, "unless the contrary intention appears, words in the singular shall include the plural, and words in the plural shall include the singular."

Held (1) that the words "insurance made upon any ship or vessel," in the 4th section of the Customs and Inland Revenue Act 1870, must be read as including "insurance made upon any ships or vessels;" and (2) that where 119 vessels were insured under a time policy, a specific sum being appropriated to each vessel, the stamp duty exigible must be calculated upon the aggregate amount of the insurance, and not upon the separate sums insured in respect of each vessel.

On 30th November 1887 John Holman & Sons, shipowners and insurance brokers, London, on behalf of themselves and all persons interested, insured with James L. White, merchant, Glasgow, and certain