may be shown to and spoken to by witnesses, just like a letter or other informal document. If that is so, the receipt is evidence in support of the pursuer's case. Second, the Lord Ordinary expresses some difficulty in accepting the evidence on account of the great improbability of the story. Now, if we assume that the defender persuaded the other contracting party to put in a fictitious price merely to deceive Mr Colquhoun, I would agree that the story was an improbable one; but there is this other alternative, that in putting in the false sum he may have all along intended to get the higher price, and on this point I may read a sentence from Mr Orr's evidence—"He was inclined to treat me very much as he treated Grant. 'It is all right, Grant and I know each other.' And I said 'No, this is business; you must discharge this sum or I won't accept your offer.' And he did so, and I then accepted his offer." Now, if I am right in the conclusion I have come to, I agree with the Lord Ordinary that the defender is putting forward an unconscientious claim, and I confess I have no difficulty in accepting the suggestion that he had intended to make it from the beginning, but gave a false reason to induce the pursuer—the other contracting party—to put in a fictitious price. On the whole matter I agree entirely with the Lord Ordinary.

The Lord President, Lord Adam, and Lord Kinnear concurred.

The Court refused the reclaiming-note, adhered to the interlocutor reclaimed against, and remitted to the Lord Ordinary to proceed. Thereafter on 7th June the Court refused leave to appeal to the House of Lords.

Counsel for the Pursuer—Sol.-Gen. Dickson, Q.C.—Cook. Agents—A. P. Purves & Aitken, W.S.

Counsel for the Defender—W. Campbell, Q.C. — Deas. Agent — J. Gordon Mason, S.S.C.

Friday, May 26.

FIRST DIVISION.

[Sheriff Court of Renfrewshire.

M'KIMMIE'S TRUSTEES *v.* ARMOUR.

Process—Appeal from Sheriff—Competency—Value of Cause.

An action raised in the Sheriff Court for payment of a year's rent amounting to £28, contained conclusions for authority to carry back certain furniture which had been removed by the defender, and for sequestration thereof. When the case first came before the Sheriff he granted warrant to arrest on the dependence, and to the officers of the Court to carry back the furniture as craved. The sum concluded for was consigned by the defender in Court, and accordingly the warrant to sequestrate was not executed. From the defender's subsequent averments on record, which were admitted by the pursuer, it appeared that the defender had paid a quarter's rent of £7.

The defender having appealed against the Sheriff's judgment to the Court of Session, the pursuer objected to the competency of the appeal on the ground that the true value of the cause was only £21.

Held that the appeal was competent on the grounds (1) (following the case of *Buie* v. *Stiven*, 2 Macph. 208) that the cause having originally been not under the value of £25 did not cease to be of that value if at an ulterior stage the interest of the parties was diminished, and (2) that as the sum consigned still remained in Court, the value of the cause had not been diminished.

An action was raised in the Sheriff Court of Renfrewshire by the trustees of the late Mrs M'Kimmie, as proprietors of the subjects No. 21 Queen's Crescent, Cathcart, against Mr Thomas Armour, ship chandler, who was tenant of a dwelling-house at the above address. The summons craved the Court "to grant warrant to officers of Court to search for, take possession of, and carry back from premises at Crookston, or such other premises to which they have been removed, to the premises No. 21 Queen's Crescent, Cathcart, now or lately occupied by the defender, the whole fittings, furniture, goods, and other effects which have been in the said last-mentioned premises since the term of Whitsunday last 1898, and were and still are subject to the pursuers' hypothec." . . .

There was a further conclusion for sequestration of the defender's furniture, and for payment of two sums of £14 each, being the rent of the premises for two half-years, and for warrant to sell the whole or so much of the sequestrated effects as would pay the above amounts.

The pursuers averred that the defender took the said dwelling-house as from Whitsunday 1898 to Whitsunday 1899 at the rent of £28, and that he had removed therefrom certain furniture and other effects belonging to him which were subject to the landlord's right of hypothec.

The defender averred that he had been compelled to remove from the house owing to its insanitary condition. He further averred that the rent was payable quarterly, and that he had paid the first quarter's rent of £7. The pursuer admitted this payment.

The Sheriff-Substitute (Henderson) on 17th October 1898, when the petition was presented, granted "warrant to arrest on the dependence; meantime to officers of Court to carry back, inventory, and secure as craved." The defender consigned in Court the sum concluded for, £28. On 1st November the Sheriff-Substitute allowed the parties a proof.

The Sheriff-Substitute on 14th February 1899 pronounced an interlocutor by which he found that the defender was entitled to leave the pursuers' house, and that he was therefore not liable in the half-year's rent from Martinmas 1898 to Whitsunday 1899.

The pursuers appealed to the Sheriff.

On 17th April the Sheriff recalled the interlocutor of the Sheriff-Substitute, and found, *inter alia*—"(7) That this petition for sequestration was presented on 17th October, but by arrangement the sum concluded for, being a year's rent, was consigned by the defender in the hands of the Clerk of Court, and in consequence of that the warrant to sequestrate was not executed; and (8) that it is admitted by the pursuers that they were in error in concluding for a full half-year's rent, the defender having on 19th August last paid the rent for the first quarter of the current year; and as the legal result of these findings—Finds that the defender is now liable for (*a*) the sum of £7 sterling, with legal interest thereon from the term of Martinmas last till paid, and (*b*) the sum of £7 sterling, with legal interest thereon from 15th February last till paid, and that he will on 15th May next be liable in another sum of £7 sterling, being the quarter's rent which will then become due."

The defender appealed to the First Division.

The pursuers objected to the competency of the appeal, on the ground that the value of the cause was less than £25, and argued —It was admitted that £7 had been paid by the defender, which reduced the amount sued for to £21. It was true that the face value of the cause was £28, being the amount appearing in the summons, but the true value was determined by looking at the condescendence. It was not necessary that there should be a formal restriction of the amount in the summons. The other conclusions in the summons were only ancillary to the leading conclusion for payment of money, and accordingly they did not aid the appellant in supporting the competency of the appeal. Payment of the claim would at once put an end to the proceedings—*North British Railway Company* v. *M'Arthur*, November 5, 1889, 17 R. 30.

Argued for appellant—1. The conclusion was for £28, and accordingly the appeal was competent—*Buie* v. *Stiven*, December 6, 1863, 2 Macph. 208. 2. Moreover there were other conclusions which took the action outside the £25 limit and made the appeal competent—*Broatch* v. *Pattison*, December 16, 1898, 1 F. 303; *Henderson* v. *Grant*, March 17, 1896, 23 R. 659; *Thomson* v. *Barclay*, February 27, 1883, 10 R. 694.

At advising—

Lord Adam—This appeal is objected to as incompetent on the ground that the value of the cause is under £25. [*After stating the circumstances of the case and the conclusions of the summons, his Lordship proceeded*] — What has raised the present question is this—It is averred by the pursuer that the defender took the house from Whitsunday 1898 to Whitsunday 1899 at the rent of £28, and the answer to that is an admission by the defender that he took the house for that term, and an explanation that the rent was payable quarterly, not half-yearly, and that the quarter's rent from Whitsunday to Lammas, £7, had been paid by him. That statement is admitted, and the pursuer now says that deducting the £7 from the £28, there is left only £21 at stake, and that accordingly the sum at issue in the case is reduced below the £25 necessary to warrant an appeal.

I do not think it necessary in this case to determine whether the conclusions of the action form the only test for determining the competency of an appeal, because I think this case is ruled by the case of *Buie* v. *Stiven*, 2 Macph. 208. In that case an inspector of poor brought an action of relief in the Sheriff Court for repayment of certain sums which had been actually advanced by him to a pauper, and of similar sums which might be advanced by him in the future. In the course of the proceedings the pauper died, which put an end to the claim for future advances. Thereupon the pursuer lodged a minute restricting the conclusions of the summons to the sum of £13, 6s. 8d., being the amount actually advanced. The Sheriff decerned for this sum, and the defender appealed. The pursuer objected to the competency of the appeal, which was by way of advocation, on the ground that the cause was not of the value of £25, but the Court held that it was, and that the appeal was competent. In giving judgment Lord Neaves said—"It seems to me that when a series of judgments have been pronounced in a case, if any of these judgments be in a cause of the value of £25, that makes the cause capable of advocation, and the cause is not rendered unsusceptible of advocation, because before the last judgment it may have ceased to be of the value of £25, or of no value at all. The party is still entitled to go back to the previous judgment, and have the case considered as it stood;" and the Lord President, then Lord Justice-Clerk, said—"I think that this cause, being originally not under the value of £25, could not cease to be of that value, because in an ulterior stage of the proceedings the direct pecuniary interest of the parties came to be of small amount."

Let us see what took place in this action. We find that it contained a conclusion to grant warrant to officers to carry back to Queen's Court the furniture removed by the defender. When the case first came before the Sheriff-Substitute he granted "warrant to arrest on the dependence, meantime to officers of court to carry back, inventory, and secure as craved." Then we find in the Sheriff Principal's judgment the seventh finding "that this petition for sequestration was presented on 17th October, but by arrangement the sum concluded for, being a year's rent, was consigned by the defender in the hands of the Clerk of Court, and in consequence of that the warrant to sequestrate was not executed." Now, when this interlocutor was pronounced no admission had been made that a quarter's rent had been paid, and the sum concluded for was a whole year's rent, £28. Accordingly, when this judgment was pronouuced the cause was beyond doubt of value above the amount of £25. If that be so, then in accordance with the judgment in the case

to which I have referred, that interlocutor is still subject to appeal. Moreover, the cause is still of the value of £28, because if we decided in favour of the appellant, his first motion would be for authority to uplift the £28 consigned. That clearly shows that even now there remains the value of £28 in the case before it can be taken out of Court.

There are other grounds upon which the competency of the appeal might be supported, which it is unnecessary to consider.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR concurred.

The Court repelled the objections to the competency of the appeal.

Counsel for the Pursuers—M'Lennan. Agents—Cumming & Duff, S.S.C.

Counsel for the Defender—J. Thomson. Agent—Wm. Balfour, Solicitor.

Tuesday, May 30.

FIRST DIVISION.

[Sheriff Court of the Lothians and Peebles.

LADY DENMAN AND ANOTHER, PETITIONERS.

Executor — Competition — Nomination of Executor--Claim of Next-of-kin.

A petition was presented by the next-of-kin of a deceased lady craving to be decerned her executrix-dative. Certain holograph testamentary writings had been left by the deceased. In the first of these, which contained no direct appointment of an executor, occurred the words "My executor Mr Torry to get £100." The second document, which constituted a general settlement, contained no direct appointment, and no reference to Mr Torry by name, but contained the words "My executor to have £100." A petition was presented by Mr Torry for confirmation as executor-nominate.

There was also presented a petition for the appointment of a judicial factor by certain of the residuary legatees and general disponees of the deceased. It contained averments to the effect that the next-of-kin was incapacitated by age and infirmities from properly administering the estate.

The Court *preferred* the claim of the next-of-kin of the testatrix.

Observed (*per* Lord Kinnear) that the question of the respective capacity of the claimants to administer an estate was not a relevant consideration.

Miss Helen Aitchison, Alderston, Haddington, died on 29th November 1898. She left certain holograph testamentary writings. The first of these, which was dated October 1897, contained various legacies to charitable institutions and to other beneficiaries, and the following words:—"My executor Mr Torry to get £100." The second document dated 1898 constituted a universal settlement. By it legacies were given to charitable institutions, and to others, and Lady Denman the sister of the testatrix was given a liferent of the residue of her estate. No reference was made to Mr Torry by name, but the document contained the words "My executor to have £100."

On 15th March 1899 a petition was presented by Lady Denman, the only surviving sister and next-of-kin of Miss Aitchison, in the Sheriff Court of the Lothians and Peebles craving for her appointment as executrix-dative of her sister.

Thereafter on 22nd March a petition was presented in the Bill Chamber by Mr Andrew Scott, C.A., Edinburgh, and others as representing the charitable institutions who were Miss Aitchison's residuary legatees and general disponees, craving the appointment of a judicial factor on Miss Aitchison's estate. The petition contained averments that Lady Denman was in her 74th year and an invalid, that she was unacquainted with business matters, and that by reason of her age she was unfit to be entrusted with the administration of the estate.

On 31st March a petition was presented by the last named petitioners in the Sheriff Court craving to be appointed as executors-dative.

On the same date the Sheriff-Substitute decerned the petitioner Lady Denman as executrix-dative *qua* next-of-kin.

The respondents appealed to the Sheriff.

A petition was presented on April 6th by Mr John Torry, law-agent, Edinburgh, craving for confirmation as executor-nominate on the ground that he had been appointed executor by Miss Aitchison's testamentary writings.

The Sheriff (RUTHERFURD) conjoined the petitions of Lady Denman and Mr Torry, and on 10th April 1899 pronounced this interlocutor:—"Finds (*Second*) That by her said holograph writings the said Miss Helen Aitchison nominated as her executor Mr Torry, meaning the petitioner John Torry, who for many years acted as her agent; (*Third*) That the said writings contain a valid and sufficient nomination of the said petitioner as executor of the deceased: Therefore recals the Sheriff-Substitute's interlocutor of 31st March 1899, in the petition at the instance of the said Baroness Denman; dismisses the same, and decerns; grants warrant to the Sheriff-Clerk of Haddingtonshire to issue confirmation in favour of the said John Torry as executor-nominate of the said deceased Miss Helen Aitchison on production of a duly stamped inventory and relative affidavits, and decerns," &c.

The petitioner Lady Denman appealed to the First Division.

Argued for petitioner Lady Denman—1. There was no appointment of Mr Torry as executor in the document of 1897. There was no case where the use of such words as "My executor Mr Torry," without any