finding of expenses was appealed against, it should have been spoken to before our final judgment was given. As it was not, it must stand.

JOHNSTONE—Your Lordships would not have listened to me on that subject till the merits of the appeal were disposed of.

LORD PRESIDENT—That is a perfectly erroneous view of the matter.

Appeal dismissed, with expenses in this Court.

Agent for Appellant—D. J. Macbrair, S.S.C.

Agents for Respondents—Hope & Mackay, W.S.

Tuesday, December 13.

MANSON *v.* DUNDAS.

Sheriff-court—Summons—Preliminary Defence. An action having been dismissed by the Sheriff-Substitute on a preliminary defence that the summons was inept, not being in conformity with the Act of Sederunt 10th July 1839, *held* that the summons was in the form prescribed by the Sheriff-court Act 1853. Remarked that it was the duty of a Sheriff-Substitute to see that the grounds of action and defences were duly stated.

This was an appeal against an interlocutor of the Sheriff-Substitute of Caithness in an action at the instance of Mrs Alexa Mill or Manson against John Dundas. The summons in said action ran as follows:—"George Dingwall Fordyce, Esq., advocate, Sheriff of the counties of Sutherland and Caithness, to officers of Court jointly and severally.—Whereas it is shown to me by Mrs Alexa Mill or Manson, late tenant at Brims, in the parish of Thurso, now or lately residing at Reay, in the parish of Reay, and county of Caithness, pursuer; against John Dundas, farmer at Brims aforesaid, defender; in terms of the conclusions underwritten: Therefore the defender ought to be decerned to pay to the pursuer the sum of £29, 11s. 6d. sterling, being the amount to which she was and is entitled, of corn valuation of 4 acres of second year's grass on said farm at Brims, from which the pursuer was the outgoing tenant at Whitsunday 1868, and the defender was then the incoming tenant, and as such liable in said amount of £29, 11s. 6d. sterling, but under deduction always of the sums of (1) £1, 8s. sterling, for the expense of ploughing; and (2) £3, 5s. sterling, the cost of two quarters and one half-quarter seed, at £1, 6s. sterling per quarter, amounting said deductions to the sum of £4, 13s. sterling, and thus leaving a balance resting-owing to the pursuer of £24, 18s. 6d. sterling, with interest on said balance from the first day of June 1868 at the rate of £5 per centum per annum till payment, with expenses."

The first plea in law for the defender was—"That the summons as laid is defective and inept, inasmuch as it does not relevantly set forth the nature, extent, and grounds of action as required by the Act of Sederunt of 10th July 1839. It is not set forth whether the sum claimed for be due under contract by the practice of the country or otherwise."

The Sheriff-Substitute (HAMILTON RUSSEL) pronounced the following interlocutor:—

"*Wick, 15th July* 1870.—The Sheriff-Substitute having heard parties' procurators on the preliminary defence, sustains the same: Dismisses the action as laid, and assoilzies the defender: Finds the defender entitled to expenses, and remits the account thereof when lodged to the auditor of Court to tax and report, and decerns."

The pursuer appealed to the First Division of the Court of Session.

HARPER, for her, maintained that the interlocutor complained of should be recalled, because the action had been dismissed in consequence of a plea founded on an Act of Sederunt which had been repealed by the Sheriff-court Act of 1853; and also that the summons was in conformity with the requirements of the Act of 1853.

BLACK, for the defender and respondent, contended that the appeal should be dismissed, the summons not being a good one under the Act, the grounds of action not being stated.

At advising—

LORD PRESIDENT—It is not very easy to understand how any procurator in the Sheriff-court could have founded a defence on an Act of Sederunt which the Act of Parliament of 1853 has completely superseded. That of itself satisfies me that the Sheriff-Substitute has made a mistake here. But apart from that, the first duty of a Sheriff-Substitute when a case comes before him is to hear the parties upon the grounds of action, and the nature of the defences. That is the first thing he has to do, and to see that they are intelligibly stated, and if they are not so, he has the power to order a condescendence and defences. Instead of doing so here the Sheriff-Substitute has sustained a preliminary defence that the summons is defective and inept, in so far as it does not set forth fully the grounds of action. Now, that is a defence which a Sheriff-Substitute should not sustain. I think that the interlocutor complained of should be recalled, and a remit made to the Sheriff-Substitute to repel the preliminary defence, and to consider whether the record should be closed on the summons and minute of defence, or whether a condescendence and defences ought to be ordered.

LORD DEAS—I quite agree with your Lordship. I am surprised that the Act of Parliament of 1853 has not reached this Sheriff-court by 1870. But, moreover, I am of opinion that this is a perfectly good summons, and in terms of the statute. The summons fulfils all the requirements of the statute, setting forth the grounds of action, and the amount claimed.

LORD ARDMILLAN concurred.

LORD KINLOCH—I am of the same opinion. I think that the Act of 1853 was meant to do away with the accumulation of statements under the Act of Sederunt of 10th July 1839. I am quite of opinion that this summons is in conformity with the statute.

Appeal sustained.

The Sheriff-Substitute's interlocutor recalled, and remitted to the Sheriff-Substitute to repel the preliminary defence, and consider whether the record should be closed upon summons and minute of defence, or whether condescendence and defences ought to be ordered.

Agents for Appellants—J. & A. Peddie, W.S.

Agent for Respondent—David Forsyth, S.S.C.