

Saturday, February 6.

FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Kilmarnock.

MUIRHEAD v. GILMOUR.

Process—Sheriff—Jurisdiction—Transmission from Sheriff Court—Heritable Right—Value of Subject in Dispute—Competency—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, c. 51), sec. 5, sub-sec. 5.

The Sheriff Courts (Scotland) Act 1907, sec. 5, sub-sec. 5, in a proviso provides—
“It shall be competent for either party at the closing of the record, or within six days thereafter, to require the cause to be remitted to the Court of Session in the case of actions (a) relating to questions of heritable right and title when the value of the subject in dispute exceeds fifty pounds by the year or one thousand pounds in value. . . .”

The holder of an *ex facie* absolute disposition of heritable property, granted in security of a loan, having failed to recover payment of his advances, exposed the subjects for sale. They were of the value of upwards of £1000. The debtor, who alleged that the advances had been repaid, brought an action in the Sheriff Court for reconveyance of the subjects, and for interdict against the defender exposing them for sale. The difference between the amount claimed and that admitted to be due was about £10. The defender required the cause to be transmitted to the Court of Session.

Held that as the true matter of dispute was as to the sum of £10 the transmission of the cause was incompetent.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, c. 51, sec. 5, sub-sec. 5) is, so far as necessary, quoted *supra* in rubric.

William Muirhead of Hayocks, Stevenston, brought an action in the Sheriff Court at Kilmarnock against John J. B. Gilmour, solicitor, Stevenston, in which he craved decree (1) that an *ex facie* absolute disposition of his farm of Hayocks, which he had granted in favour of the defender, was granted in security only of an advance of £10; (2) that the said sum had been repaid; (3) that the defender should be ordained to reconvey the subjects; and (4) that the defender should be interdicted from exposing the subjects for sale.

The circumstances in which the action was brought were as follows:—In June 1906 Muirhead borrowed from Gilmour sums amounting to £170, he granted a bond and disposition over his farm of Hayocks for £160, and he also granted (1) an *ex facie* absolute disposition of the subjects, and (2) an assignation of certain life policies. (At the date of the loan the subjects, which were valued at about £1500, were burdened to the extent of £1200.) In January 1908 Gilmour, who had failed to

recover payment of his advances, surrendered the policies, receiving therefor a sum of £34 odd. Thereafter, in February 1908, he advertised the farm for sale by public roup. Muirhead then brought the present action.

The pursuer averred that as the defender had recovered payment of the £10 by surrendering the policies, he was no longer entitled to retain the subjects disposed in the said disposition, or to expose them for sale. The defender averred that the disposition was in security of all his advances, including expenses connected therewith—and that unless these were repaid he was entitled to sell the subjects. In the course of proceedings the pursuer deposited a sum of £144 odd, which he alleged was the balance due by him. The difference between the sum admitted by the pursuer to be due and the defender's claim was about £10.

On 27th January the Sheriff-Substitute (MACKENZIE) closed the record; and on the same date the defender required the cause to be remitted to the First Division of the Court of Session in terms of section 5 (5) of the Sheriff Courts (Scotland) Act 1907.

On the case appearing in the Single Bills counsel for the pursuer objected to the competency of the transmission, on the ground that the value of the cause was below the limit stated in the Act.

Counsel for the defender submitted that the question at issue was whether the defender was or was not entitled to sell the said subjects, which were admittedly upwards of £1000 in value.

LORD PRESIDENT—This case is brought before us as remitted from the Sheriff Court under the provisions of sub-division (a) of sub-section 5 of section 5 of the recent Sheriff Courts Act, which provides “that it shall be competent for either party at the closing of the record, or within six days thereafter, to require the cause to be remitted to the Court of Session in the case of actions (a) relating to questions of heritable right and title where the value of the subject in dispute exceeds fifty pounds by the year or one thousand pounds in value.”

The action is one at the instance of a proprietor of a certain estate, and is directed against another gentleman who happens to be the holder of an *ex facie* absolute disposition granted by the pursuer, but who does not plead that the disposition was not in security. It appears that the sum about which the parties are quarrelling amounts to about £10. The security-holder says he is not bound to retransmit, and that he is entitled to sell the subject which he holds in security unless the sums outstanding, amounting to about £10, are repaid him. For the purposes of the argument I shall assume that the defender's contention is right, but it is none the less fantastic to say that the dispute is a question of heritable right within the limit as to value prescribed by the section I have quoted. The true test of the matter is what the parties are fighting about, and that, as I have already indicated, is a sum of £10. I think the trans-

mission here is incompetent. We have no discretion in the matter, and I only make these observations as this is the first case under this section of the Act. The case therefore will go back to the Sheriff.

LORD M'LAREN—I agree.

LORD KINNEAR — I am of the same opinion.

LORD PEARSON—I also agree.

The Court found that the transmission of the cause was incompetent.

Counsel for Pursuer—Lippe. Agent—W. Croft Gray, S.S.C.

Counsel for Defender—W. J. Robertson. Agents—Laing & Motherwell, W.S.

VALUATION APPEAL COURT.

Tuesday, February 16.

(Before Lord Low, Lord Dundas, and Lord Mackenzie.)

POPULAR AMUSEMENTS, LIMITED,
AND OTHERS v. EDINBURGH
ASSESSOR.

Valuation Cases—Subjects of Valuation—Erections within Grounds of the Scottish National Exhibition 1908—“*Lessees of Lands and Heritages*”—*Caterers and Exhibitors—Valuation of Lands (Scotland) Acts 1854 (17 and 18 Vict. c. 91), sec. 6, and 1895 (58 and 59 Vict. c. 41), sec. 4.*

Certain prospective caterers and exhibitors at the Scottish National Exhibition entered into agreements with the Exhibition Executive, under which they were empowered to make erections on ground allocated to them within the Exhibition area, and they undertook to make the erections and to run their businesses during the period of the Exhibition, and also to make certain payments to the executive. The executive held the ground occupied by the Exhibition from the proprietors thereof under a lease which, *inter alia*, excluded sub-tenants, but empowered them to allocate space for the use of exhibitors and others and to make charges therefor. The Assessor, proceeding under section 4 of the Valuation of Lands (Scotland) Act 1895, entered the caterers and exhibitors in the valuation roll as proprietors of their respective erections.

Held, on appeal, that on consideration of the agreements between the parties, they were not lessees of the ground allocated to them, and therefore did not fall to be entered in the roll.

The Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. c. 91), sec. 6, enacts—“In estimating the yearly value of lands and heritages under this Act, the same shall

be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year; . . . and where such lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof, without grassum or consideration other than rent, such rent shall be deemed and taken to be the yearly rent or value of such lands and heritages in terms of this Act: Provided always, that if such lands and heritages be let upon a lease the stipulated duration of which is more than twenty-one years from the date of entry under the same . . . the rent payable under such lease shall not necessarily be assessed as the yearly rent or value of such lands and heritages, but such yearly rent or value shall be ascertained in terms of this Act irrespective of the amount of rent payable under such lease, and the lessee under such lease shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor thereof . . . of such proportion of all assessments laid on upon the valuations of such lands and heritages made under this Act, and payable by such lessee as proprietor in the sense of this Act, as shall correspond to the rent payable by such lessee to such actual proprietor as compared with the amount of such valuation.”

The Valuation of Lands (Scotland) Amendment Act 1895 (58 and 59 Vict. c. 41), sec. 4, enacts—“Section 6 of the Valuation Act 1854 shall be read and construed as if the following proviso were inserted after the words ‘as compared with the amount of such valuation’—that is to say: 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 this Act, be entered in the valuation roll, such erections or structural improvements shall be deemed to be lands and heritages within the meaning of this Act, and such lessee shall be deemed to be the proprietor thereof for the purposes of this Act, and the assessor shall ascertain the yearly value of such erections or structural improvements as a separate subject, by taking the amount of rent, if any, in addition to the rent stipulated to be paid under such lease or agreement at which, one year with another, the subjects let, and such erections or structural improvements might together in their actual state be reasonably expected to let from year to year in consequence of such erections or structural improvements having been made, and shall make a separate entry thereof in the valuation roll, setting forth all the particulars relating thereto as hereinbefore provided with respect to other lands and heritages.”

At a Court of the Magistrates of the City