

fall. The pursuers seek to make the Corporation of Glasgow liable on the ground, generally speaking, that the lighting of the stair was defective. The precise grounds of fault which are alleged are two and they are put alternatively. The first is that there were not suitable gas pipes and brackets, lamps and burners, and that as it was the statutory duty of the Corporation to see that there were suitable fittings they failed in that duty and accordingly are liable in damages. But, as has been observed more than once in the course of the debate, there is no allegation on record of the pipes, brackets, lamps, and burners being in any way defective or unsuitable for the purpose for which they were supplied, and accordingly that ground of fault fails on relevancy. It is not sufficient to say that they were unsuitable. There must be a specific averment of defect in these various fittings to render such an action as this relevant against the Corporation, who are said to have failed in their statutory duty of inspection.

The other ground of liability, which was the one mainly relied on by counsel for the pursuers, was that the Corporation were at fault in not having supplied these burners with gas sufficient to illuminate the close in question in a proper manner. In support of that allegation they set out the statutory duty of the Corporation under the Act of 1866 to supply gas to these common stairs, meaning thereby gas suitable, if the fittings were suitable, to light the stairs properly. But it appears that the pursuers here have founded upon the wrong statute. The Statute of 1866 sets up no standard of lighting. The Glasgow Gas Act of 1910 does, and it is not said that the specific standard of lighting which was set up by the thirtieth section of that statute was not supplied. There is no suggestion of a standard existing and a standard not complied with. At the time of the accident, in point of fact, the statutory provisions which the Act of 1910 imposed were superseded by an Order passed under the authority of the Defence of the Realm Regulations, which set up what is obviously a lower standard, namely, 500 British thermal units gross, or in certain circumstances 450 British thermal units gross. That was the standard of gas which the Corporation of Glasgow at the time of the accident were bound to supply for this common stair. Once more, it is not alleged by the pursuers that they failed there in the performance of their statutory duty.

Accordingly there is here no relevant averment of fault in respect of defective supply of gas. In other words, it is not averred that the standard of gas which was set up and prevailed at the time when the accident occurred was not maintained by the defenders. On these grounds I think that the pursuers have failed to make a relevant case here, and that we ought to adhere to the Lord Ordinary's interlocutor.

LORD MACKENZIE—I agree. It has appeared in the course of the discussion that at the time the accident happened the supply of gas by the Corporation of Glasgow

was governed by a somewhat elaborate set of provisions necessitated by the war. There is no averment on record that there was any breach on the part of the Corporation of these statutory obligations which governed the supply of gas at the time of the accident. Therefore there is no averment in the case so far as regards the insufficiency of the supply of gas. There is no averment that there was a failure to provide the necessary apparatus. There is no averment that there was a defect in the apparatus which was supplied. There is no averment that the accident was due to any temporary defect in the apparatus for which the Corporation was responsible. Accordingly I think the action is irrelevant.

LORD SKERRINGTON—The pursuers aver alternative grounds of fault against the defenders. According to the familiar rule it is fatal to their case if either alternative is bad. I think that each of the alternatives as stated in the condensation is irrelevant.

LORD CULLEN—I concur.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Maclaren. Agent—John Baird, Solicitor.

Counsel for the Defenders (Respondents)—The Solicitor-General (Morison, K.C.)—Crawford. Agents—Campbell & Smith, S.S.C.

Saturday, January 31.

FIRST DIVISION.

[Sheriff Court at Hamilton.]

SUMMERLEE IRON COMPANY, LIMITED v. DUFF.

Process—Appeal—Competency—Sheriff—Suspension Disposed of “in a Summary Manner”—*Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sec. 28, and First Schedule, Rule 124, as Amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), sec. 2.*

A sheriff disposed of a suspension using the forms and procedure appropriate to summary causes. One of the parties appealed, although the Sheriff had not certified the cause as suitable for appeal. *Held* that as it was competent under rule 124 of the Sheriff Courts (Scotland) Act 1907 for a sheriff to dispose of a suspension “in a summary manner,” the appeal was incompetent in terms of section 28 (1) (a) of the Act of 1907, as amended by the Act of 1913, in respect that the cause had been tried as a summary cause.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 28, as amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), section 2, enacts—Section 28—“(1) Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment

either of a sheriff or of a sheriff-substitute if the interlocutor appealed against is a final judgment: . . . Provided that no appeal shall be competent where the cause does not exceed fifty pounds in value, exclusive of interest and expenses, or is being tried as a summary cause, unless the Sheriff, after final judgment by him, on an appeal on the motion of either party made within seven days of the date of the final interlocutor, certifies the cause as suitable for appeal to the Court of Session. . . ." First Schedule, Rule 124—"On sufficient caution being found . . . the Sheriff may sist diligence, order intimation and answers, and proceed to dispose of the cause [*i.e.*, a summary suspension] in a summary manner."

The Summerlee Iron Company, Limited, Coatbridge, *pursuers*, brought an action in the Sheriff Court at Hamilton against Robert Duff, miner, High Blantyre, *defender*, craving the Court to suspend "the charge following upon the extract registered award under the Workmen's Compensation Act 1906 in the action at the instance of the defender against the pursuers, which award was recorded in the special register kept in the Sheriff Court of Lanarkshire at Hamilton, under the Workmen's Compensation Act 1906, on the 21st day of December 1912 years, under which the pursuers were found liable to pay to the defender the sum of 18s. per week, and under which the pursuers were charged on the 11th day of October 1919 to pay to defender the sum of £9, 18s. sterling."

The interlocutors in the cause were—"Hamilton, 17th October 1919.—Caution having been found—Grants warrant to cite the defender by serving a copy of the writ and warrant upon an *induciae* of seven days; and appoints him to answer within the Sheriff Court-House, Hamilton, on Friday, the 31st day of October 1919, at 10 o'clock forenoon, under certification of being held as confessed: Meantime sistis diligence.—HAY SHENNAN, Sheriff-Substitute." "Hamilton, 31st October 1919.—Appoints parties to debate on 18th November 1919, at 10.15 a.m.—HAY SHENNAN." "Hamilton, 18th November 1919.—Having heard parties' procurators makes avizandum.—HAY SHENNAN." "Hamilton, 21st November 1919.—The Sheriff-Substitute suspends the charge as craved: Finds the suspenders entitled to expenses on the lower scale."

The defender appealed.

Counsel for the pursuers objected to the competency of the appeal, and argued—The appeal was incompetent, as there was no certificate that the case was suitable for appeal as required by the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), section 28, as amended by the Sheriff Courts (Scotland) Act 1913 (2 and 3 Geo. V, cap. 28), section 2; and (1) the value of the cause did not exceed £50; and also (2) the action had clearly been treated as a summary cause. Section 3(i) of the 1907 Act was not an exhaustive definition of summary causes, but it did expressly exclude actions which the parties consented to being tried summarily. Here there was undoubtedly implied consent, for there had been throughout no

objection to the procedure, and the procedure was that appropriate to a summary cause. Thus the warrant for citation was that appropriate to a summary cause—First Schedule, Rule 4, and Form B. Form C was appropriate to an ordinary action. The record had not been closed, which was competent in a summary cause—Rule 41, as amended by the Act of 1913—but incompetent in an ordinary action—Rule 52, as amended by the Act of 1913. Expenses were given on the lower scale. A suspension was a cause—section 3(d), as amended by the Act of 1913—and in 1907 for the first time suspensions became competent in the Sheriff Court, but only where the value was less than £50—section 5(5). If therefore the action was competent in the Sheriff Court it was necessarily a summary cause—section 3(i), as amended by the Act of 1913. In the Rules suspensions were called summary—Rules 123-125—and the Sheriff, apart from consent of parties, had power to deal with the cause in a summary manner. Rule 124, and section 8, were referred to. On the question of value, *Wilson and Clyde Coal Company, Limited v. Cairnduff*, 1911 S.C. 647, 48 S.L.R. 500, was referred to.

Argued for the defender—The appeal was competent. The action was not in itself a summary cause, nor had it been so treated. The Sheriff had a right to adopt an expeditious form of procedure in suspensions analogous to the Bill Chamber procedure—section 5(5), which expressed that by enacting that such cases might be tried in a summary manner, but did not make such actions "summary causes" in the sense of the Act. Those formed a quite well-known and definite class of cases enumerated in section 3(i). The defender had not consented to the cause being tried summarily. The procedure here was indecisive. It was appropriate either to a summary cause or to trying in a summary manner. The form of warrant was immaterial. It was written on by the Sheriff-Clerk, and he could not decide the nature of the cause. *Lewis, Sheriff Court Practice*, pp. 40, 42, was referred to. On the question of value—*Paisley Parish Council v. Glasgow and Row Parish Councils*, 1907 S.C. 674, 44 S.L.R. 520; *Hamilton v. Hamilton*, 1877, 4 R. 688, 14 S.L.R. 448; *Aitchison v. M'Donald*, 1911 S.C. 174, 48 S.L.R. 185; *James Nimmo & Company v. Myles*, 1917 S.C. 522, 54 S.L.R. 465.

LORD PRESIDENT—The competency of this appeal has been challenged on two grounds—(1) value, and (2) that it is a summary cause. I offer no opinion on the question of value, because I consider the second ground of challenge to be well founded. By section 28(1)(d) of the Sheriff Courts Act 1907, as it now reads, no appeal to this Court is competent where the cause "is being tried as a summary cause" unless by leave. No leave has been given, and the question we have to consider therefore is whether the cause was being tried as a summary cause. An examination of the procedure leaves no doubt upon the question. The first interlocutor before us is in the form prescribed by Rule 4(a) to be adopted in

summary causes. It appoints the defender to answer at a place and on a day and hour stated under certification, thus following Form B, which is in the form prescribed for summary causes. It does not follow Form C—the form prescribed in all other causes—which appoints the defender if he intends to defend to lodge a notice of appearance. Thereafter this action proceeded as a summary cause to the end. No record was made up, there was no adjustment of the pleadings, and no closing of the record. The procedure followed was indeed in strict compliance with Rules 123-125, which are made expressly applicable to summary suspensions. That this cause therefore was *de facto* being tried as a summary cause admits of no doubt. But it was argued for the appellant that section 3 (2) of the Statute of 1907 gives an exhaustive definition of the expression "summary cause," and that as this action does not fall within the definition the appeal is competent. To this argument the answer is that section 3 (i) does not profess to define summary cause, but merely says that certain actions falling under these categories are included within the expression "summary cause." The description is not exhaustive. But even if it were it must be observed that the 28th section of the Act as it now reads does not confine the right of appeal under it to cases falling within the statutory description of "summary causes." It applies to any action which "is being tried as a summary cause"—which this action certainly was. I am accordingly for dismissing the appeal as incompetent.

LORD MACKENZIE and LORD SKERRINGTON concurred.

LORD CULLEN—The limitation of right of appeal on which the respondents found is, under section 28 of the Sheriff Courts (Scotland) Act 1907, as amended, made applicable to, *inter alia*, a cause "which is being tried as a summary cause."

Under Rule 124 contained in the First Schedule to the Act of 1907 it is enacted that the Sheriff in the case of a suspension such as we have before us may "proceed to dispose of the cause in a summary manner."

It appears to be quite clear, on a scrutiny of the course of procedure before the Sheriff-Substitute whose judgment is the subject of this appeal, that the cause proceeded and was disposed of by him in a summary manner. While the language of the Act is somewhat confusing, I do not think that it can have been intended to make a distinction between causes "tried as summary causes" and causes "disposed of in a summary manner."

On that footing the limitation of the right of appeal already referred to applies, and I therefore agree with your Lordships in the view that the appeal should be dismissed as incompetent.

The Court dismissed the appeal.

Counsel for the Pursuers (Respondents)—Sandeman, K.C.—Walker. Agents—W. & J. Burness, W.S.

Counsel for the Defender (Appellant)—A. M. Mackay—Stevenson. Agent—John Baird, Solicitor.

VALUATION APPEAL COURT.

Thursday, February 5.

GLASGOW CITY ASSESSOR v.
GILMARTIN.

Valuation Cases—Lands and Heritages—Entry in Valuation Roll—Stevedore's Bothies—Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91) secs. 6 and 42—Valuation of Lands (Scotland) Act 1895 (58 and 59 Vict. cap. 41) sec. 4.

A stevedore, the tenant of a piece of ground from which he could be removed on a month's notice, placed upon the ground three structures which were used as sheds or bothies for his employees at a quay and for storing odd gear. One of them had fittings for wheels, but the wheels were removed and it rested on the ground on sleepers. The wheels were available on the premises, and by means of them the shed could be removed as a whole. The other two were constructed of frames covered by corrugated iron sheets. The frames were bolted together and could be separated without injury. Those sheds rested on bricks by their own weight. They could not be removed as complete units, but they could be taken to pieces, and these could be removed and the whole erected again elsewhere. Held that the two sheds last mentioned being erections, and heritable, in the sense of the Valuation Acts must enter the roll, but that the other being moveable was rightly deleted from the roll.

The Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. cap. 91) enacts—Section 42—"The following words and expressions, when used in this Act, shall in the construction thereof be interpreted as follows . . . the expression 'lands and heritages' shall extend to and include . . . all buildings and pertinents thereof."

The Lands Valuation (Scotland) Amendment Act 1895 (58 and 59 Vict. cap. 41), by section 4 adds to section 6 of the Act of 1854 the following proviso—"Provided also that where any lessee of any such lands and heritages holding under a lease or agreement, the stipulated duration of which is twenty-one years or under from the date of the entry under the same . . . has made or acquired erections or structural improvements on the subjects let, and where the actual yearly value of such erections or structural improvements cannot under the provision of section 6 [of the Act of 1854] be entered in the valuation roll, such erections or structural improvements shall be deemed to be lands and heritages within the meaning of [the Act of 1854], and such lessee shall be deemed to be the proprietor thereof for the purposes [of the Act of 1854], and the assessor shall ascertain the yearly value of such erections or structural improvements as a separate subject, and shall make a separate entry thereof in the valuation roll."