produced." Now, because the books of one party show a balance to the credit of another party, that is not of itself a ground of action at the instance of that other party against the first. He must aver some contract or circumstances out of which an obligation to pay the sum at his credit arises, and I cannot discover from the averments here what the nature of the action is. I think there must be some more specific averment of the contract in respect of which the balance in the pursuer's favour is said to arise. At present, therefore, I am not prepared in the present action to do more than to repel the first plea-in-law for the defender.

LORD ADAM concurred.

LORD M'LAREN—I also concur. I think it results from an examination of the authorities that in all or almost all the cases where the plea of *forum non conveniens* has been sustained, there has been another Court in another country which had jurisdiction over the parties interested and the whole subjects of the action, while in this Court the parties were either not subject to the jurisdiction, or a question of foreign law came to be involved, or there was some difficulty which prevented this Court from giving final judgment without the aid of the Court of another country. Such certainly was the nature of the ground of decision in the executry and partnership cases cited to us, and it is very difficult to see how any case could arise in which we would sustain the plea where the action is a simple personal claim for payment of a sum of money. No doubt the question raised by this plea always arises in cases where it is said that great inconvenience will be caused to the defender by subjecting him to the courts of his temporary domicile, but inconvenience does not appear to be an appropriate ground for rejecting the jurisdiction of a Court.

The LORD PRESIDENT concurred.

In the action of count, reckoning, and payment the Court adhered.

In the second action the Court adhered to the interlocutor of the Lord Ordinary in so far as it repelled the first and second pleas-in-law for the defender and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuer—C. S. Dickson—M'Lennan. Agent—John Cameron, S.S.C.

Counsel for the Defender—Dundas—W. Thomson. Agents—Reid & Guild, W.S.

Friday, March 18.

FIRST DIVISION.

[Lord Low, Ordinary.

GRAY *v.* SMART AND M'DONALD.

Reparation—Wrongous Legal Proceedings—Want of Citation and Notice—Small Debt Decree—Proceedings before Decree—Diligence following Decree — Review — Small Debt Act 1837 (1 *Vict. c.* 41), *secs.* 30, 31—*Citation Amendment* (*Scotland*) *Act* 1871, *sec.* 3—*Citation Amendment* (*Scotland*) *Act* 1882, *sec.* 3—*Relevancy.*

A summons of sequestration for rent was taken out against a tenant in the Small Debt Court, upon which an appraisement of his effects was made, and thereafter decree was pronounced with warrant of sale under which his effects were sold. He brought an action of damages for wrongous legal proceedings against his landlord and against the sheriff-officer, in which he averred that he had received no citation under the summons, no notice of the appraisement, and no notice of the sale. He admitted that he had recently changed his address, leaving his furniture behind him, but averred that that change was well known to the defenders. The defenders explained that the summons, with a copy of the appraisement and the decree with warrant of sale, had both been duly served upon the pursuer at his last known place of residence.

Held (1) (*aff.* Lord Low, and following the case of *Crombie* v. *M'Ewan*, January 17, 1861, 23 D. 333) that any irregularities in the proceedings prior to the decree were protected by the decree, which was not open to review by the Court of Session, but (2) (*rev.* Lord Low) that the pursuer's averment of no notice of the diligence following upon the decree was relevant and entitled him to an issue, any explanations by the defenders falling to be dealt with at the trial.

Robert Gray, journeyman baker, Cockenzie, in the county of Haddington, brought an action of damages, concluding for £100, against Miss Ellen Smart, Mount View Road, Churchhill, London, proprietrix of certain heritable property in Musselburgh, and Alexander M'Donald, sheriff-officer, 5 Hill Square, Edinburgh, for wrongous legal proceedings. There was also a conclusion for the reduction of an inventory and appraisement as being inept. The pursuer averred that he was tenant for the year Whitsunday 1890 to Whitsunday 1891 of a house in Musselburgh belonging to Miss Smart, but that having got work at Cockenzie and secured a house there, he was proceeding to remove his furniture from the Musselburgh house early on the morning of 6th January 1891 when he was prevented doing so by Miss Smart's factor, by whom he was forced to replace the furniture in the house, although he was allowed to lock the door and retain posses-

sion of the key. That at that date he was in arrears with his rent for the period to Martinmas 1890 to the extent of £1, 3s. 6d. That upon the same day Miss Smart raised a summons of sequestration against him for that sum in the Small Debt Court at Edinburgh, and obtained an order of citation and for sequestration and appraisement of his effects, but that the summons, inventory, and appraisement were never legally served upon him. "Although it was well known to the defender M'Donald, and to the factor of the other defender, that the pursuer had removed from the said house to Cockenzie, and although his address there was known to or could have been readily ascertained by them, and further, although the defender M'Donald found the house locked and deserted, and required to force the door open, no attempt was made to effect legal execution of the said summons, inventory, and appraisement, and no execution thereof was returned by the defender M'Donald in the form prescribed by the said Act. The pretended execution returned by him is null and void. It bears that the service copy summons, with citation thereon, and a copy of the inventory and appraisement of the sequestrated effects, was left for the present pursuer 'upon a table within the dwelling-house of the said defender, there being no person therein to whom the same could be delivered.' No copy of the summons, &c., was affixed to the gate or door of the house; but the pretended execution bears that a copy thereof was sent by registered post letter to the present pursuer, addressed to said house, which of itself discloses the said defender's knowledge of the pursuer's removal. The said pretended execution does not state that the defender endeavoured to effect service at the pursuer's last known dwelling-place, and the circumstances that prevented it, and in fact no such endeavour was made. Notwithstanding thereof, the said defender Alexander M'Donald, acting on the instructions and authority of the other defender, wrongfully and illegally proceeded on or about the said 7th day of January 1891 to make a pretended inventory and appraisement of the pursuer's furniture and effects within the said house at Musselburgh. No copy of the said inventory and appraisement was given to or served upon or left for the pursuer as required by the statutes." Further, that upon 21st January 1891, and in his absence, Miss Smart obtained a decree in the Small Debt Court for £1, 3s. 6d., with 17s. of expenses, decerning and ordaining execution to pass thereon by sale of the effects on the premises where the same were "after 48 hours' notice to defender, all in terms of the Act of Parliament." That "on said 21st January the defender M'Donald, acting on the instructions of the defender Miss Smart, gave the pursuer a pretended 'lockhole' charge under the said decree. The pretended execution of said charge returned by the defender M'Donald bears the charge was given 'by leaving a just copy of the foregoing complaint and decree, and a charge thereto annexed, subscribed by me for the defender, within the lockhole of the most patent door of his dwelling-house in 37 High Street, Musselburgh, and that after giving six audible knocks on said door, because I neither could get access to the said dwelling-house nor find himself personally, and also by posting a like full copy in a registered letter addressed Robert Gray, 37 High Street, Musselburgh.' The said pretended execution of charge is *funditus* null and void, the recited provisions of the Small Debt Acts being applicable to charges on decrees as well as to service of summonses, &c. On 24th January 1891, without any intimation to the pursuer, the said defender Alexander M'Donald, acting on the instructions of the other defender Miss Smart, wrongfully and illegally, nimiously and oppressively, carried out a pretended sale of the whole furniture and other effects within the said dwelling-house, exposing them in the lots and at illusory appraised values."

The pursuer explained that he only discovered what had taken place when he visited the house in Musselburgh upon 25th February and found it displenished.

In the answers for the defender M'Donald it was explained that he endeavoured on 7th January 1891 to serve the said summons along with an inventory and appraisement made by two sworn appraisers, in terms of the Small Debt Acts, on the pursuer personally. He was, however, unable to find the pursuer or to discover any trace of his having removed elsewhere. In these circumstances the said summons and the inventory and appraisement of the furniture were served on the pursuer, both by leaving copies of them at the said house in Musselburgh, and by posting them in a registered letter to the pursuer at the said house, which was the only and last residence of the pursuer known to the defender M'Donald. The said service was effected by the defender M'Donald in strict compliance with law, and further, that "before the said sale took place, the usual notice of sale was duly given to the pursuer by affixing it to the door of the pursuer's said dwelling-house, and sending a copy thereof through the post in a registered letter addressed to the pursuer at his said dwelling-house, because access to the said house could not be obtained."

The Citation Amendment (Scotland) Act 1871 (34 and 35 Vict. c. 42), by sec. 3 provides, that "Where an officer of any Small Debt Court is satisfied that the defender named in any summons, complaint, decree, and warrant, or other order of such Small Debt Court, or writ following upon such summons or complaint . . . has within a period of forty days removed from the house or premises occupied by him, his place of dwelling for the time not being known, it shall be lawful for such officer, after he has affixed to the gate or door of such house or premises . . . the said summons . . . to send to the address which after diligent inquiry he may deem most likely to find the defender, or to his last known address, a registered letter by post containing a

copy of such summons . . . or other order or writ, and the affixing of such summons . . . or other order or writ, and the posting of such intimation, shall constitute a legal and valid citation or service." . . .

The Citation Amendment Act 1882 (45 and 46 Vict. c. 77), by sec. 3 provides for citation in all cases "by sending to the known residence or place of business of the person upon whom such summons, warrant, or judicial intimation is to be served, or to his last known address, if it continues to be his legal domicile or proper place of citation . . . a registered letter by post containing the copy of the summons or other document." . . .

The pursuer pleaded, *inter alia*—"(1) The pursuer having sustained loss, injury, and damage through the wrongful and illegal actings of the defenders, nimiously and oppressively carried out, adopted, and taken advantage of by them as condescended on, is entitled to decree in terms of the petitory conclusions of the summons. (2) The alleged inventory and appraisement being inept in respect, 1st, the summons of sequestration was not served on the pursuer; 2nd, the alleged inventory and appraisement was not served on him; and 3rd, there was no proper inventory and specification of the articles said to have been sequestrated, ought to be reduced with all that has followed thereon. (3) The said alleged inventory and appraisement being false and fictitious as regards the values put upon the articles appraised, and the said false and fictitious values being used for the purpose of attaching articles greatly in excess of the rent for which the sequestration was taken, said sequestration which followed thereon, as also the sale, ought to be reduced. (4) The pretended sale following on the said alleged inventory and appraisement not having been notified to the pursuer, nor preceded by a charge, in terms of the Small Debt Acts, and not having been carried out as required by the Small Debt Acts, . . . the said pretended sale ought to be reduced."

The defender Miss Smart pleaded—"(1) The pursuer's averments are irrelevant. (2) The reductive conclusions of the summons are incompetent, and *quoad* them the Court has no jurisdiction. (3) The defender should be assoilzied, in respect, 1st, that the whole proceedings complained of were regular and legal; 2nd, that the pursuer has not sustained any loss, injury, or damage, for which the defender is responsible; 3rd, that the pursuer's averments, so far as material, are unfounded in fact."

The defender M'Donald pleaded—"(1) The jurisdiction of the Court being excluded by the Act 1 Vict. cap. 41 (Small Debt Act), the action ought to be dismissed. (3) The pursuer's averments are irrelevant, and the action ought to be dismissed. (4) The defender M'Donald having performed in conformity with the law the duties he was called upon to fulfil, should be assoilzied. (6) The inventory and appraisement complained of having been accurately and legally prepared, and having been duly served on the pursuer, decree of reduction thereof should not be pronounced. (8) The sale complained of having been carried out in conformity with the law, decree of reduction thereof should be refused, with expenses."

Upon 4th February 1892 the Lord Ordinary (Low) pronounced the following interlocutor:—"Finds that the pursuer's averments are not relevant or sufficient to support the conclusions of the action: Therefore sustains the first plea-in-law for the defender Smart, and the first and third pleas-in-law for the defender M'Donald: Dismisses the action, and decerns: Finds the pursuer liable in expenses, &c.

"*Opinion.*—The pursuer sues Miss Smart, who is possessed of some property in Musselburgh, and Alexander M'Donald, sheriff-officer, Edinburgh, for damages for alleged wrongous legal proceedings.

"In January 1891 the pursuer was Miss Smart's tenant in a small house in Musselburgh, the rent of which was £4, 15s. The pursuer is a journeyman baker, and he says that having obtained employment at Cockenzie, and finding it inconvenient to walk there from Musselburgh daily, he took a house in Cockenzie, and on the morning of 6th January proceeded to remove his furniture there. While he was putting his furniture upon a lorry, the police interfered and sent for Miss Smart's factor Mr Newlands, who refused to allow the pursuer to remove the furniture, and made him take it back into the house. The pursuer, however, says that he was permitted to lock the door of the house, and take the key away with him.

"The pursuer does not dispute that he gave no notice of his intention to leave the house in Musselburgh, and he does not say that he explained to Mr Newlands why he was taking away his furniture, or where he was going. Further, the interference of the police suggests that the removal was taking place at an early hour in the morning, because I do not know what right they had to interfere unless it was under the 255th section of the Police Act of 1862, which authorises the police to stop removal of furniture within burgh, until inquiry can be made, between the hours of eight in the evening and six in the morning, except at the usual terms of removing.

"When the pursuer left the house he was in arrear of his rent to the extent of £1, 3s. 6d., and on the same day, the 6th January, a summons of sequestration and sale under the Small Debt Act, at the instance of the defender Miss Smart, was raised against him. The pursuer did not appear in the action, and on 21st of January Miss Smart obtained decree for £1, 3s. 6d., with expenses, and warrant for the sale of the effects in the house which had been sequestrated. On the 24th January the effects were sold for the sum of £4, 4s. 9d.

"The pursuer says that he never heard of the action until a considerable time after the sale, that he then endeavoured to obtain a re-hearing of the case under section 16th of the Small Debt Act, but that the Sheriff held that the decree had been implemented,

and that the provisions of the section did not apply.

"In these circumstances the pursuer claims damages on the grounds—(1) That he was not properly cited in the action; (2) that there was no proper appraisement of the articles sequestrated; and (3) that he had not received notice of the sale. The first two of these grounds of action are in a different position from the third, because the former refer to matters which preceded the decree in the action, while the latter refers to the procedure in carrying out the decree.

"Now, it is admitted that a Small Debt decree cannot be challenged in any way whatever in the Court of Session. The decree must be dealt with as a valid and legal decree, and therefore it seems to me to be impossible to entertain an action of damages founded upon alleged irregularities in the proceedings leading up to the decree, because that would truly be to allow objections to the decree itself. The case of *Crombie* v. *M'Ewan*, 23 D. 333, is directly in point.

"The pursuer's counsel, however, tried to make out that the appraisement was in some way separable from the decree, and ought to be made the ground of an action in the Court of Session, although the decree was unchangeable. I am unable to adopt this view. The procedure in a summons of sequestration and sale at the instance of a landlord is regulated by the 5th section of the Small Debt Act, and Schedule B of the Act, and it is plain that the appraisement is just a step which must be taken in the process before decree can be pronounced. It is after 'an execution of the citation and sequestration, with the appraisement of the effects,' has been returned to the clerk that the Sheriff 'on hearing the application . . . shall dispose of the cause as shall be just, and may either recal the sequestration in whole or in part, or pronounce decree for the rent found due, and grant warrant for the sale of the sequestrated effects.'

"In so far, therefore, as the pursuer's action is founded upon alleged irregularities in the procedure anterior to the decree, I am of opinion that it is incompetent.

"The remaining ground of action is the 3rd, viz., that the pursuer did not receive notice of the sale for which warrant was granted by the Sheriff. I do not think that the action, in so far as it is laid upon this ground, is incompetent, and the question is, whether the pursuer has stated a relevant case?

"The decree of 21st January granted warrant for the sale of the sequestrated effects upon forty-eight hours' notice. The defender M'Donald gave the notice by affixing the decree and warrant to the door of the house in Musselburgh, and by sending a copy in a registered letter, addressed to the pursuer at that house. The pursuer avers that M'Donald either knew that he was residing at Cockenzie, or could easily have found out that he was residing there, and that therefore to send the notice to the house in Musselburgh was insufficient. The Citation Amendment Act of 1882 (45 and 46 Vict. cap. 77) provides that citation may be by registered letter sent to the 'last known address' of the party 'if it continues to be his legal domicile or proper place of citation.' The question is, whether the sending of the registered letter to the house in Musselburgh was in conformity with the provisions of the Act? and in order to answer that question it is necessary to see precisely how the facts stand. The pursuer, upon his own showing, tried to take his furniture away from the house without notice to his landlord, and under suspicious circumstances; he does not say that he told the factor, or any one else, where he was going, and he did not go back to the house again for nearly seven weeks. He, however, left his furniture in the house and kept possession of the key. In such circumstances the house in Musselburgh was, I think, *prima facie* the place at which to cite the pursuer. He was still tenant of the house, he had civil possession of it, and he had left no other address. It was therefore *prima facie* his last known address, and the proper place of citation. The pursuer, however, avers that it was well known to M'Donald that he had gone to Cockenzie, and that his address there was known to, or could have been readily ascertained by M'Donald. I am of opinion that so general and vague an averment is not sufficient. I must assume that the sheriff-officer acted regularly and in conformity with his duty unless specific facts necessitating a different conclusion are averred. Now the undisputed facts in this case lead to the inference that the sheriff-officer did not know, and had no means of knowing, where the pursuer actually was residing; and I cannot hold that a mere general averment that he had knowledge, or means of knowledge, makes the case relevant without some specification, or at least indication, of the sources from which he had obtained or might have obtained his information.

"I understand, however, that the pursuer contends that the citation must be held to be one under the Citation Amendment Act of 1871 (34 and 35 Vict. cap. 41), and not under the Act of 1882, because there was a lock-hole charge as well as a registered letter. Now, if the sending of a registered letter is sufficient under the Act of 1882, the additional precaution of a lock-hole charge would not, I think, make the citation bad. But assuming the citation to have been under the Act of 1871, I do not think that the averments are sufficient. The Act provides (section 3) that when an officer is satisfied that the defender is concealing himself to avoid citation, or has within a period of forty days removed from the house or premises occupied by him, his place of dwelling for the time not being known, it shall be lawful for the officer, after he has affixed to the gate or door of such house or premises the summons, or warrant, or order, as the case may be, 'to send to the address which, after diligent inquiry, he may deem most likely to find the defender, or to his last known address,

a registered letter by post,' containing a copy of the summons, warrant, or order, provided that the execution returned by the officer shall state that he endeavoured to effect service at the defender's last known dwelling-place, and the circumstances which prevented it. Now, it seems to me that the citation here was in conformity with these provisions, unless the officer knew the pursuer's place of dwelling for the time, or failed to make diligent inquiry as to the address most likely to find the pursuer. The only averments as to the officer's knowledge of the pursuer's dwelling-place, or his failure to make inquiries, are the general averments to which I have referred, and for the reasons I have already given, I am of opinion that they are insufficient, and that the pursuer has not stated a relevant case.

"I shall therefore dismiss the action, with expenses."

The pursuer reclaimed, and argued—(1) The appraisement was bad, because the pursuer had received no notice whatever that it was going to take place, and because the articles had all been slumped together and an illusory value put upon them—*Le Conte* v. *Douglas & Richardson*, December 1, 1880, 8 R. 175. (2) Although the decree which followed was not reducible, the appraisement, which was a separate proceeding, was, if irregularly carried out. (3) The pursuer had got no notice of the decree and warrant of sale. That was a relevant statement entitling him to an issue. But, besides, the defenders' explanations showed that the citations had been irregular. Citation had been made at Musselburgh under the 1871 Act. But that Act only allowed a registered letter if the present address was unknown and diligent inquiry had been made. Here the defenders either knew the pursuer was at Cockenzie, or would have found this out if inquiry had been made. Even if the citation was held to have been under the 1882 Act, it was bad, because Musselburgh had ceased to be the pursuer's "proper place of citation."

Argued for the defenders—The Lord Ordinary was right. (1) The decree of the Small Debt Court could not be reviewed by the Court of Session—Small Debt Act 1837 (1 Vict. c. 41), secs. 30, 31; *Graham* v. *Mackay*, Feb. 25, 1845, 7 D. 515; *Miller* v. *Henderson*, February 2, 1850, 12 D. 656. The proceedings prior to the decree, including the appraisement, were protected by that decree—*Crombie* v. *M'Ewan*, Jan. 17, 1861, 23 D. 333. (2) As to proceedings after the decree, the pursuer had set forth no relevant case of illegal diligence or of want of citation. Upon his own showing he remained master of the house at Musselburgh. It was his proper place of citation, and he had been regularly cited there—doubly cited both by keyhole service and by registered letter. He did not aver that no citation was sent there. If he had gone elsewhere, and did not leave instructions as to the forwarding of his letters, he had himself to blame if he suffered inconvenience.

At advising—

LORD PRESIDENT—The pursuer in this action complains of a wrong done to him by the sale of his household effects, and he alleges three illegalities in the proceedings. Two of these relate to steps anterior to the warrant of sale, and the case of *Crombie* is a binding authority to this effect, that the clause of the Small Debt Act excluding review of small-debt decrees implies that no action of damages will lie for proceedings leading up to that decree any more than for the decree itself. Now, unless it can be made out that what purports to be part of the small-debt decree is not so in fact the clause applies. I think it is impossible to split up the decree in the manner contended for in argument, and therefore that the clause is in point, the decree being one and inseparable.

There remains the third objection, which assumes the validity of the decree, but challenges the proceedings subsequent thereto. The decree was the only warrant of sale, and one condition in it was that the sale was only to take place after 48 hours' notice had been given to the pursuer. The pursuer avers that he received no notice whatever. I cannot escape from the conclusion that that is a relevant averment of defect in procedure. The defenders' answer is that notice was sent to what they were entitled to regard as his proper residence. That is an answer upon the facts, not upon relevancy, and does not meet the pursuer's categorical negative. Upon the clear and simple ground that there is here a plain allegation of no notice, I am of opinion that this case must be allowed to go to trial.

LORD ADAM—Upon the first two grounds I agree with the Lord Ordinary. There is only an appeal from small-debt decrees upon limited grounds, and to the Court of Justiciary. Here there is a decree for payment of £1, 3s. 6d., and it is quite settled that the objection of want of citation is an insufficient ground for setting aside that decree, because citation is a necessary preliminary to decerniture. The same reasoning applies to want of notice of appraisement, for of course decerniture could never have been given unless upon the footing that appraisement had been made. But, as your Lordship has pointed out, all this applies to protection of decrees in the Small Debt Court, but does not protect the diligence done in virtue of such decrees. Here the sale may have been properly proceeded with, or it may not, but we must at this stage take the pursuer's statement as true when he says that his effects were sold without any intimation to him. If that turns out to be the case, no doubt a wrongful act has been done. I do not see why what he has said is not to be regarded as a sufficient averment of the wrong he complains of. The defenders may be able to show that notice was given at a certain house, and that that house was the pursuer's dwelling-house, where he should have been to receive such notices, but that is just a question of fact which the jury

will have to determine. Accordingly, I think the Lord Ordinary has gone too fast, and that the case must go the trial.

LORD M'LAREN—It seems to be settled by the case of *Crombie* that no action will lie because of informality attending proceedings incidental to a decree in the Small Debt Court—in short, while the case is under the control of the judge in that Court he can correct any error before pronouncing decree, and the holder of a decree has protection by statute against its being reduced. But when the case has passed out of the Sheriff's hands, I cannot see why a small-debt decree should confer a higher immunity upon a creditor in carrying it into execution than that enjoyed by holders of decrees in any other Court. A decree in this Court, affirmed it may be by the House of Lords, must be regularly enforced, and any informality in its execution is open to challenge. It is no answer to say that the decree being executed is a final decree, and not appealable to any other Court. Its finality only warrants lawful execution. In that respect there is no difference between decrees of this Court and those of the Small Debt Court. Therefore, upon the question of the objection to the execution of this charge I think there is issuable matter.

But it is argued that under the 1882 Act it was sufficient if a registered letter were sent to the pursuer's last known address. According to the pursuer's statement, the house in Musselburgh was neither his present address nor his last address known to the defenders, because the factor knew perfectly well he had moved to Cockenzie. I have no doubt if a person goes on a holiday he may be well cited by a registered letter, because he ought to make arrangements for getting his letters, but here it is said for the pursuer that he had finally given up the Musselburgh house. However that may be, we are at present on relevancy, and must accept the pursuer's statements, and I cannot hold with the Lord Ordinary that his case is altogether irrelevant. On the contrary, I am of opinion that if the facts he avers are true a wrong has been done for which compensation will be due.

LORD KINNEAR—I am of opinion that the Lord Ordinary is perfectly right as to the effect of the decree in the Small Debt Court and as to any irregularity in the proceedings leading up to that decree, but it is quite different with regard to the execution of the decree. The pursuer says he found his furniture had been sold, and that without any notice to him. It is said that that is not relevant because vague. I cannot see why the pursuer need say more than that he knew nothing about the sale if that is so. That puts it upon the other party to show what means he took to inform the debtor. I can imagine the sheriff-officer returning a conclusive answer, but here a question of fact is involved, and the only proper mode is to allow the pursuer to have the verdict of a jury. The ultimate defence is that a registered letter was sent to the debtor's last known address, but what that was is just an additional fact to be ascertained by evidence, which we cannot assume one way or the other at this stage.

The Court pronounced the following interlocutor:—

> "... Adhere to said interlocutor in so far as it sustains the pleas therein mentioned as applicable to the objections to the decree of the Small Debt Court, and procedure antecedent thereto: *Quoad ultra* recal the said interlocutor, and remit to the Lord Ordinary to adjust an issue or issues for the trial of the cause, and to proceed further as may be just: Find the pursuer Robert Gray entitled to expenses." ...

Counsel for the Pursuer and Reclaimer — Watt — M'Lennan. Agent — Robert Broatch, L.A.

Counsel for the Defender and Respondent Miss Smart—Wilson. Agents—Macfarlane & Richardson, S.S.C.

Counsel for the Defender and Respondent M'Donald—F. T. Cooper—T. B. Morison. Agent—Peter Morison, S.S.C.

Friday, March 18.

SECOND DIVISION.

MACKENZIE *v.* CAMPBELL.

Poor's Roll—Admission Refused.

An unmarried man earning 24s. a-week was *refused* admission to the poor's roll for the purpose of raising a petitory action for the sum of £40.

Duncan Mackenzie, a labourer at the Aberfoyle Slate Quarries, unmarried and earning 24s. a-week, applied for admission to the poor's roll, to enable him to raise an action against his former employer, Dr Campbell, lessee of the Ballachulish Slate Quarries, for £40 alleged to have been illegally retained from his wages in violation of the Truck Acts.

Dr Campbell opposed the application.

The applicant cited the cases of *Stevens* v. *Stevens*, January 23, 1885, 12 R. 548, and *Paterson* v. *Linlithgow Police Commissioners*, July 4, 1888, 15 R. 826. In the latter case the applicant had 27s. a-week.

Argued for Dr Campbell — The Lord President's opinion in the case of *Robertson*, July 8, 1880, 7 R. 1092, was conclusive against admission. Indulgence had been shown in cases which could only be brought in the Court of Session, but this was not of that character. It could be raised in the Debts Recovery Court.

At advising—

LORD JUSTICE-CLERK—This is a case to which we have given great consideration and have had the advantage of consulta-