

stated for the defender: Decern and ordain the defender to deliver to the Commissioners of Inland Revenue, within fourteen days, an account of the property which passed on the death of the deceased Mrs Helen Carruthers or Maclachlan for the purpose of ascertaining the estate-duty due and payable in respect of said property, and decern: Find the pursuer entitled to expenses, and remit," &c.

Counsel for Pursuers—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for Defender—Ure, Q.C.—Pitman. Agents—J. & F. Anderson, W.S.

Thursday, June 15.

### FIRST DIVISION.

[Sheriff Court of Lanarkshire.

KING v. BRITISH LINEN COMPANY.

*Bank — Account-Current — Obligation of Bank to Honour Cheque—Damages for Failure to Honour.*

A banker who has an account-current with a customer is bound to honour his cheques to the extent to which there are funds at the credit of the customer in the account, and in the event of his failure to do so he is liable in damages for injury to credit.

A customer having a balance to his credit in an account-current drew a cheque on the 21st October. On 22nd October the bank intimated to him that they intended to retain any money at his credit pending a settlement of a claim by them, and requested him not to pass any further cheques. The customer wrote to the bank that he had drawn the cheque in question prior to receipt of their letter, and that if they dishonoured it his business reputation would probably be injured. The bank dishonoured the cheque. *Held* that they were liable in damages to the customer for injury to credit.

*Contract—Breach of Contract—Measure of Damages—Award of Sheriff.*

*Observed* (per Lord President) that while the Court will not, in a question of damages, treat the award of a Sheriff with the same caution as that of a jury, it will not lightly set aside the decision of the Sheriff.

An action was raised in the Sheriff Court of Lanarkshire by Mr John Miller King, grain merchant, Glasgow, against the British Linen Company, craving that the defender should be ordained to pay to the pursuer the sum of £161, 4s. 10d., being the amount standing at the credit of the pursuer's current account on 21st October 1896. There were further conclusions for delivery to the pursuer of certain bills, and for payment of £500, this last sum being claimed as damages in respect of the defen-

ders having dishonoured a cheque drawn by the pursuer. The pursuer had kept an account-current with the defenders for a number of years prior to 21st October 1896, at which date there was a balance in his favour of the amount claimed in the first conclusion of the summons.

On 21st October 1896 the pursuer issued a cheque for £38, 18s. drawn by him in favour of Mr James Whiteford, Baillieston.

On the 22nd October the pursuer received from the defenders' agent at their Union Street branch a letter stating that the defenders were raising an action against the pursuer in respect of a bill for £180 alleged to be lying unpaid at their Hutchesontown branch, and also intimating that pending a settlement of this matter he had been instructed to retain any money at the credit of the pursuer's current account, and requesting him to refrain from passing any further cheques. On receipt of this letter the pursuer intimated that prior to it he had issued the cheque in question, and that if it were dishonoured it would injure his credit. He also demanded delivery of certain bills which the defenders held for collection.

On 27th October the defenders raised an action in the Court of Session against the pursuer and his brother concluding for payment of the amount in the bill, but in respect of an extrajudicial settlement the defenders consented to the pursuer being assolzied.

The cheque which the pursuer had drawn in favour of Mr James Whiteford was endorsed by him to his brother, who paid it into the Union Bank. When presented through the clearing-house to the defenders they refused to honour it and returned it dishonoured to the holders marked "Effects to be retained. Refer to drawer." The pursuer in consequence raised the present action.

The pursuer maintained that the defenders' action in refusing to honour the cheque when they had sufficient funds to meet it had injured his business credit with Mr Whiteford and his other customers, the damage caused thereby amounting to the sum concluded for.

The defenders maintained that they were entitled to retain the balance at the pursuer's credit in respect of his indebtedness to them, and were not bound to honour his cheque pending the settlement.

The Sheriff-Substitute (STRACHAN) on 28th December 1897 repelled certain of the defenders' preliminary pleas and allowed a proof.

The defenders appealed to the Sheriff (BERRY), who on 9th March 1898 adhered to the interlocutor appealed against.

The Sheriff-Substitute on 30th June pronounced an interlocutor, by which he found, *inter alia*, "that the defenders acted wrongfully and unwarrantably in retaining the funds at the credit of the pursuer's current account with them, and the fore-said bills belonging to him, and that their action in dishonouring the said cheque while they had funds at his credit sufficient to pay the same constitutes a breach of the



contract implied in the relationship of banker and customer which subsisted between the parties when the said cheque was dishonoured: Finds that the defenders are liable to the pursuer for the loss and damage sustained by him through the fore-said proceedings on their part: Assesses the amount at £100, and decerns against the defenders for payment to him of that sum."

*Note.*—"Since this action was last before the Court, the defenders have delivered to the pursuer the bills specified in the petition, and have also paid him the balance at the credit of the bank account, with 5 per cent. interest thereon. The question of damages alone now remains to be disposed of.

"It must now be taken as finally settled that the defenders had no legal claim against the pursuer for the bill in respect of which they retained both his money and his bills. That was judicially settled by the compromise in the action in the Court of Session, and the defenders have now given effect to it by the delivery of the bills and the payment of the balance due to the pursuer.

"The defenders, however, contend that at the time the cheque was dishonoured they had reasonable grounds for believing that the pursuer was liable to them for the bill in question, and that this is sufficient to exclude any liability for damages on their part. The bill, they say, was accepted in his name by his brother, who had power to sign cheques for him, and had admittedly a general management of his pecuniary affairs; the money got for the bill had been applied for his benefit, in extinction of an obligation for which he was undoubtedly liable, and he himself had signed a number of previous bills, of which the one in question was only a renewal. All these circumstances in their view entitled them to assume that the bill had been signed by his brother with the authority of the pursuer, and in that case under the Bills of Exchange Act it would be as binding on him as if it had been signed by himself. It has, however, in my opinion, been clearly established by the evidence that the bill was signed by the pursuer's brother without his knowledge or authority, that he knew nothing of its existence until a demand was made for payment, and that down to that time he was under the belief that the previous bill had been retired by Kennedy, for whose accommodation it had been granted. The money had no doubt been applied in extinction of an obligation for which he was liable, but he says that, for reasons explained by him, and which I regard as quite satisfactory, he had made up his mind not to renew the last bill when it fell due at the time the bill in question was granted, and that if he had been obliged to retire it he could have obtained payment from Kennedy, who was then in good credit, although he became bankrupt by the time the bill signed by the brother became due, so that the acceptance of that bill by his brother was in reality of no benefit to him.

"But the circumstances relied on by the defenders as affording reasonable ground for their belief in the pursuer's liability for the bill, although they might be of importance in enabling them to establish that liability, did not in my opinion justify them in closing the pursuer's bank account and dishonouring his cheque. At the most they only raised the presumption of liability on the part of the pursuer; and I am not aware of any principle or authority for holding that a banker is entitled to retain his customer's money in security of a claim in regard to which there is nothing more than a presumption of liability. The defenders do not maintain that the bill in question was a claim instantly prestable against the pursuer, and of which they were then entitled to demand payment. In the letter to the pursuer intimating the closing of the account, the defender's agent, by whom it was written, stated, 'I am instructed by the head office to intimate to you that the bank are raising an action against you in respect of the bill for £180 lying unpaid at the Hutchesontown Branch. I have also to intimate that pending a settlement of that matter I am instructed to retain any money at the credit of your account here.' Now, I am clearly of opinion that the defenders are not entitled to retain money belonging to a customer in security of a disputed claim. So long as there are funds at the credit of his account the banker is bound to honour the customer's cheques. He is no doubt entitled to apply these funds in payment of a debt due to himself, but that can only be done where the debt is duly constituted and can at once be placed to the debit of the account. I cannot conceive of anything more inconsistent with the relationship of banker and customer than the retention of the customer's funds in security of a claim which is repudiated by him, which is about to form the subject of an action, and which, as happened in the present case, might turn out to be entirely unfounded.

"It was further maintained by the defenders that the person exercising the right of retention *bona fide* has no greater responsibility than the person arresting on the dependence of an action. This contention is based on a passage in Moir's Lectures, vol. i. p. 402, where, in dealing with the nature and origin of the doctrine of retention, he represents it to be the counterpart of an arrestment in security. 'It would,' he says, 'be a strange anomaly if third parties could by arrestment compel the holder of any fund or article which belonged to the common debtor to retain it for his behoof in security for his debt while the holder himself could not retain it for his own behoof in security of a similar debt which was due to himself before the arrestment was used.' But there is nothing in this which gives the slightest sanction to the contention that the person using the right of retention has the same privilege as a person using an arrestment on the dependence of an action. Beyond the fact that they have to some extent the same effect there is very little in common between



retention and arrestment. They are regulated by entirely different rules and principles. An arrestment on the dependence of an action is one of the most privileged proceedings known to our law. The person using it is not liable in damages unless it can be shown that he acted maliciously and from an improper motive. The right of retention carries with it no such privilege. The person exercising it does so without any judicial warrant or authority. He is acting entirely at his own hand and at his own risk, and he is responsible for the consequences if he acts wrongfully or in a manner which is not justified by the circumstances. More especially is this the case in regard to the banker's right of retention of the balance at the credit of a customer on his current account. The banker is acting under a very special contract, and his right of retention (when he has any) is confined within very narrow limits. Any violation of the obligation incumbent on him under the contract between him and his customer carries along with it a liability for damages.

"I have no difficulty in holding that defenders were not warranted in closing the pursuer's bank account and dishonouring his cheque in respect of the bill in question, and that having done so they are liable in damages for the loss thereby sustained by the pursuer.

"With regard to the retention of the bills, there was nothing, and, so far as I can see, nothing could be said in its justification. It was beyond question a wrongful and illegal retention of the property of the pursuer which rendered the defenders liable to him in damages.

"The question then comes to be, what is the amount of the damage to which the pursuer is entitled. He has not instructed any special damage, nor was it necessary that he should have done so. That the defenders' proceedings were calculated to injure the pursuer's credit is beyond question, but there are no means of ascertaining the nature or extent of that injury. Commercial credit is notoriously a delicate plant and easily injured, and I am not aware of anything more calculated to have that effect than the retaining a customer's bills and dishonouring his cheques. If the defenders had really intended to destroy the pursuer's credit, they could not have adopted more effectual means for that purpose, and I have no doubt but that would have been the result had not the pursuer been in a position to withstand the strain to which he was subjected. The rule of English law with regard to the damages to which a person is entitled for non-payment of a cheque by a banker is thus clearly and distinctly stated by Addison on Contracts—'If a banker refuses to pay a cheque drawn on him by a trader who keeps an account with him and who has sufficient assets in the hands of the banker to meet the cheque at the time it was presented, such trader is entitled to recover substantial damages without proof of any actual damage, since the dishonouring of cheques is likely to be very injurious to the credit of persons in

trade.' I am not aware of anything in the law of Scotland that in any way conflicts with this doctrine, and I see no reason why there should be any distinction on this subject in the laws of the two countries. Having regard therefore to the dishonouring of the cheque, and the retention of the bills, I have no hesitation in awarding the pursuer the sum of £100 of damages."

The defenders appealed to the Court of Session, and argued—If the pursuer were really liable under the bill, there was no balance at his account-current, and the defenders were entitled to dishonour his cheque. But in any case the customer under the contract between him and the bank was not entitled to damages—*Clydesdale Bank v. M'Lean*, March 2, 1883, 10 R. 719; *Waterston v. City of Glasgow Bank*, February 6, 1874, 1 R. 470, at 479; *Paul and Thain v. Royal Bank*, January 14, 1869, 7 M. 361; *Devaynes v. Noble*, July 30, 1816, 3 Ross' L.C. (Commercial Law), p. 643, at 651. The relations of banker and customer were closed by the defenders' letter to the pursuer of 22nd October, and so he had no right to more than a claim for his balance with 5 per cent. interest. His claim for damages in addition to that was inconsistent. Even, however, assuming that the pursuer was entitled to damages, it was only for slander of his credit by a wrongous act of the defenders—*Halsey v. Brotherhood* [1881], L.R., 19 Ch. Div. 386; *Wren v. Weild* [1869], L.R., 4 Q.B. 730. Looking at the circumstances there was no ground for holding damage had been proved, and in law there was no ground for holding damages due even though not proved.

Argued for respondent—The terms of the letter of 22nd October could not alter the relations of the parties prior to that date when the dishonoured cheque had been drawn, when indisputably the relation between the parties was that of banker and customer. But there was a contract between a banker and his customer that the former would honour the latter's cheques as long as there were funds to his credit, and if it were broken by the banker he would be liable in damages for a loss which was certain to result to the customer—*Byles on Bills* (15th ed.), p. 19; *Marzetti v. Williams*, 1 B. & A. 415. Nor was it necessary to prove special damage—*Rolin v. Steward*, 1854, 33 L.J. (C.P.) 148.

LORD PRESIDENT—As matter of fact, the British Linen Company Bank, at the time when there were considerable funds in its hands which had been placed there by the present respondent, refused to honour his cheques, and in particular dishonoured one. The bank has raised, first, the question whether it was entitled so to close the account and dishonour cheques on the ground that in truth, on an accounting between the parties there was not a balance in favour of the respondent, but, on the contrary, a balance against him. Now, I do not intend to enter upon the merits of that question, depending as they do on a somewhat complicated state of facts. And for this reason, that the merits of that



question were brought into the Court of Session in an action which ultimately was compromised. In that action the bank had an opportunity of making good their case upon the facts and showing that there was no money in the account, effect being given to the state of accounts between them and their customer, but then the bank deliberately declined to go into that, and the action was taken out of Court on the footing which, so far as the merits of that action are concerned, leaves the bank in the wrong in this sense, that they had not made out that there were no funds in the hands of themselves at that time. They have failed to make out that in respect of the disputed bill the present respondent was liable for what had been done by his brother. Now, I am unable to see how we should be justified in going back on that judicial settlement of this question, and I think the bank must abide by the consequences of their own proceedings and that we must hold that they were in the wrong on the question which was then brought into Court. I am not expressing any opinion that if it were open to us to revise that decision we should hold that the bank had made out their case. On the contrary, it would rather appear that the Sheriff has taken a proper view of the evidence, and he has virtually decided against them.

Then if it be the case that at the date of the notice of 22nd October the bank had funds of this gentleman in their hands there comes the question, what were their rights and obligations in regard to that account? Now, I take it that they were quite entitled to close the account, giving notice to their customer, and that they were quite entitled to say—"From this date we cease to be your bankers; we decline to do more business with you." But then that is only as from the date of the notice reaching the customer, and the important point here is that prior to the issuing of this circular this customer had granted a cheque in the ordinary course of business. I say the bank could not by this circular absolve themselves from responsibilities that they had undertaken as bankers, and meeting this cheque was one of them. They were entitled to say, "In future we will not honour them," but they could not say, "We decline to meet obligations you have incurred during the currency of our undertaking to supply such orders for money." Therefore I hold that as matter of fact the bank were in the wrong in declining to meet this particular cheque when tendered.

I have listened with attention and respect to Mr Johnston's argument as to the nature of this breach of contract and the consequences in damages when the question of damages is raised, but I do not think that we can at this time of day go back upon what I hold to be the clear established law of bankers, and that is, that there is a contract between the bankers and their customer that the banker shall honour cheques duly issued during the currency of that relation, and that if they fail to do so they are liable in damages for injury to credit. It seems to me quite well established that

that is the law. It has been established by decisions in England, and I must say it is a surprise to hear it questioned, and the grounds which Mr Johnston advanced, while, as I have said, entitled to respectful consideration, do not seem to me to displace what I think to be matter of settled practice and which is grounded also upon reason and common sense. Therefore I think this gentleman was entitled to damages and to damages for injury to credit.

Now, the next question is, what of the award of the Sheriff? I am not prepared to say that the Court will treat the award of a sheriff with the same caution that it does the award of a jury, not merely because we are not an appellate Court from a jury, but because from the composition of a jury, perhaps most of all in mercantile cases, the award of a jury has a very special title to respect as representing the conclusion of a number of minds, and minds conversant with the state of affairs brought under their notice. But, on the other hand, we are not lightly to set aside the decision of the Sheriff, and especially on a matter where it is extremely difficult to find tangible and palpable reasons for each £1 or each £5 note of damages. It is in our power, as has been pointed out by English judges in previous cases, in a region where a conclusion must be drawn from somewhat imperfect material, and in relation to matters which do not admit of exact calculation. Had I been sitting as Sheriff in this case, I think that my view of the injury to the pursuer would have been more circumscribed, but at the same time we cannot say that the limits of reason and common sense have been transcended on this occasion, and accordingly I am disposed to fall in with what I believe to be the prevalent view of your Lordships, that the safer course is to adhere to the award of the Sheriff, not as expressing the individual concurrence of everyone here upon that as the exact appraisal of the injury, but rather because if the award is at all within reason it is better to let it stand than to indicate a disposition on the part of this Court to canvass and criticise every judgment of a sheriff which comes up on a question of damages like the present. I am therefore for affirming the interlocutor of the Sheriff-Substitute.

LORD ADAM—I am of the same opinion and on the same grounds. It appears to me that we must take this case upon the footing that in point of fact the bank had money of the pursuer in their hands when the cheque was presented. That being so, the question is, whether or no the bank was right or wrong in refusing to honour the cheque. Now, I think it is a clear and well-established law that a bank having the money of a customer are bound to hold that money at call, and are bound, so long as they have funds, to honour cheques presented by the customer, and in this case I think it is clear that in dishonouring the cheque in the circumstances the bank have broken the contract, and are liable in damages in consequence. After listening with



all attention to the argument on that part of the case by Mr Johnston, I agree with your Lordship that it is now too late to entertain it. That being so, the question is, does any specialty arise in this case in respect of the circular issued by the bank putting an end to the relation of customer and banker between the pursuer and the defender? Now, had this cheque, which was presented on 10th November, been drawn by the pursuer after the date of that notice, I think that the bank would on that assumption have put an end to the relation of customer and banker, and would have been entitled to refuse payment of the cheque after the notice. But that is not the state of the facts, because the cheque of which payment was refused was issued and dated 21st October, the day before the notice was given by the bank. It seems to me that that circular necessarily applied only to cheques issued after the withdrawal of the relation of customer and banker, but I agree with your Lordship that the bank was under all the obligations undertaken before that relation was put an end to, and that it was not put an end to till the circular was issued, although I have no doubt that the cheque was not presented till some days after the issuing of the circular. Therefore there are no special circumstances in the case that would result in freeing the bank of liability.

In regard to the amount of damages, I think we are in this position, that if there had been a question of merely nominal damages, of course we could not agree with the Sheriff. But as your Lordship has said, the moment that it is admitted that it is substantial damages that are to be awarded, there is no particular call for drawing the line between £50 and £100. I have, with your Lordship, great difficulty in interfering with the judgment of the Sheriff-Substitute on that matter. He has fixed the amount of damages at £100. I do not say whether that is more or less than we would have been inclined to give, but I cannot think it is so excessive that we should interfere with it. I say that keeping in view the distinction which your Lordship has pointed out that we are not dealing with the award of a jury—fixing the amount of damages is the peculiar province of a jury—I cannot look at the judgment of the Sheriff-Substitute in the same light, but in this case I confess I do not see any grounds for interfering with the Sheriff-Substitute's discretion, and I concur with your Lordship.

LORD M'LAREN—It is settled law that a banker who opens an account-current with a customer undertakes to honour his cheques as presented to the extent to which there are funds at the credit of the customer in the account. This results, I need hardly say, from no arbitrary rule of law, but it is the meaning of an account-current. It is the contract into which the parties enter that the banker constitutes himself the agent of his customer for the payment of his drafts on condition that he is to be in funds to make those payments

as required; and it follows from the nature of the relation that if the banker refuses to honour a cheque pending the subsistence of the relation, he has committed a breach of contract for which he will be liable in damage to such extent as damage can be proved. The opinion of Lord Tenterden in the *Baxendale* case and the passage read from Byles on Bills clearly state the rule that the banker opening an account-current is in the same position as if he had given an undertaking to accept his customer's cheques so long as there were funds in his hand to meet them. But then it is equally clear that this contract subsists only during the will of the parties to it. The customer may at any time close his account and ask for the balance, and on the other hand although there may be a balance at the credit of the customer the banker may terminate the contract, and then of course it would be his duty to pay over the balance such as it is at the date of closure. Supposing there are contingent or unsettled claims which according to the practice of banking could not be entered as debts in the account-current a question may arise whether the banker is entitled to retain the balance of the account against these unsettled or contingent claims. It is unnecessary to express an opinion as to what the banker's rights would be if such a case should arise, but we can see that the question is very different from the present question, and that in the event of the banker's claim turning out to be unfounded the criterion of damage might be very different from that which is applied in the case of a wilful breach of contract. But then, as has been explained by your Lordship, no such question arises in the present case, because the cheque which the British Linen Company dishonoured was a cheque issued before the customer had received the notice of the closing of the account—the termination of the contract—and was therefore issued while the bank's obligation was current; and I can entertain no doubt that by refusing to pay that cheque when there was a balance at the credit of the account sufficient to meet it, the British Linen Company became liable in damages.

I agree with what has been said by your Lordship on the subject of damages. Apart from the judgment of the Sheriff I should probably have been disposed to treat this as a case in which a very moderate though still substantial award of damages would be sufficient, because there is very little evidence of real loss. But this is not a case where damage can be calculated. Where damage is matter of calculation I should hold that this Court of Appeal would be bound to go into the calculation and to correct it if we thought the Sheriff had gone wrong; but this is an award of an arbitrary sum of damages, and therefore unless I thought it was beyond what a reasonable judge would award I should not be disposed to interfere, and I agree that the proper course is to adhere *simpliciter* to the Sheriff's interlocutor.



LORD KINNEAR—I am of the same opinion. Mr Johnston's argument was exceedingly clear, and so far as it was valid I think it was constructed upon perfectly right lines, because his position, as I understand his argument, is this, that if this is an action for breach of contract, then the defender can only be liable for the direct consequence of his breach, and that injury to credit resulting from the dishonour of a cheque is a remote and not a direct consequence, so as to fall within the rule of *Hadley v. Baxendale*. Mr Johnston did not cite *Hadley v. Baxendale*, but his argument was founded on the doctrine established by that decision, and then he said that if this is not an action for breach of contract, but an action for slander, there were certain grounds on which he undertook to show that the pursuer had not been slandered by the defenders. I have no doubt whatever that this is not an action for slander, but an action for breach of contract, and I think Mr Johnston is quite right in his argument on the general rule of law that damage for breach of contract cannot be awarded for remote or consequential injuries; it must be limited to those injuries that are direct consequences of the breach. But then I think the answer is that it has been decided that an injury to trade which arises from a banker's refusal to honour his customer's cheque is not a remote or indirect consequence of his breach of contract, but that it is so highly probable a consequence in the ordinary course of things that everybody must contemplate it as a necessary, or, at all events, a most probable, result of the breach of contract, and that therefore to allow damages on that ground is entirely within the rule of *Baxendale*. I think that is the ground of judgment in *Rollin v. Stewart*, which appears to me to be a very important decision indeed, and I think with all your Lordships that the authority of that case, and of the previous decision in *Marzetti's* case, is not now to be called in question. It is too late at this time of day to ask us to reconsider a rule that has stood so long on such high authority, and has entered, as Lord M'Laren pointed out, into all the text-books. I am therefore clearly of opinion that if the defenders are liable for breach of contract we must take into account the loss which the pursuer must have suffered from the dishonour of his cheque. I therefore agree with all that has been said by your Lordships. I think that in the first place the defenders having consented to absolvitor of the present pursuer in the action at their instance cannot now be allowed to say that that was a well-founded action and that they would have succeeded if they had chosen to go on. We must take it to be settled by that procedure that there is no liability to the pursuer on account of the bill of £180 which was the origin of all this question. Then secondly I am clearly of opinion with your Lordships that although the bank was quite entitled for good or bad reasons to say that they did not intend to continue to act as bankers for the pursuer—that they would

not honour his cheques after a certain date, their letter intimating that to him could not justify them in refusing to honour a cheque drawn before their letter was written, and that is the breach of contract which forms the ground of the present action.

On the question of damages I confess I should have had very great difficulty if I were determining that question for myself in the first instance. I agree with what has been said by all your Lordships, that in reviewing a decision of a Sheriff-Substitute in a question of damages we are not at all in the same position as that in which we are asked to consider the verdict of a jury, because there is no appeal to this Court against the verdict of a jury in determining damages. We do not review their verdict and give a judgment of our own according to what we think their judgment ought to have been. We may set it aside if we see sufficient ground for holding that a reasonable jury, honestly regarding what is laid down for their guidance, which in the present case is supposed to be that they are to give reasonable and temperate, although substantial damages, could not possibly have awarded so excessive an amount as has been actually given in a particular case. We may set aside the verdict and order the case to be tried again, but we do not review their verdict, and make up our own minds as to what is the proper amount, and so decide. But in the case of an appeal from a Sheriff, then we are bound to review the judgment of the Sheriff just as much on that point as on any other. We are to exercise the same functions as he exercised, and if we think him wrong, then we are to do what we think he ought to have done in the first instance, but while there is that very material distinction, I still think with your Lordships that it is not reasonable to interfere on slight grounds with the Sheriff's estimate of damage especially in a case in which no exact measure can be fixed. The Sheriff was called upon to consider what was a reasonable and probable estimate of the loss which the pursuer must have suffered from the dishonour of his cheque. I think he was very well fitted to perform that duty, and I do not feel sufficient confidence that he has gone wrong to justify in my mind my interference at least with what he has done. I therefore concur with your Lordships that the safest course is to leave the judgment standing in that respect as well as on the merits.

The Court dismissed the appeal, and pronounced a finding in terms of the interlocutor appealed against.

Counsel for the Pursuer—Guthrie, Q.C.,—Munro. Agents—Gray & Handyside, Q.C.

Counsel for the Defenders—H. Johnston Q.C. — Salvesen. Agents — Mackenzie & Kermack, W.S.