to lodge certain particulars, giving to intending investors in this country information with regard to their business, their capital, their profits, and so on. But that does not assist us in interpreting the language which the legislature has used, and that is simply "establishes a place of business within the United Kingdom," and I entirely agree with your Lordship that these words cannot be stretched to meet the circumstances of the present case.

LORD SKERRINGTON concurred.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court answered the question of law in the negative.

Counsel for the First Party—Sol.-Gen. Hunter, K.C.—Pitman. Agent—Henry Smith, W.S.

Counsel for the Second Party—D.-F. Dickson, K.C.—Macmillan. Agents—Davidson & Syme, W.S.

Counsel for the Third, Fourth, and Fifth Parties—D.-F. Dickson, K.C.—Macmillan. Agents—Macandrew, Wright, & Murray, W.S.

Friday, March 3.

FIRST DIVISION.

(SINGLE BILLS.)

PRICE *v.* CANADIAN PACIFIC RAILWAY COMPANY.

Sheriff — Small Debt Court — Summary Cause—Sheriff Courts (Scotland) Act 1907 (7 *Edw. VII, cap.* 51), *secs.* 3 (*i*), 8, 28, *and* 48.

The Sheriff Courts (Scotland) Act 1907, enacts—Section 3 (i)—"Summary cause includes (1) Actions . . . for payment of money exceeding twenty pounds and not exceeding fifty pounds, exclusive of interest and expenses; (2) Actions of whatever kind (except . . . under the Small Debt Acts) notwithstanding that the value may exceed fifty pounds, in which the parties consent to the action being treated as a summary cause." Section 8 prescribes the conditions on which "a summary cause" may be appealed from the Sheriff-Substitute to the Sheriff and to the Court of Session. Section 48, enacts—"If the Sheriff is of opinion that the importance of the questions raised in any cause brought under the Small Debt Acts warrants that course, he may at any stage remit the cause to his ordinary court rolls either on cause shown or *ex proprio motu*, in which case the cause shall proceed in all respects (including appeal) as if it had been originally raised in the ordinary court."

Held that a cause raised in a Small Debt Court is not made a summary cause by being remitted by the Sheriff to his ordinary court roll.

The Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, cap. 51), sections 3 (i), and 48 are *quoted in the rubric.* The Act also enacts—Section 8—"In a summary cause the Sheriff shall order such procedure as he thinks requisite, and (without a record of the evidence, unless on the motion of either party the Sheriff shall order that the evidence be recorded) shall dispose of the cause without delay by interlocutor containing findings in fact and in law. Where the evidence has been recorded the judgment of the Sheriff-Substitute upon fact and law may in ordinary form be brought under review of the Sheriff, but where the evidence has not been recorded the findings in law shall only be subject to review. 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." Section 28—"Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment of a Sheriff-Substitute or of a Sheriff, but that only if the value of the cause exceeds fifty pounds" (and fulfils certain other conditions).

John Price, boilermaker, Bridgeton, on 5th July 1909, raised an action in the Small Debt Court at Glasgow against the Canadian Pacific Railway, carrying on business at 67 St Vincent Street, Glasgow, for payment of a sum of £6, 5s. The pursuer averred that he had been engaged, along with others, by the defenders to do work for them in Canada, and that the sum sued for being his outward passage money had been improperly retained by the defenders from his wages.

On 16th July 1909 the Sheriff-Substitute (A. O. M. MACKENZIE) remitted the cause to the ordinary court roll, and thereafter defences were duly lodged. On 15th July 1910 the Sheriff-Substitute assoilzied the defenders from the conclusions of the action. The pursuer appealed to the Sheriff (MILLAR), who on 30th January 1911 adhered to the interlocutor of the Sheriff-Substitute and granted leave to appeal. In the note appended to his interlocutor he mentioned that the case raised an important question of law under the Truck Acts.

The pursuer appealed to the Court of Session, and presented a note to the Lord President, in which he set forth the procedure which had taken place, and on the ground that he was desirous of obtaining the benefit of the poor roll of the Court of Session asked the Court to grant a sist and to dispense with printing *in hoc statu.*

On the case appearing in Single Bills on 3rd March 1911 the defenders objected to the competency of the appeal, and argued—The purpose of section 48 of the Sheriff Courts (Scotland) Act 1907 (7 Edw.

VII, cap. 51) was to regulate procedure. It did not allow the Sheriff to turn a small debt cause into a summary cause. Under the scheme of the Act there were three divisions of causes according to value, viz. —(i) not exceeding £20, (ii) exceeding £20 but not exceeding £50, and (iii) exceeding £50. Summary cause meant (ii), and did not include (i). Reference was made to *Campbell* v. *Gillies*, September 20, 1871, 2 Coup. 142, at 147.

Argued for the pursuer (appellant)—There were really only two classes of action considered in the Act—summary and non-summary. There was no exhaustive definition of "summary cause" in the Act. That what it was said in section 3 (i) to include was not exhaustive appeared from rule 40, which provided that even though exceeding £50 in value a cause might be treated as a summary cause. Similarly, they submitted that a cause raised in the Small Debt Court, by being transferred to the ordinary roll became a summary cause, and was appealable to the Court of Session under the conditions applying to summary causes. Reference was also made to rules 41 and 42.

LORD PRESIDENT—In this case the action was raised in the Small Debt Court. The merits of the case, we are given to understand, raise a question of very general importance under the Truck Acts.

Now by the 48th section of the Sheriff Courts (Scotland) Act 1907 it is provided that "... [*quotes v. sup.*] ..."

The Sheriff-Substitute followed that course in this case, and accordingly the case was put to the ordinary roll. It was decided by the Sheriff-Substitute, and an appeal was taken from him to the Sheriff, who affirmed the judgment of the Sheriff-Substitute. The Sheriff appended to his note an expression of opinion that he considered the questions raised were important questions of law and he granted leave to appeal, and the case appeared in the Single Bills in order to be sent to the roll.

The question that your Lordships have to decide is whether in these circumstances appeal to this Court is competent. Now the section that I have already read provides that the case "shall proceed in all respects (including appeal) as if it had been originally raised in the" Sheriff Court. The section that deals generally with appeal from the Sheriff Court to the Court of Session is the 28th, and that is obviously limited by the initial words, which provide that it is "competent to appeal to the Court of Session ... but that only if the value of the cause exceeds £50." Now here of course the value of the cause does not exceed £50; and therefore it is quite obvious that if this is to be viewed as an ordinary Sheriff Court action the appeal is incompetent because of the want of value. But the argument that was presented to us was that this case had been treated as a summary cause.

Now summary causes are dealt with in the 8th section which (I will not read it, but glossing it) provides that the Sheriff shall order such procedure as he wishes, that there is an appeal (where the evidence is taken down) upon both fact and law from the Sheriff-Substitute to the Sheriff, and then there is a further appeal to the Court of Session on questions of law alone if the Sheriff considers the questions of importance and grants leave.

Therefore, really, this point seems to come to turn upon whether this cause, that is to say, a small debt cause in its initial nature but transferred to the ordinary roll, is or is not a summary cause.

I am somewhat reluctantly driven to the view that it is not. This is not the only case, I am sorry to say, in this Act where it has used words as if they were words of common style, whereas as a matter of fact they were not.

"Summary cause" up to the time of this Act in civil procedure is not a known phrase, and therefore we are not helped by any existing practice as to what is a summary cause. But the definition clause of the Act (3 *i*) deals with "summary cause," and says "summary cause includes certain actions." I need not go through what the section provides, because it is at once evident that this does not fall under any of the classes of actions there specified; and therefore if "includes" is equivalent to "means," there is an end of the matter. But "includes" is not necessarily upon the phrase equivalent to "means." It may be, as expressed, merely a specification of certain things which it undoubtedly includes, leaving it to be understood that there are certain other things not specifically mentioned which it also "means."

Going back to what I have already said—that there is no admitted and practised use of the words "summary cause"—I am afraid that if it were held that any action other than those specified in the section might be included in the definition, it would be left in the power of the Sheriff to decide what actions might be so included. That I think is impossible, because it would allow the Sheriff then, *ex proprio motu*, to turn into a summary cause what was never meant to be a summary cause at all. And I think that the very words of the section, which I have not yet read, strongly support the argument, because it says, in 3 (*i*) (2) "Actions of whatever kind (with a certain exception) notwithstanding that the value may exceed £50, in which the parties consent to the action being treated as a summary cause," may be so treated. Now the bringing in of the consent of parties seems to me destructive of the idea that you could turn it into a summary cause simply because the Sheriff chose to say so.

I have therefore come to the conclusion that this appeal is incompetent.

Whether it is or is not a *lacuna* in the arrangements of the Sheriff Courts Act, I do not think it is for me to say. When this Act is amended, it will be one of the things which those who are amending it will have to consider. But I think this is worth saying, that when an action, as

here, is raised by an individual workman, although the question is of very general interest, the question for him can never be more than the very small sum of money that is involved, and it may be that the remedy of the other party against whom many actions might be raised, if he wishes a higher tribunal, would be to raise the matter in some form like a declarator.

LORD JOHNSTON — I agree with your Lordship. Where the statute says that "summary cause includes," *prima facie* one would understand that although it is to include the specified causes, it may include something else. But it is necessary to read it as if "includes" means "means and includes," because in point of fact there is nothing else it can include except the specified causes. And therefore the conclusion is that, whether purposely or by inadvertence, there is a *lacuna* covering the class of cases between £1 and £20.

I think it is worth while noting, going back to the Small Debt Act of 1837, that things are left by the Act of 1907 precisely where they were in 1837. Because that statute, in section 14, provided that no record was to be made up of the pleadings unless with the leave of the Court in consequence of any difficulty in point of law, or special circumstances of any particular case, which would, of course, cover a case such as we have here; "provided always that when the Sheriff should order any such pleadings to be reduced to writing, then every such case should proceed as an ordinary civil cause and be disposed of in all respects as if this Act had not been passed."

Now that places any case such as the present in the position of an ordinary action. But then it does not go on to provide any special appeal for cases of that sort. There is a special means of appeal to the Justiciary Court, under sections 30 and 31, which would not affect cases of this sort if they were tried in the ordinary court and were disposed of in all respects as if that Act had not been passed; and therefore cases of that sort were left in the position that being under £25 no appeal was possible. This Act of 1907, therefore, though raising the limit of small debt actions to £20, leaves the small debt cases remitted to the ordinary court precisely in the same position as regards appeal as they would have been under the 1837 Act, and does not give them the benefit of the latter part of section 8 of the Act of 1907, which allows important questions of law arising out of summary causes to be stated to the Court of Session on leave to appeal.

LORD SKERRINGTON concurred.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court sustained the respondents' objection to the competency of the appeal and directed the clerk to re-transmit the process to the Sheriff-Clerk.

Counsel for the Pursuer (Appellant) — Armit. Agent—Arthur A. Ross, S.S.C.

Counsel for the Defenders (Respondents) —Mair. Agents—Webster, Will, & Company, W.S.

Tuesday, March 7.

FIRST DIVISION.

[Sheriff of Ayr.

FERGUSSON *v.* M'QUATER.

Lease — Outgoing — Compensation — Improvements—Agricultural Holdings (Scotland) Act 1908 (8 *Edw. VII, cap.* 64), *sec.* 1, *Schedule I, Part* 3—*Tenant Bound by Lease to Apply Artificial Manure Claiming Compensation for Unexhausted Value thereof.*

The Agricultural Holdings (Scotland) Act 1908 enacts, sec. 1, sub-sec. (1)—"Where a tenant of a holding has made thereon any improvement comprised in the first schedule to this Act he shall, subject as in this Act mentioned, be entitled, at the determination of a tenancy, on quitting his holding, to obtain from the landlord, as compensation under this Act for the improvement, such sum as fairly represents the value of the improvement to an incoming tenant." Sub-sec. (2)—"In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account—(*a*) any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement; (*b*) as respects manuring as defined by this Act, the value of the manure required by the lease or by custom to be returned to the holding in respect of any crops sold off or removed from the holding within the last two years of the tenancy or other less time for which the tenancy has endured, not exceeding the value of the manure which would have been produced by the consumption on the holding of the crops so sold off or removed."

The first schedule to the Act specifies in Part 3 "Improvements in respect of which consent of or notice to landlord is not required. . . . (23) Application to land of purchased artificial or other purchased manure."

A lease contained provisions which required the tenant to manure the land with a certain amount of farmyard manure per acre, and so far as he did not make on the farm sufficient farmyard manure to apply artificial manure. *Held* that the application of the artificial manure was an "improvement," that it could not be assumed that the landlord in fixing the rent had given "any benefit" in consideration of this