

II. SUBJECT-MATTER OF THE CAUSE

- 2.26** The jurisdiction of the sheriff court in point of subject-matter extends over all causes except those reserved to the Court of Session or to other courts or tribunals. In certain cases it has privative jurisdiction; in others its jurisdiction is excluded; and in others it has concurrent jurisdiction with the Court of Session. Those three aspects of the jurisdiction of the sheriff court in point of subject-matter are discussed in the following paragraphs of this part of this chapter.

Privative jurisdiction*The value rule*

- 2.27** Subject to one exception, the sheriff court has privative jurisdiction in all causes not exceeding £1,500 in value (exclusive of interest and expenses) which are competent in the sheriff court. Such a cause must be brought and followed forth in the sheriff court only, and is not subject to review by the Court of Session³⁸ unless it has been brought as a summary cause (with the exception of a small claim) and has been appealed to the sheriff principal who has, after final judgment, certified the cause as suitable for appeal to the Court of Session.³⁹ This does not apply to appeals under the Debtors (Scotland) Act 1987, such as appeals on time to pay directions.⁴⁰ If the cause is not competent in the sheriff court, as where the defender is not subject to its jurisdiction, the limit of value does not apply and the cause may be brought in the Court of Session if the defender is subject to the jurisdiction of that court.⁴¹ A Lord Ordinary of the Court of Session may hear by summary trial any dispute or question not affecting the status of any person which might competently be the subject of any cause in the Outer House, or which might competently have been the subject of any such cause but for the provisions of section 7 of the 1907 Act.⁴²
- 2.28** The value of the cause may have to be considered if there is a question whether the action should be raised in the sheriff court or the Court of Session, or whether a decision in the sheriff court may be appealed to the Court of Session. The statutory rule is that the sheriff court has privative jurisdiction, subject to the exception noted above, in causes competent in that court which do not exceed £1,500 in value “exclusive of interest and expenses”.⁴³ The interest thus excluded is not only interest from the date of citation, but all interest which is merely an accessory of the principal

³⁸ 1907 Act, s. 7, amended by 1971 Act, Sch. 2, SI 1976/900, Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, Sch. 3, and SI 1988/1993; *Allan v Alexander's Trs* (1908) 16 S.L.T. 491; *Dickson & Walker v John Mitchell & Co*, 1910 S.C. 139.

³⁹ 1971 Act, s. 38, amended by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, s. 18(4).

⁴⁰ See Debtors (Scotland) Act 1987, s.103(1).

⁴¹ *Strachan v Pharmaceutical Society of Great Britain* (1901) 8 S.L.T. 373; *Pagan & Osborne v Haig*, 1910 S.C. 341. This rule is now of limited application, in view of the jurisdictional rules in the Civil Jurisdiction and Judgments Act 1982: see Ch. 3.

⁴² Court of Session Act 1988, s. 26(4).

⁴³ 1907 Act, s. 7: see fn. 38.

sum sued for.⁴⁴ A cause “not exceeding £1,500 in value” is one the subject-matter of which does not exceed the value of £1,500.⁴⁵ Questions as to how the value of the cause is to be determined may arise in actions for payment, in actions *ad factum praestandum*, and in appeals to the Court of Session where a counterclaim has been stated or where there has been a change of circumstances subsequent to the raising of the action. These questions are considered in the following paragraphs.

(1) Action for payment. In an action for payment of money the crave gives only a prima facie means of ascertaining the value, since the value is that of the true subject of the cause as determined by the court,⁴⁶ and it may be gathered from the whole of the record.⁴⁷ Thus the sum sued for is not conclusive should the nature of the action be such that something of greater value, taking the case outside the limit, is at stake and is dependent on the result of the case.⁴⁸ A common example is where the sum sued for is rent⁴⁹ or other periodic payment⁵⁰ and the decision will rule a question of continuing liability which takes the case beyond the limit of value.⁵¹ Where no such question arises, the value of such a cause is the amount sued for.⁵² Apart from questions of continuing liability, a case containing a small pecuniary crave may involve a question of greater value which takes it beyond the limit⁵³; but it must appear on the face of the proceedings that there is such a live, practical question to be determined⁵⁴ which is part of the subject-matter of the action and not an extrinsic consequence of it.⁵⁵ 2.29

⁴⁴ *Bowie v Donaldson*, 1922 S.C. 9. It is not clear whether interest which is treated as part of and included in the principal sum sued for should be excluded.

⁴⁵ *Hopkirk v Wilson* (1855) 18 D. 299 at 300; *Buie v Stiven* (1863) 2 M. 208, per L.J.C. Inglis at 218. (Note that prior to 1988 the equivalent sum was £500 and before that it was £50.)

⁴⁶ *Dickson & Walker v John Mitchell & Co*, 1910 S.C. 139, per L.P. Dunedin at 145–146. In A.S. (Alteration of Sheriff Court Fees) 1971, Sch. 2, para. 18(f) (now revoked) “value” was held to mean the value as determined by the court, and not the sum sued for (*Bennett v Livingston Development Corp*, Sh. Pr. O’Brien, Linlithgow Sh. Ct, Oct 29, 1979, unreported).

⁴⁷ *Purves v Brock* (1867) 5 M. 1003, per L.P. Inglis at 1004; *General Guarantee Corp v Alexander*, 1918 S.C. 662. The court will not, however, consider the question by reference to what may come out at the proof: *Soutar v Mulhern*, 1907 S.C. 723.

⁴⁸ *Scottish Special Housing Association v Maxwell*, 1960 S.C. 391, approving Dobbie, p. 49.

⁴⁹ *Drummond v Hunter* (1869) 7 M. 347; *Cunningham v Black* (1883) 10 R. 441; *Duke of Argyll v Muir*, 1910 S.C. 96; *Scottish Special Housing Association v Maxwell*, 1960 S.C. 391; cf. *Welsh v Duncan* (1893) 20 R. 1014.

⁵⁰ *Stevenson v Sharp*, 1910 S.C. 580 (payment under letter of obligation); *Abrahams Ltd v Campbell*, 1911 S.C. 353 (rent due under contract); *Hamilton v Hamilton* (1877) 4 R. 688 (aliment); *Paisley Parish Council v Glasgow and Row Parish Councils*, 1907 S.C. 674 (relief of payment of aliment).

⁵¹ *Scottish Special Housing v Maxwell*, 1960 S.C. 391.

⁵² *Macfarlane v Friendly Society of Stornoway* (1870) 8 M. 438 (single claim for aliment); *Heddie v Gow* (1880) 18 S.L.R. 96 (single assessment); *North British Ry v McArthur* (1889) 17 R. 30 (rent); *Standard Shipowners’ Mutual Association v Taylor* (1896) 23 R. 870 (not shown that continuing liability over limit); *Stirling Parish Council v Perth Parish Council* (1898) 25 R. 964 and *Melrose Parish Council v Hawick Parish Council*, 1912 S.C. 1029 (no continuing liability to aliment).

⁵³ *Raines, Clark & Co v Swan’s Tr.* (1902) 10 S.L.T. 316 (condition adjoined to payment of dividend); *Aitchison v McDonald*, 1911 S.C. 174 (liability of official not called as defender to pay on charge for club debt); *McDonald v Ross*, 1929 S.C. 240 (paternity); *Brady v Napier & Son*, 1944 S.C. 18 (irregular execution of diligence); *Scottish Special Housing Association v Maxwell*, 1960 S.C. 391 (test case).

⁵⁴ *Standard Shipowners’ Mutual Association v Taylor* (1896) 23 R. 870 (no question apparent from process); *Stirling Parish Council v Perth Parish Council* (1898) 25 R. 964 (insufficient that question of statutory construction involved).

⁵⁵ *Brown & Critchley v Decorative Art Journals Co*, 1922 S.C. 192.

2.30 The following appear to be further general rules for determining value which are applicable in particular circumstances. Where a crave for payment of a sum under the limit is combined with a crave which may raise a very large question from a pecuniary point of view, the value of the cause is taken to be above the limit.⁵⁶ Where in one action two or more pursuers having community of interest⁵⁷ sue for separate sums,⁵⁸ or several defenders having community of interest are sued for separate sums,⁵⁹ or where actions have been conjoined,⁶⁰ the whole sums claimed are aggregated to determine the value of the cause. In a process of competition the value of the cause is in general determined by the amount of the claim.⁶¹ Where the pursuer sues for payment of the balance of an account, the value of the cause will be determined by the amount craved⁶²; but if he gives credit to the defender for a sum due by him on a separate transaction, the value is the sum craved plus the credited amount.⁶³ Where the defender is entitled in terms of the contract sued on to make deductions from the sum craved, the value will be taken to be the balance.⁶⁴

2.31 (2) Action *ad factum praestandum*. The determination of the value of an action *ad factum praestandum* depends on the nature of the crave. If there is a crave for payment of a definite sum of money as an alternative to the crave for decree *ad factum praestandum* the sum specified will be taken to be the value of the cause,⁶⁵ but if the sum alternatively craved is indefinite the value will be deemed to exceed the limit.⁶⁶ The value was formerly deemed to exceed the limit if there was no alternative pecuniary crave,⁶⁷ unless it was clear from the pleadings that it was below the limit.⁶⁸ Now, however, an action *ad factum praestandum* other than one in which there is claimed in addition, or as an alternative, to a decree *ad factum praestandum* a decree for payment of money exceeding £1,500 in amount (exclusive of interest and expenses) should be brought as a summary cause.⁶⁹ But an action appropriate to ordinary cause procedure does not lose that character if it has a crave seeking a remedy, which, if sought on its own, would have only been competent as a summary cause.⁷⁰ In a

⁵⁶ *Thomson v Barclay* (1883) 10 R. 694, commented on in *North British Ry v McArthur* (1889) 17 R. 30.

⁵⁷ The rule does not apply where there is no community of interest: *Bruce v Henderson* (1889) 17 R. 276; *Brotherston v Livingston* (1892) 20 R. 1.

⁵⁸ *Nelson, Donkin, & Co v Browne* (1876) 3 R. 810, per Lord Deas at 812; *Birrell v Taylor* (1884) 12 R. 151; *Campbell v Train*, 1910 S.C. 147, per L.P. Dunedin at 149; *Sneddon v Addie & Sons' Collieries*, 1927 S.N. 164.

⁵⁹ *Dykes v Merry and Cuninghame* (1869) 7 M. 603; *Nelson, Donkin, & Co v Browne* (1876) 3 R. 810.

⁶⁰ *Campbell v Train*, 1910 S.C. 147.

⁶¹ *Henderson v Grant* (1896) 23 R. 659; cf. *Dobbie v Thomson* (1880) 7 R. 983.

⁶² *Stevens, Son & Co v Grant* (1887) 5 R. 19.

⁶³ *Inglis v Smith* (1859) 21 D. 822.

⁶⁴ *Campbell's Trs v Kinloch*, 1925 S.L.T. 189.

⁶⁵ *Singer Manufacturing Co v Jessiman* (1881) 8 R. 695; *Dickson v Bryan* (1889) 16 R. 673; *Lamonby v Foulds Ltd*, 1928 S.C. 89.

⁶⁶ *Shotts Iron Co v Kerr* (1871) 10 M. 195; *Aberdeen v Wilson* (1872) 10 M. 971.

⁶⁷ *Purves v Brock* (1867) 5 M. 1003; *Galloway v McGhie* (1869) 41 Sc.Jur. 400; *Henry v Morrison* (1881) 8 R. 692; *Broatch v Pattison* (1898) 1 F. 303.

⁶⁸ *General Guarantee Corp v Alexander*, 1918 S.C. 662.

⁶⁹ 1971 Act, s. 35(1)(c). Note that SI 1988/1993 increased the amount from £1,000 to £1,500. See also *Rutherford v Virtue*, 1993 S.C.L.R. 886, showing the incompetence of bringing an action *ad factum praestandum* as an ordinary cause and attempting to cure it by adding an amendment craving damages.

⁷⁰ *Milmor Properties Ltd v W & T Investment Co Ltd*, 2000 S.L.T. (Sh. Ct) 2, distinguishing *Rutherford*, above.

summary cause action *ad factum praestandum* the value of the cause determines whether there is to be a percentage reduction of the fees chargeable under Chapter IV of the Table of Fees.⁷¹ It is thought that it is for the party claiming that there should be a reduction to raise the matter when the sheriff hears parties on the question of liability for expenses, and to satisfy the court that the value of the cause is within the limit to which the reduction claimed applies.

(3) Other actions. In actions of accounting, where the crave is for payment of a specified sum or such other sum as may be found due, the sum specified does not determine the value, which may be held to exceed the limit.⁷² It has been suggested that on the analogy of the cases where a pecuniary alternative to a crave for delivery is left indefinite, the value of an accounting should be regarded as over the limit unless it clearly appears from the record that it is in fact under the limit.⁷³ The value of an action of declarator may be deemed to exceed the limit, notwithstanding that a sum below the limit has been specified in an ancillary crave.⁷⁴ **2.32**

(4) Counterclaim. The question whether the value of the cause is affected by the statement of a counterclaim may arise on appeal to the Court of Session. In *Bowie v. Donaldson*⁷⁵ it was observed *obiter* that no counterclaim, however large, could make appealable a cause which was otherwise unappealable for want of value: it was said that a pursuer who sues for a sum under the limit could not be subjected to appeal by the existence of a counterclaim over the limit, and that the defender could obtain a decision in the Court of Session by raising a substantive action. It has been submitted, however, that the value of the cause should be the total of the claim and the counterclaim.⁷⁶ It is thought that the latter view is correct, subject to the observations that the true value of a claim may not be the sum specified⁷⁷ and that where one claim is admitted the value of the cause may be only the difference between the claims.⁷⁸ A counterclaim may be dealt with as if it had been stated in a substantive cause,⁷⁹ the principles to be applied as regards the expenses of trying it are the same as if it had been tried in a separate action,⁸⁰ and it continues as a separate cause if the pursuer abandons the cause.⁸¹ The right to state a counterclaim would therefore appear not to be a limited privilege controlled by the value and continued existence of the pursuer's claim. If the defender **2.33**

⁷¹ A.S. (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993, Sch. 1, reg. 14(f).

⁷² *Stott v Gray* (1834) 12 S. 828.

⁷³ *Dobie*, p. 51.

⁷⁴ *Edinburgh Tramways Co v Torbain* (1876) 3 R. 655; (1877) 4 R. (HL) 87; commented on, *Aitchison v McDonald*, 1911 S.C. 174, per L.P. Dunedin at 176.

⁷⁵ 1922 S.C. 9, per Lord Salvesen at 13.

⁷⁶ *Lewis*, p. 21; *Dobie*, p. 50; *Murphy v Muir*, 1927 S.L.T. (Sh. Ct) 55. For the purpose of the percentage reduction of solicitors' fees in certain summary causes the value of any action in which a counterclaim has been lodged is the total of the sums craved in the writ and the sum claimed in the counterclaim (A.S. (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993, Sch. 1, reg. 14(f)).

⁷⁷ para. 2.29.

⁷⁸ *Kinnaird & Sons v Millar* (1931) 47 Sh.Ct.Rep. 320.

⁷⁹ OCR, r. 19.4(a).

⁸⁰ *Macfarlane v Macdougall*, 1932 S.L.T. (Sh. Ct) 36.

⁸¹ OCR, r. 19.3.

raised instead a substantive action, the pursuer could be subjected to appeal by the conjoining of the actions.⁸²

- 2.34 (5) Change of circumstances.** On appeal to the Court of Session the question may arise whether the value of the cause is affected by a change of circumstances subsequent to the raising of the action which results in an alteration reducing the demand with which the pursuer came into court. The effect of such an alteration appears to vary according to the circumstances causing it. It would appear that the value of the cause used to be regarded as its value at the date either of litiscontestation (i.e. of lodging defences), or of the closing of the record. Thus an admission before the closing of the record that the defender was liable for only part of the sum sued for, so that the outstanding difference was below the statutory limit, was held not to affect the value of the cause⁸³; and restriction of the sum sued for below the limit was held to reduce the value where it was made before the closing of the record,⁸⁴ but not to do so where it was made thereafter.⁸⁵ In some later cases, however, the criterion of value was taken to be the value of the matter in dispute at the date of the appeal.⁸⁶ But these cases have been criticised,⁸⁷ so that the matter is left in some uncertainty.

Other matters

- 2.35** There are many matters in respect of which jurisdiction is conferred upon the sheriff court either exclusively or subject to a right of appeal to the Court of Session. These matters are noted elsewhere in this book. It has been observed that there is a class of cases which are only competent in the sheriff court, and in which an action brought in the Court of Session would be dismissed as incompetent.

“The general character of such cases is that they relate to questions as to property within the sheriffdom in which there is a necessity for immediate decision, such, for example, as warrants for the sale of a pledge or the sale of perishable articles when the right of possession is disputed. There can be no doubt that cases between landlord and tenant of property situated within the sheriff’s territory have always been regarded as specially suited for decision in the sheriff court.”⁸⁸

Under his common law powers as a judge ordinary of the bounds the sheriff may undertake miscellaneous duties which cannot be appropriately performed by any other authority. Such duties are considered elsewhere in this book.⁸⁹ Numerous other duties are performed by the sheriff under statutory powers which are also considered elsewhere.⁹⁰

⁸² *Gottlieb v Fons Patent Inkwell Ltd*, 1917 1 S.L.T. 331.

⁸³ *Wilson v Wallace* (1858) 20 D. 764; *Armour v Munro* (1899) 7 S.L.T. 21.

⁸⁴ *Cairns v Murrall* (1884) 12 R. 167.

⁸⁵ *Buie v Stiven* (1863) 2 M. 208; *Tait v Lees* (1903) 5 F. 304.

⁸⁶ *David Allen & Sons Billposting Ltd v Dundee and District Billposting Co Ltd*, 1912 S.C. 970; cf. *Muirhead v Gilmour*, 1909 1 S.L.T. 235; and see comments on *Tait v Lees*, above, in *Melrose Parish Council v Hawick Parish Council*, 1912 S.C. 1029.

⁸⁷ *Lanonby v Foulds Ltd*, 1928 S.C. 89.

⁸⁸ *Duncan v Lodjanski* (1904) 6 F. 408, per Lord McLaren at 410.

⁸⁹ paras 26.03–26.05.

⁹⁰ Ch. 27.

