Saturday, July 8.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CRANSTON *v.* MALLOW & LIEN.

Sheriff—Appeal—Competency—Summary Cause—"Important Questions of Law"—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, c.* 51), *secs.* 3 (*i*) *and* 8.

The Sheriff Courts (Scotland) Act 1907 enacts—Sec. 3 (*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."

In an action raised in the Sheriff Court for £28, being the price of a horse, the Sheriff-Substitute granted the pursuer decree. On appeal the Sheriff pronounced an interlocutor decerning against the pursuer and making a certain finding in law. He appended a note thereto in which he discussed the law applicable to the case. Within seven days thereafter he pronounced an interlocutor granting the pursuer leave to appeal. He gave no statement in either interlocutor of "important questions of law" involved in the case.

Held that the appeal was *competent.*

James D. Cranston, horsedealer, Glasgow, *pursuer*, brought an action in the Sheriff Court there against Mallow & Lien, provision merchants, Glasgow, *defenders*, for payment of £28, being the price of a bay horse sold and delivered by the pursuer to the defenders on or about 25th May 1910.

Proof was allowed and led, and the evidence was recorded.

On 22nd December 1910 the Sheriff-Substitute (CRAIGIE) decerned against the defenders as craved.

The defenders appealed to the Sheriff (MILLAR), who on 22nd February 1911 pronounced the following interlocutor—"Recals the interlocutor of 22nd December last: Finds in fact (1) that on 25th May 1910 the pursuer sold to the defenders a bay horse at the price of £28, with a warranty that it was a good worker and sound in wind; (2) that the defenders bargained that they should have a week's trial with the horse; (3) that they returned the horse within the week, on the ground that it was suffering from stringhalt and was going lame: Finds in law that the contract was one of sale on approbation, and that the defenders having returned the horse within the period allowed for approval, there was no completed contract of sale: Therefore assoilzies the defenders from the conclusions of the action, and decerns.

The Sheriff appended to his interlocutor a note setting forth the authorities on which he based his finding. On 28th February 1911 he granted leave to appeal to the Court of Session.

On 2nd March 1911 the pursuer appealed.

When the case was called in the Summar Roll the defenders took objection to the competency of the appeal, and argued—The appeal was incompetent because the Sheriff had not complied with the provisions of section 8 of the Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51). That section was imperative. The questions of law for the decision of the Court must be stated in the interlocutor. That had not been done here. A mere finding in law would not do. It was true that in *Duke of Argyll* v. *Muir*, 1910 S.C. 46, 47 S.L.R. 67, the questions of law were not stated in the interlocutor disposing of the cause, but they were set forth in the interlocutor granting leave to appeal. In the face of section 8 the case could not be remitted back to the Sheriff. This was a summary process, and it was the policy of the Legislature to restrict appeal in this type of case.

Argued for the pursuer—The appeal was competent. The Sheriff had made a finding in law in his interlocutor. He had thereafter within seven days granted the pursuer leave to appeal. It was thus clearly to be inferred that he considered that an important question of law was involved in his decision. He had complied with the spirit of the section. It was true that the wording of the section was not very felicitous, but the underlying idea was perfectly plain. It had already been laid down in *Duke of Argyll* v. *Muir* (*sup. cit.*) that an express statement of the questions of law need not be given in the Sheriff's interlocutor.

LORD SALVESEN—This is an action brought in the Sheriff Court of Glasgow for the sum of £28—being the price of a bay horse sold and delivered by the pursuer to the defenders on or about 25th May 1910. It was accordingly an action to which the provision of section 7 of the Sheriff Courts (Scotland) Act 1907 applied, by which the right to appeal to the Court of Session which previously existed has been in the ordinary case excluded. Section 8 of the statute, however, provides for a limited appeal in cases where the evidence has been recorded as it was in the present case. The words of section 8 which deal with this matter, and which we have to construe, are as follows—"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."

The respondent objected to the competency of the appeal, on the ground that

the Sheriff, if he was of opinion that important questions of law were involved, has not stated the same in his interlocutor, and if by this is meant that he must set forth in a separable part of his interlocutor an articulate statement of the questions of law on which he thinks that the unsuccessful party should have an opportunity of having his judgment reviewed, he has certainly not done so. We were referred to the case of *The Duke of Argyll* v. *Muir* (1910 S.C. 96), where the Lord President made certain remarks on the draughtsmanship of section 8, and in these observations I express my respectful concurrence, but as I agree further with him that the underlying idea of the section is perfectly clear, I do not think it ought to be construed too literally. The Sheriff has here made a finding in law in his interlocutor, and he has discussed in the note which he appended the various authorities on which he bases his finding. He has also within seven days of the interlocutor granted leave to the pursuer to appeal, and it must therefore be inferred that he considered that an important question of law was involved in his decision. That being so, I think both the conditions which are necessary to a competent appeal to the Court of Session have been satisfied, and that we are bound to entertain the appeal. It would be obviously impracticable for the Sheriff in every summary case to consider, possibly without previous argument, whether the decision which he was pronouncing involved important questions of law, and to state these articulately so as to pave the way for a further appeal, when at that stage of the cause no suggestion may have been made by either party as to further procedure. I cannot think that that was intended, having in view the provision that the interlocutor granting leave to appeal may be signed within seven days of the interlocutor on the merits. The jurisdiction of the Court of Session in such summary causes, if this view be sound, would be similar to the jurisdiction which the House of Lords exercises with regard to judgments pronounced by either Division on appeals coming from the Sheriff Court. On questions of fact the judgment of the Court of Session cannot be reviewed by the House of Lords, but the findings in law proceeding on these facts are open to review. I am therefore for repelling the objection to competency and appointing the cause to be put out for hearing.

The LORD JUSTICE-CLERK and LORD CULLEN concurred.

LORD ARDWALL was absent, and LORD DUNDAS was sitting in the Extra Division.

The Court sustained the competency of the appeal and ordered the cause to be put to the roll.

Counsel for Pursuer—Paton. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defenders—T. G. Robe tson. Agents—Laing & Motherwell, W.S.

Thursday, July 13.

FIRST DIVISION.

[Lord Dewar, Ordinary.

GLEN'S TRUSTEES *v.* GLEN AND OTHERS.

MILLER (GLEN'S *CURATOR BONIS*) *v.* GLEN'S TRUSTEES.

Process—Multiplepoinding—Trust—Competency—Double Distress.

A father died survived by a widow and a daughter. Thereafter his widow, who had been his executrix, died. The *curator bonis* of the daughter raised an action of count and reckoning and payment against the widow's trustees and executors, in which he averred that the widow had immixed her husband's estate with hers, and that it formed the bulk of the estate of which she died possessed. This action was signeted after, but called before, an action of multiplepoinding whereby the widow's trustees and executors, as real raisers, threw into Court the whole estate under their administration as such, and called as defenders the daughter and her *curator bonis* and the whole individual beneficiaries under the widow's settlement. They maintained that this procedure was justified on the ground that they were threatened with legal proceedings by the beneficiaries under the widow's will if they admitted the claim of the *curator bonis*. The Lord Ordinary (Dewar) repelled the defender's plea to the competency of the multiplepoinding, and sisted the action of count, reckoning, and payment *in hoc statu*.

The Court *sustained* the defender's plea to the competency of the multiplepoinding, and *recalled* the sist of the action of count, reckoning, and payment.

David Rintoul and another, the trustees acting under the trust-disposition and settlement of Mrs Jane M'Laren or Glen, dated 17th August 1907, *pursuers and real raisers*, raised an action of multiplepoinding against Marion Glen, daughter of the said Mrs Glen, and Guy B. Miller, *curator bonis* to the said Marion Glen and others. The summons was signeted on 12th October 1910. Answers were lodged for Guy B. Miller, *curator bonis* to Miss Marion Glen, who pleaded that the action was incompetent and should be dismissed.

Guy Burns Miller, writer in Glasgow, *curator bonis* to Miss Marion M'Laren Glen, *pursuer*, raised an action of count, reckoning, and payment against David Rintoul and another, the trustees and executors of Mrs Janet M'Laren or Glen, acting under her trust-disposition and settlement dated 17th August 1907, *defenders*. The summons was signeted on 24th October 1910.

The circumstances in which the actions were raised sufficiently appear from the