

for compensation under the Act, and provides for the Court, on the request of the pursuer, virtually turning the action into a proceeding under the Act. But there is this pointed condition, viz., that the action has been raised "within the time hereinafter limited in this Act for taking proceedings." This appears to me to confirm the view that section 2 (1) intended a positive and definite limitation of proceedings under the Act, and it is therefore not immaterial to the present question to note that if in the end the appellant had, as he proposed, raised his common law action in place of these proceedings and failed, as admittedly he would have failed, he could not, under this sub-section, have transformed his action into a proceeding under the Act.

There remains the third question, viz., whether the appellant can be relieved of the statutory limitation by reason of his failure having been occasioned by mistake, absence, or other reasonable cause. There was neither mistake, absence, nor reasonable cause of the like, or indeed any other, nature. The appellant may have his action against Mr Connell, but he cannot throw upon the respondents responsibility for Mr Connell's laches. Had they done anything to mislead him it might have been different. But the case cannot be brought under the category of *Wright v. Bagnall & Son*, [1900] 2 Q.B. 240, and is a *fortiori* of *Rendall v. Hills Dry Docks, &c. Company*, [1900] 2 Q.B. 245, and the query must therefore, I think, be answered in the negative.

LORD MACKENZIE was absent.

The Court refused to answer the questions of law as stated in the case, affirmed the determination of the Sheriff-Substitute as arbitrator, and decerned.

Counsel for Appellant—Morison, K.C.—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for Respondents—Horne, K.C.—Spens. Agent—Robert Miller, S.S.C.

Wednesday, November 30.

FIRST DIVISION.

(SINGLE BILLS.)

A. E. ABRAHAMS LIMITED AND ANOTHER v. CAMPBELL.

Sheriff-Process—Appeal—Competency—Summary Cause—Value of Cause—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), secs. 3 (i) (1), 8, and 28.

The Sheriff Courts (Scotland) Act 1907 enacts, section 3—"In construing this Act (unless where the context is repugnant to such construction) . . . (i) Summary cause includes (1) Actions . . . for payment of money exceeding twenty pounds, and not exceeding fifty pounds, exclusive of interest

and expenses . . ." Sec. 8, ". . . In a summary cause, if the sheriff, on appeal, is of opinion that important questions of law are involved, he shall state the same in his interlocutor, and he may then, or within seven days from the date of his interlocutor, grant leave to appeal to a Division of the Court of Session on such questions of law, but otherwise the judgment of the Sheriff shall be final." Sec. 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds and the interlocutor appealed against is a final judgment . . ."

A firm of advertising contractors brought an action in the Sheriff Court for payment of £43 odd, being the amount alleged to be due, in terms of an agreement executed by the defender in 1907, for advertising on certain electric cars for 146 weeks commencing 11th June 1907 at the rate of one shilling per week each glass, under reservation of their right to all sums yet to become due thereunder. The Sheriff having found that the pursuers were not *in titulo* to demand implement of the contract, the pursuers appealed. The defender objected to the competency of the appeal on the ground that the action was a summary cause, and that no questions of law had been stated and no leave to appeal granted.

Held that as the initial writ showed that the real question at issue was the interpretation of the contract, involving a continuing liability of greater value than £50, the cause was not a "summary cause" in the sense of section 8, and objection repelled.

Opinion per curiam that "summary cause," as defined in section 3 (i) (1) of the Sheriff Courts (Scotland) Act 1907 meant an action for payment of money and nothing else.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sections 3 (i) (1), 8, and 28 are quoted *supra in rubric*.

A. E. Abrahams, Limited, advertising contractors, Stratford, Essex, and the said A. E. Abrahams as an individual, brought an action against William Campbell junior, furniture dealer, Dumbarton, in which the pursuers' claim, as stated in the initial writ, was "for payment of the sum of £43, 16s. stg., being amount due in terms of agreement executed by defender and dated 1st March 1907, for advertising on six glass slides on the electrical cars running at Dumbarton for 146 weeks commencing 11th June 1907, at the cost of 1s. per week each glass, viz., 6s. per week in all, under reservation of pursuers' rights to any and all sums yet to become due by defender under said agreement." The crave was for decree for the said sum of £43, 16s.

By agreement dated 1st March 1907 the defender made a contract with the individual pursuer in the following terms—"I, William Campbell junior, do hereby

agree to take six glass slides on the electric cars running at Dumbarton, for a period of five years, commencing from the day the advertisement is first exhibited, at the cost of one shilling per week each glass . . .”

The pursuers averred—“(Cond. 2) On 20th February 1907 electric tramway cars were inaugurated in the burgh of Dumbarton by the Dumbarton Burgh Tramway Company, Ltd. The routes were Dumbuck to Dalreoch and to Barloan and *vice versa*, and the cars on the routes were six double deckers. (Ans. 2). Admitted. (Cond. 7) In the beginning of 1908 the Dumbarton Burgh Tramway Company, Ltd., was taken over by the Dumbarton Burgh and County Tramway Company, Ltd., and the routes were extended as follows:—On 7th April to Alexandria, and on 25th June 1908 the present route, viz. Dalmuir to Balloch, was fully opened. The present company have in use thirty cars in all, including the six double deckers referred to in article 2. (Ans. 7) Admitted that the car route was extended as stated. *Quoad ultra* not known and not admitted. (Cond. 8) Since the inauguration of said tramway service on 20th February 1907, said tramway companies have run a daily service of cars (Sundays included) suitable for the purposes and to meet the requirements of their business, and have throughout the whole period in respect of which defender is sued used the said six double decker cars, and defender’s advertisements have had exhibition on said six double deckers from said 11th June 1907 during said whole period. With reference to the explanation in answer, it is admitted that, since the introduction of the twenty-four new cars, the old double deckers have not been so much used. In fine weather they are not in demand. *Quoad ultra* denied. The defender took the risk of much or little running, and of any circumstances emerging that might affect the value of his advertisement. He made no stipulation for regular running, and in any case regularity could not have been guaranteed. Nor did he stipulate for any minimum amount of running, or that the running of the cars containing his advertisements should be confined to the original route, or for any rebate dependent upon hours or mileage run, or an extension of the tramway lines. With his local knowledge, defender was better able than pursuers to judge whether any alterations likely to be made by the Tramway Company would depreciate the worth of his advertisement. The pursuers had no control over such alterations, and they in no respect failed to implement their part of their contract with the defender. (Ans. 8) Denied as stated. Explained that immediately after the extension of the route as set forth in article 7 of the condescence, the six cars referred to, upon which defender’s advertisement was exhibited, ceased to run regularly upon the original route, and in point of fact were practically withdrawn therefrom for a time. The running of said cars was very intermittent, and they or some of them were frequently laid up in

the tramway station, and other cars, upon which defender’s advertisement did not appear, were run in their place. The pursuers thus failed to fulfil their part of the contract.”

On 22nd October 1910 the Sheriff (LEES) pronounced an interlocutor in which he, *inter alia*, made the following findings—“(4) That from and after July 1908 the pursuers have not implemented said contract in any reasonable way, in respect that the defender has during said period received only about one third of the amount of display of his advertisement which he was in use to receive at the beginning of the contract, and which was in the contemplation of parties impliedly for due implement of said contract: Finds in these circumstances *as matter of law* that the pursuers are not *in titulo* to demand implement by the defender of a contract which they have ceased to fulfil, but only reasonable compensation for the amount of advertising display they have obtained for defender’s advertisement, and that the sum of £18 would be such reasonable remuneration: Finds the pursuers liable to the defender in his expenses of the cause and of the appeal.”

The pursuers appealed.

The defender objected to the *competency of the appeal*, and argued—This was a “summary cause” in the sense of section 3 (i) (1) of the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), and that being so the judgment of the Sheriff was final unless leave to appeal had been given on important questions of law—Act of 1907, sec. 8.

Argued for pursuers—The appeal was competent for this was not a “summary cause” in the sense of the Act. Summary cause as defined in the Act meant an action for a sum of money and nothing more—*Duke of Argyll v. Muir*, 1910 S.C. 96, *per* Lord Kinnear at p. 104, 47 S.L.R. 67. It was apparent on the face of this initial writ that a much larger question was involved than the sum actually sued for, viz., the construction of the contract and the liability for future payments. That being so the appeal was clearly competent—*Duke of Argyll v. Muir* (*cit. sup.*); *Stevenson v. Sharp*, 1910 S.C. 580, 47 S.L.R. 511.

LORD PRESIDENT—In this case A. E. Abrahams, Limited, a firm of advertising contractors, sue William Campbell, furniture dealer, Dumbarton, for payment of a certain sum alleged to be due in respect of an advertising contract; and in the initial writ the claim or demand of the pursuers is “for payment of the sum of £43, 16s. stg., being amount due in terms of agreement executed by defender and dated 1st March 1907, for advertising on six glass slides on the electrical cars running at Dumbarton for 146 weeks commencing 11th June 1907, at the cost of 1s. per week each glass, viz., 6s. per week in all, under reservation of pursuers’ rights to any and all sums yet to become due by defender under said agreement.”

The defence is a denial that the pursuers have truly performed their part of the agreement. Now to say that pursuers have not truly performed their part of a bargain is an assertion which may mean various things, and here it does not mean that they did not insert the advertisements in question, but that they did not place them on cars which truly corresponded to the cars mentioned in the contract. The contract was an agreement to take six glass slides on the electric cars running at Dumbarton, and the defence is that owing to a change in the arrangements the cars upon which the advertisement was confessedly put were not, in the true sense of the words, electric cars "running at Dumbarton."

The real controversy, accordingly, between the parties is the question, what is in law the true construction of the contract; and one sees that though the sum sued for is under £50 the real question is not as to this sum of less than £50, but as to the meaning of a contract which extends over a period of five years and obviously involves a much larger sum than £50. That being so, the question before us is whether (the Sheriff having given judgment) an appeal to this Court is competent.

It is urged that no appeal is competent, on the ground that this is a summary cause, and under section 8 of the Sheriff Courts (Scotland) Act 1907 an appeal in such causes is competent only on questions of law and where leave has been given by the Sheriff to appeal; and the Sheriff has not given leave here. The section, however, on which the matter really turns is the definition clause, section 3 (i) (1), which defines summary cause as including actions "for payment of money exceeding twenty pounds, and not exceeding fifty pounds, exclusive of interest and expenses." Now I do not think that this is an action for payment of money alone, and I think that a summary cause in the sense of that section must mean an action for payment of money and nothing else. I am of opinion, therefore, that it follows by analogy that there is involved the long series of decisions we have given on the question of value, namely, that the true value cannot always be found on the face of the conclusions of the summons or other writ. Accordingly I am of opinion that this is not properly a summary cause, and that under section 28 of the Sheriff Courts Act the appeal to this Court is competent.

LORD KINNEAR—I agree.

LORD JOHNSTON—I also agree. I think the present case is governed by the case of *Stevenson v. Sharp* (1910 S.C. 580), to which it is very similar. The ground of my opinion in that case equally I think applies here. That action was founded upon a letter of obligation, and what I said there was this—"When the letter on which this claim is founded is looked at, it is at once apparent that it governs not merely the pursuer's claim of interest for the half-year ending Martinmas 1908, but that for subsequent half-years. The pursuer cannot

succeed in her claim without obtaining a favourable interpretation of the letter of obligation founded on." And on such interpretation more depended than the mere sum sued for in the action. In the present case I think the pursuers cannot get decree in their favour without obtaining a favourable interpretation of the contract on which they sue, and equally more turns on that interpretation than the mere sum sued for in the action. I am of opinion, therefore, that the two cases are on all fours, and that the decision in *Stevenson v. Sharp* should be followed here.

LORD MACKENZIE—I agree with your Lordship in the chair.

The Court repelled the objection.

Counsel for Pursuers (Appellants)—Wilton. Agents—Henderson & Mackenzie, S.S.C.

Counsel for Defender (Respondent)—J. R. Christie. Agents—Simpson & Marwick, W.S.

Tuesday, December 13.

FIRST DIVISION.

[Lord Dewar, Ordinary
on the Bills.]

CAMPBELL v. WILLIAM TURNER & SONS' TRUSTEE AND OTHERS.

Bankruptcy—Revenue—Poor—School—Right in Security—Sequestration—Diligence—Poinding of the Ground—Poinding of the Ground Subsequent to Sequestration—Order of Preference of Collector of Customs and Excise, Collector of Poor and School Rates, and Superior—Revenue Act 1884 (47 and 48 Vict. cap. 62), sec. 7 (2)—Poor Law Amendment (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 88—Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), sec. 44.

The Revenue Act 1884, sec. 7 (2), enacts—"No moveable goods and effects belonging to any person in Scotland at the time any of the duties or land tax became in arrear or were payable shall be liable to be taken by virtue of any poinding, sequestration, or diligence whatever, or by any assignation, unless the person proceeding to take the said goods and effects shall pay the duties or land tax so in arrear or payable, provided such duties or land tax shall not be claimed for more than one year. . . ."

The Poor Law Amendment (Scotland) Act 1845, sec. 88, enacts—"The whole powers and rights of issuing summary warrants and proceedings, and all remedies and provisions enacted for collecting, levying, and recovering the land and assessed taxes, or either of them, and other public taxes, shall be held to be applicable to assessments imposed for the relief of the poor; . . . and all assessments for relief of the