I have felt myself unable to hold that the appellant has shown ground for his contention that in doing what they propose to do their powers will be exceeded. The pleadings of the appellant set forth his case as being one of property. He complains that the Corporation propose to take his property without compensation; that they have failed to give him notice under the 24th section, which relates to purchase by the Corporation under their statutory powers. That, as it appears to me, is a totally false view of his position. The whole pavements are by section 16 vested in the Corporation, subject only to a right where the original property title of a citizen extends past the front of his building, to have cellars or vaults under the pavement, and a space of 30 inches in front of the buildings for lighting the underground premises. And in addition to this the part of the pavement with which the Corporation propose to deal is entirely outside of the space which was added to the street when the appellant's present buildings were erected. Further, the Corporation do not propose to alter levels in any way, and it is only where in altering a footpath an alteration of level is to be made that any compensation for damage can be claimed where the alteration is on a footpath.

It is no doubt somewhat hard that where the front of buildings has been thrown back, and thereby a broad pavement has been left opposite them, that its breadth should be diminished. But I am unable to hold that if the Corporation decide that a different arrangement of the space between buildings is an improvement of the street, they have not the power to make the change. I would therefore move your Lordships to refuse the appeal.

LORD YOUNG—I have arrived at the same conclusion, and, I confess, without any hesitation. The street is made up of the carriageway and the whole of the existing foot-pavements on both sides. The interest of the public in this public street is that it should be of sufficient width. I cannot conceive any ground for suggesting hardship done to the proprietor who is objecting to the proposed proceedings of the Magistrates. He made certain alterations on his property in order that he might have a broad street in front of him. He says a broad pavement, but the pavement, as I have shown, is just part of the street. He did that having reference to no interest but his own, being of opinion that the best use he could make of his property was to build it in such a position that there should be a broad street or pavement in front. Where the building ends the street begins. He might have put a sunk area in front of his building. The street would in that case have begun at the fence of the sunk area. But he did not do so, and by the appellant's own act in his own interest the street comes up to his own buildings. In these circumstances the Magistrates, in discharge of their duty as guardians of the public interest, are of opinion that the public interests require that the breadth of the carriageway should be widened, and that they are able to widen the carriageway by taking 6 feet off the breadth of the pavement in front of appellant's buildings without detriment to the pavement. They have therefore resolved to carry this out, and I am of opinion that they are acting in accordance with their duty and within their statutory powers. A suggestion was made that the Magistrates were widening the street by reducing the breadth of the pavement in front of the appellant's buildings because they themselves possessed property on the other side of the street and did not wish to decrease the breadth of the pavement in front of their own property. I see no ground for such a suggestion, and think it was an improper suggestion to make. I think with your Lordships that the city authorities have done nothing in excess of their duty and their powers. The judgment of the Dean of Guild ought therefore, in my opinion, to be affirmed.

LORD TRAYNER—I think that the interlocutor of the Dean of Guild is well founded.

LORD MONCREIFF—I agree with your Lordship in the chair.

The Court refused the appeal.

Counsel for the Petitioner and Respondent — Shaw, K.C. — Cooper. Agents — Campbell & Smith, S.S.C.

Counsel for the Objector and Appellant — Clyde, K.C. — Horne. Agents — Carmichael & Miller, W.S.

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*Tuesday, January,* 13.

## FIRST DIVISION.

[Sheriff of Roxburgh.

## TAIT *v.* LEES.

*Process—Appeal from Sheriff Court—Competency — Value of Cause — Conclusions Restricted after Proof Taken — Sheriff Court Act* 1853 (16 *and* 17 *Vict. c.* 80), *sec.* 22.

The Sheriff Court Act 1853 enacts, sec. 22 — "It shall not be competent . . . to remove from a Sheriff Court, or to bring under review of the Court of Session, . . . any cause not exceeding the value of £25 sterling."

In an action of filiation and aliment the prayer of the Sheriff Court petition was for £2, 2s. of inlying expenses and £6, 10s. per annum for seven years as aliment for the child. The child died before a proof was taken, and after the proof, but before the action had been decided by the Sheriff-Substitute, the pursuer restricted the conclusions of the action to £2, 2s. of inlying expenses and £2, 11s. 8d. of aliment to the date of the child's death, and decree was ultimately granted for these sums.

*Held* that the interlocutor of the Sheriff was appealable to the Court of Session.

This was an appeal from a judgment of the Sheriff of Roxburgh (SALVESEN) in an action of filiation and aliment at the instance of Christina Tait, farm worker, Colmslie, Galashiels, against Richard Lees, farm servant, Kittyfield, near Melrose.

The prayer of the petition was, "To ordain the defender to pay to the pursuer —(*First*) The sum of £2, 2s., with the legal interest thereon from 13th December 1901 till payment; (*second*) the sum of £6, 10s. per annum for seven years."

The pursuer averred that she gave birth to an illegitimate child on 13th December 1901, of which the defender was the father.

On 10th April 1902 the Sheriff-Substitute (BAILLIE) closed the record and allowed a proof, which was taken on 8th May.

On 6th May the pursuer's child died, and accordingly on 10th May she lodged a minute in process, by which she restricted the conclusions of the petition to £2, 2s. of inlying expenses and the sums of £1, 12s. 6d. and 19s. 2d. as aliment for the child until its death.

On 16th May the Sheriff-Substitute assoilzied the defender from the conclusions of the action.

The pursuer appealed to the Sheriff, who on 19th June 1902 recalled the interlocutor of the Sheriff-Substitute, and decerned against the defender for payment of the sums concluded for, as restricted by the minute of 10th May.

The defender appealed to the Court of Session.

Counsel for the respondent objected that the appeal was incompetent in virtue of the provision of the Sheriff Court Act 1853, section 22 (quoted in rubric), on the ground that the sum sued for at the date when the interlocutors of the Sheriff-Substitute and the Sheriff were pronounced was less than £25, and therefore that the value of the cause was below the statutory limit—*Dobbie* v. *Thomson*, June 22, 1880, 7 R. 983, 17 S.L.R. 677; *Cairns* v. *Murray*, November 21, 1884, 12 R. 167, 22 S.L.R. 116.

Counsel for the respondent argued that the appeal was competent. Competency was to be determined by the value of the cause at the date of litiscontestation. That took place at latest when the record was closed, and the value of the cause then was above £25.

LORD PRESIDENT—It is not necessary in this case to consider whether, if the value of the cause had been limited before the record was closed and parties had joined issue, this would have affected the competency of an appeal. But here not only was the value of the cause above the limit for appeal when the record was closed, but also when the proof was taken. The case was appealable at that stage, and I do not think that anything which has since happened could affect the right of appeal.

LORD ADAM—I am of the same opinion. The Sheriff Court Act declares that it shall not be competent to appeal "any cause not exceeding the value of £25." The general rule, as I have understood, is to look at the conclusions of the action and see whether they exceed the statutory amount. Then again I think that if an appeal is competent to one of the parties it must be competent to the other, and accordingly that it cannot be in the power of a pursuer by merely restricting the conclusions of an action to deprive his opponent of a right of appeal. I agree with your Lordship that it is unnecessary in this case to consider whether or not, *in initio litis*, and before the record is closed—in other words, before the parties have joined issue—it is competent to restrict the conclusions of an action so as to render it unappealable. That was what was decided in the case of *Cairns*, and I have nothing to say against that decision. But here the record was closed and issue joined and a proof taken in an action whose conclusions as they then stood, unrestricted, clearly made it a cause exceeding in value £25. In these circumstances, notwithstanding the minute of restriction subsequently put in, I think the appeal is competent.

LORD M'LAREN—We are accustomed to consider an appeal from the Sheriff Court as a new action to certain effects, and if the Legislature had provided that the value of the cause, as originated by the note of appeal, or, according to the older practice, by bill of advocation, was to determine the competency of the appeal, that would be a perfectly intelligible limitation. But as that is not the law, and as the competency of the appeal is determined by the value of the cause in the Sheriff Court, I cannot see how that criterion can be affected by circumstances supervening after the question between the parties has been fixed by litiscontestation, or at least by closing the record.

LORD KINNEAR concurred,

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

Counsel for the Pursuer and Respondent —Mitchell. Agents—Winchester & Nicolson, S.S.C.

Counsel for the Defender and Appellant —MacRobert. Agent—George F. Welsh, Solicitor.

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*Wednesday, January* 14.

## SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

## BOYLE & COMPANY *v.* MORTON & SONS.

*Contract—Construction—Undertaking to Indemnify "from any legal action"—Party Giving Indemnity to have the "Conduct of the Case"—Right to Appeal.*

The sellers and the purchasers of an article as to which there were doubts