

The Court set aside the verdicts and granted new trials.

Counsel for Pursuers—Anderson, K.C.—D. P. Fleming. Agents—Clark & Macdonald, S.S.C.

Counsel for Defenders—M'Clure, K.C.—Hon. W. Watson. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, March 16.

SECOND DIVISION.

(SINGLE BILLS.)

GAVIN v. P. HENDERSON & COMPANY
AND OTHERS.

Process — Sheriff Court — Expenses — Remitted Cause—Expenses of One Defender who has been Assoizied in the Sheriff Court—Successful Defender Unable to Obtain Extract.

In an action in the Sheriff Court against three defenders, one of the defenders was of consent assoizied, and the Sheriff allowed a proof against the remaining defenders. The cause was then, on the application of the pursuer, remitted to the Court of Session, and on the same date the successful defender, having applied for extract, was informed that it could not be obtained. On the motion of the successful defender in the Single Bills the Court of new decerned for the Sheriff Court expenses, and found the said defender entitled to the expenses of the appearance in the Single Bills modified at £3, 3s.

In July 1909 Joseph Gavin brought an action in the Sheriff Court at Glasgow against P. Henderson & Co., shipowners there, to which action of 6th October 1909 he was allowed to add other two defenders. On 28th January 1910 P. Henderson & Co. were of consent assoizied and found entitled to expenses, and on 8th February 1910 the Sheriff-Substitute (BOYD) approved of the Auditor's report on the account of expenses and decerned against the pursuer for the taxed amount, £13, 10s. 7d. On 23rd February 1910 the Sheriff-Substitute allowed a proof against the remaining defenders, and on the following day the pursuer required the cause to be remitted to the Second Division of the Court of Session. On the same date P. Henderson & Co. applied for extract of their decree for expenses and were informed that it could not be obtained, because a note requiring the cause to be remitted had been marked on the process. On the case appearing in Single Bills the successful defenders moved the Court to find them anew entitled to expenses. The pursuer opposed the motion and argued that P. Henderson & Co. were no longer parties to the process and could not be heard.

The Court pronounced this interlocutor:—

“Having heard counsel in the Single Bills, affirms the interlocutor of the Sheriff-Substitute dated 8th February 1910, and in terms thereof of new decern against the pursuer for payment to the defenders P. Henderson & Co. of the sum of £13, 10s. 7d., the taxed amount of the said defenders' account of expenses; further, find the said defenders entitled to the expenses of this appearance; modify the same at £3, 3s, and decern and ordain the pursuer to make payment of the same to the said defenders; dispense with the reading in the Minute Book, and grant warrant for immediate extract.”

Counsel for Pursuer—Aitchison. Agents—Balfour & Manson, S.S.C.
Counsel for P. Henderson & Co.—Paton. Agent—Campbell Faill, S.S.C.

Thursday, March 17.

FIRST DIVISION.

[Sheriff Court at Ayr.]

MAGISTRATES OF CUMNOCK
AND HOLMHEAD v. MURDOCH.

Burgh — Appeal — Competency — Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 339—Burgh Police (Scotland) Act 1903 (3 Edw. VII, cap. 33), sec. 104 (2) (s) — Summary Prosecutions Appeals (Scotland) Act 1875 (38 and 39 Vict. cap. 62) — Summary Jurisdiction (Scotland) Act 1908 (3 Edw. VII, cap. 65), secs. 3 and 4, and Schedule A.

The Burgh Police (Scotland) Act 1892, sec. 339, as amended by the Burgh Police (Scotland) Act 1903, sec. 104 (2) (s), provides for a right of appeal to the Court of Session, “in terms and subject to the provisions of” the Summary Prosecutions Appeals (Scotland) Act 1875. The last-mentioned Act is repealed by the Summary Jurisdiction (Scotland) Act 1908, which enacts, sec. 4, that “where any statute provides for . . . appeal under the Summary Prosecutions Appeals (Scotland) Act 1875, such . . . appeal shall be taken under this Act” (*i.e.*, to the High Court of Justiciary).

Held that an appeal under sec. 339 of the Burgh Police (Scotland) Act 1892, as amended by sec. 104 (2) (s) of the Burgh Police (Scotland) Act 1903, which had been taken to the Court of Session in terms of the Summary Prosecutions Appeals (Scotland) Act 1875, had been competently presented to that Court—the repeal of the last-mentioned Act by the Summary Jurisdiction (Scotland) Act 1908 not affecting the independent right of appeal to the Court of Session given by the Burgh Police (Scotland) Acts of 1892 and 1903.