heading of 'Drop from Cloudland,' that 'Professor Baldwin, the world-renowned scientific aeronaut, will make his remarkable descent at the Hawkhill Recreation Grounds, Edinburgh;' whether the said 'Professor Baldwin' on said date ascended in a balloon from the said ground and descended from the same into an adjoining field, and whether this descent therein might readily have been foreseen by the defender; whether the said field was occupied by the pursuers as part of the farm of Lochend, and whether, induced by the said advertisements of the defender, a crowd of persons collected on the roads and other places in the vicinity of the said farm, and whether in consequence of the said descent being made in the said field occupied by the pursuers, and as the natural and probable effect thereof, they entered the said field and destroyed the fences and gates thereof, and the grass and turnips growing thereon, or some part thereof, to the loss, injury, and damage of the pursuers?"

Counsel for the Pursuers—Gloag—Dickson. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Defender — Rhind—Baxter. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Tuesday, November 5.

FIRST DIVISION.

[Sheriff of Lanarkshire.

NORTH BRITISH RAILWAY COMPANY *v.* M'ARTHUR.

Process—Sheriff—Appeal—Competency of Appeal—Value of Cause—Sheriff Court Act 1853 (16 *and* 17 *Vict. cap.* 80), *sec.* 22.

A summons of sequestration for rent under the Debts Recovery (Scotland) Act 1867 concluded for warrant to sequestrate the goods on the premises let for payment of the rent due, which was £22, 10s., and for warrant to sell the goods sequestrated. An objection to the competency of an appeal against the judgment of the Sheriff, on the ground that the value of the cause was under £25, *sustained.*

Thomson v. *Barclay*, February 27, 1883, *distinguished.*

In 1888 the North British Railway Company let to Mr L. J. M'Arthur certain premises at 88 North John Street, Glasgow, under a lease for a tract of years, with entry at Martinmas 1888, at a yearly rent of £45, payable half-yearly at Whitsunday and Martinmas in equal portions. Mr M'Arthur having failed to pay the rent due at Whitsunday 1889, £22, 10s., the railway company took out a summons of sequestration against him under the Debts Recovery Act of 1867 in the Sheriff Court of Lanarkshire. The conclusions of the summons were in these terms—"That warrant ought forthwith to be granted to inventory, appraise, sequestrate, and, if need be, secure the goods and effects upon or within the said premises; and decree ought to be pronounced decerning the defender to make payment of the said rent to the pursuers, with expenses; and warrant ought also to be granted to sell the goods and effects sequestrated in payment of the said rent and expenses."

The defender pleaded, *inter alia*, that he was not due the whole amount of rent sued for, as he had not received possession of the whole subjects let.

The value of the goods sequestrated was, according to the inventory, £14, 6s.

On 19th August 1889 the Sheriff-Substitute (BALFOUR) granted decree against the defender for the sum sued for and warrant of sale.

On 14th October 1889 the Sheriff (BERRY) adhered.

The defender then appealed to the First Division of the Court of Session.

The pursuers objected to the competency of the appeal, and argued—The appeal was incompetent, the sum in question between the parties being less than £25. The case of *Thomson* v. *Barclay* was decided on specialties not present in this case. The valuation of the goods sequestrated here amounted only to £14, and there were no conclusions for caution and removing—*The Singer Manufacturing Company* v. *Jessiman*, May 14, 1881, 8 R. 695; *Aberdeen* v. *Wilson*, July 16, 1872, 10 Macph. 971; *Henry* v. *Morison*, March 19, 1881, 8 R. 692; Debts Recovery (Scotland) Act 1867 (30 and 31 Vict. cap. 96), sec. 10; *Dickson* v. *Bryan*, May 14, 1889, 16 R. 673.

The defender argued—The appeal was competent—*Thomson* v. *Barclay*, February 27, 1883, 10 R. 694. (1) The valuation was for the purpose of bringing everything into the sequestration, and it did not follow that the inventory value was the fair value of the goods. In the present case certain items were clearly entered below their full value. (2) The rent sued for was a half-year's rent under a five years' lease, and the pursuers' objection would affect his obligation to pay the full rent for succeeding terms. Thus the amount in question between the parties was really over £25—*Cunningham* v. *Black*, January 9, 1883, 10 R. 441; *Drummond* v. *Hunter*, January 12, 1869, 7 Macph. 347.

At advising—

LORD PRESIDENT—The conclusion of the summons in this case is in the following terms—"That warrant ought forthwith to be granted to inventory, appraise, sequestrate, and, if need be, secure the goods and effects upon or within the said premises; and decree ought to be pronounced decerning the defender to make payment of the said rent to the pursuers, with expenses; and warrant ought also to be granted to sell the goods and effects sequestrated in payment of the said rent and expenses," &c.

Now, it appears to me that there are three heads in that conclusion. First, there is a conclusion for warrant to secure the goods; in the second place, decree is sought

for payment of the rent; and the third conclusion is for warrant of sale with a view to realise enough to pay the rent and expenses. I cannot in any view consider the value of the action greater than the amount of the rent sued for, namely, £22, 10s. The application for a warrant to sequestrate is, properly speaking, no part of the conclusions of the summons, but merely an initial step taken with a view to secure that if decree for the rent is given, there will be goods out of which payment may be operated. The real conclusion is for a warrant for payment, and for sale so as to operate payment. There is no answer, I think, to Mr Dickson's observation that if this appeal is held to be competent every cause in which a warrant for sequestration is applied for will be appealable, and there are no cases to warrant such a conclusion.

The case of *Thomson* v. *Barclay* is, I think, clearly distinct from the present. I am not quite sure that I agree with the grounds on which that case was decided, but these grounds were, first, that the warrant might bring back goods of far greater value than £25, and also that there were conclusions for caution and removing. There are no such specialties in this case.

LORD SHAND—I am also of opinion that this appeal is incompetent, following the principle of the cases of *The Singer Manufacturing Company* v. *Jessiman* and *Dickson* v. *Bryan*. The principle the Court has acted on in questions of this kind is to apply as a test of the value of the action this question—By paying what sum would the defender be enabled to get rid of the action? When you reach that you have ascertained the value of the cause. If a person is summoned, and can get rid of the action by the payment of a sum under £25, then the value of the cause is fixed under that sum, though no doubt there may be cases distinct from that rule, as where a document is sought to be recovered for some collateral purpose. Accordingly, applying the above test to the present action, the conclusion is for £22, the conclusion for sequestration being merely ancillary to the conclusion for payment. And therefore, following the authorities, the present appeal is incompetent.

In the case of *Thomson* v. *Barclay* there are three grounds mentioned on which the decision is rested. The first is that although the sum concluded for was under £25, the amount of goods in the inventory exceeded that in value. In that ground I do not think I can concur. The officer taking the inventory is bound to make a fair valuation of the goods. The second ground of decision is that the conclusion for warrant to bring back articles removed might bring back goods to a value exceeding £25. That seems to me an ancillary conclusion, and the decision not to be satisfactorily rested on that ground. In the third ground of decision I am disposed to concur — there was a conclusion to remove from the subjects. In the present case, however, there is no such conclusion. There is simply a pecuniary conclusion, and ancillary conclusions to make the first good.

Further, I do not think it is competent to attempt to bring this case under the authority of certain other cases as raising a question of greater value than £25 by the defences which have been stated.

LORD ADAM—It appears to me the pecuniary value of the action is the amount set forth in the conclusions of the summons. It is clear that the pursuers cannot get decree for a larger sum, nor can the defender be forced to pay a larger sum. By paying that sum the defender can get rid of the action, the other conclusion being merely ancillary to the conclusion for payment.

With reference to the case of *Thomson* v. *Barclay*, it appears to me that there were ample grounds for that decision, but I do not agree with it in so far as it is rested on the ground that under the sequestration goods to a larger amount than the sum sued for might be seized. I think Mr Dickson's argument is sound that if that were so, then in every sequestration there would be an appeal competent to the Court of Session.

Appeal refused as incompetent.

Counsel for the Pursuers—C. S. Dickson. Agent—White Millar, S.S.C.

Counsel for the Defender — Salvesen. Agents—

Wednesday, November 6.

SECOND DIVISION.

BRAETER *v.* BOARD OF TRADE.

Ship—Loss of Ship—Master—Duties of Master—Shipping Casualties Investigations Act 1879 (42 *and* 43 *Vict. c.* 72)—*The Shipping Casualties* (*Appeal and Rehearing*) *Rules* 1880.

Circumstances in which the Court, acting upon the advice of Nautical Assessors, *found* that the steamship "Sevilla" was not lost owing to the wrongful act or default of the master, but owing to an error in judgment on his part, which error was shared in by his crew as to the distance of the ship from the land, the weather being hazy at the time; and *restored* to the master his certificate which had been suspended by the deliverance of a Court of Inquiry, at the same time reprimanding the master for said error of judgment.

The certificate of Henry Braeter, lately master of the steamship "Sevilla" of Glasgow, which was lost off the east coast of Harris on 20th May 1889, was suspended for twelve months by a decision of a Court of Inquiry, consisting of one of the Sheriff-Substitutes of Lanarkshire, and two Nautical Assessors, dated 28th June 1889. Against this decision Braeter appealed to the Court