SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 47
XA35/26

Lord Justice Clerk
Lord Malcolm
Lord Braid

OPINION OF THE COURT

delivered by LORD BRAID

in the appeal

by

STEPHANIE HUGHES

Appellant

against

CABOT FINANCIAL UK LIMITED

Respondent

Appellant: K. Young; Flexlaw Solicitors
Respondent: Davie KC, A. Sutherland; Nolans Solicitors

3 November 2026

The issue

[1] The issue raised by this appeal from the Sheriff Appeal Court is the extent to which the law of evidence applies to simple procedure claims in the sheriff court. In particular, does section 77 of the Courts Reform (Scotland) Act 2014 permit a sheriff to treat as evidence a document which has neither been spoken to by a witness nor admitted in a joint minute of agreement between the parties? Section 77 is in the following terms:

> **"77 Evidence in simple procedure cases**
>
> (1) Any enactment or rule of law that prevents evidence being led on grounds of admissibility before a court of law does not apply in simple procedure cases.
>
> (2) The evidence, if any, given in simple procedure cases is not to be recorded."

As the hearing of the appeal developed, a broader question emerged as to whether the Simple Procedure Rules (contained in Schedule 1 to the Act of Sederunt (Simple Procedure) 2016) more generally permit the sheriff to have regard to material even though it may not have been formally spoken to in evidence.

Background

[2] The appeal arises out of a claim brought in the sheriff court under simple procedure by Cabot Financial UK Limited, the respondent in this appeal, against the appellant Stephanie Hughes, for payment of the sum of £3,120.02, which was said to be a debt due under a credit card issued to Ms Hughes by Bank of Scotland, part of the Lloyds Banking Group. (For simplicity, we will henceforth refer to Cabot as "the respondent", and to Ms Hughes as "the appellant".) The respondent averred that the debt had been assigned to it by Lloyds in 2016. The appellant's position was not that she denied the debt, so much as that she wished to put the respondent to proof of its case. In the course of sundry procedure before the sheriff, various orders were made requiring the respondent to lodge in court the documentation upon which it founded, which resulted in it lodging the following in support of its case: (i) the signed credit agreement; (ii) statements of account displaying an outstanding balance; (iii) a copy of the default notice served on the appellant; (iv) a redacted copy of the assignation agreement between Bank of Scotland and Cabot; and (v) a copy of the assignation notice sent to the appellant.

[3] The case called for a hearing (described by the sheriff as an evidential hearing, although that term is not used in the Simple Procedure Rules). Both parties were represented by solicitors. Although, apparently, it had been anticipated that both parties would lead evidence, the appellant was unable to attend. The sheriff recorded that he was informed by the respondent's solicitor that it had been agreed that documents in the case were "what they bore to be", from which the appellant's solicitor did not demur although he did state that the respondent proceeded "at their peril". A joint minute of agreement was lodged in which the parties agreed: (i) that the appellant signed an agreement with the Bank on or around 18 June 2009, in terms of which she was supplied with a credit card: (ii) that she made use of the credit card and accumulated debt to the Bank; (iii) that production C2 was a letter intimated to the appellant that the debt had been assigned on 7 July 2016 (*sic*); and (iv) that she made payment to the respondent's agents. Production C2 was a letter by the Bank to the appellant dated 7 July 2016 stating that the debt had been assigned to the Cabot Credit Management Group, effective 27 June 2016 (and not 7 July 2016); it requested that future payments be made to Cabot Financial (Europe) Limited. None of the other documents lodged by the respondent were admitted in the joint minute.

[4] The defence advanced to the claim at the hearing was three-fold. First, the appellant maintained that the original credit agreement was fundamentally defective since it had not been signed by the Bank. It followed that the credit agreement, which was governed by the Consumer Credit Act 1974, could not be enforced by an action for payment without an order under section 127 of that Act: section 65(1), 1974 Act. Second, it was argued that since the default notice lodged in process bore no name (but did contain an address), it had not been proved that it had ever been issued to the appellant. Finally, the appellant contended that the assignation deed lodged in process contained an unacceptable number of redactions

and, it not having been spoken to in evidence, was incapable of allowing the court to construe the document as assigning title to sue from the Bank to the respondent. It was not argued that the document itself was not genuine or had been forged in some way; rather, the appellant argued that the redactions prevented a proper construction of the full terms of the document.

[5] The sheriff rejected the appellant's arguments. He accepted that raising an action for payment was "enforcement" which would be prohibited in circumstances where there was a want of an order under section 127 of the 1974 Act. However, that problem was superseded by the fact that the relationship was no longer governed by the 1974 Act since the default notice had been properly served. Support for this finding could be found in the fact that the parties had acted in a manner consistent with termination. It followed that there was a simple debt resting, owing and due to the respondent, being the sum outstanding as shown on the statement of account. The sheriff was also satisfied that the respondent had title to sue. He specifically found (at paragraph 63 of his judgment) that the information within letter C2 was sufficient proof of the fact of the assignation.

Proceedings in the Sheriff Appeal Court

[6] The appellant appealed to the Sheriff Appeal Court on three grounds: (i) that the essential documents had not been proved in evidence; (ii) that the respondents could not enforce the sum claimed (the "consumer credit" argument); and (iii) that the original assignation had not been provided and so the respondent lacked title to sue. In support of the first ground, she submitted that the sheriff had incorrectly recorded the agreement between the parties as to the provenance of the documents; she had not, in fact, agreed that

the documents were what they bore to be and, there having been no evidence led in support of the documents, there was no evidential basis for the sheriff's finding.

[7] The appeal was heard by a single-sheriff bench of the Sheriff Appeal Court. In relation to the first ground of appeal, at paragraph 15 of its opinion, the court explained that it was the responsibility of parties to make matters "crystal clear" to the court. The hearing had proceeded on the basis that the documents were agreed and if the appellant's position was that the provenance of documents was not agreed, it was her agent's task to make that clear to the court rather than to use a Delphic phrase such as "at their peril". At paragraphs 16 and 17 the court went on to say, in the passage which has given rise to this appeal:

> "[16] In any event, this evidential bourach, for which Ms Hughes' agents appear to bear responsibility, can be resolved on a statutory basis. In the context of simple procedure, special evidential rules apply. Section 77 of the Courts Reform (Scotland) Act 2014 provides: 'Any enactment or rule of law that prevents evidence being led on grounds of admissibility before a court of law does not apply in simple procedure cases.
>
> [17] The sheriff admitted the evidence ... without it being spoken to by a witness. Section 77 permitted him to take that course. The evidence comprised: the signed credit agreement; notices of assignation; statements of account; a copy default notice; and a copy of the assignation agreement. These documents provided a complete and compelling account of: Ms Hughes' debt; her default on repayment; the basis of liability; and Cabot's entitlement to enforce. There was no basis on the evidence to doubt that decree was properly awarded. This ground of appeal has no merit."

[8] Insofar as the second ground of appeal was concerned, it had not been pursued. As for the third ground of appeal, it, too, was founded on an alleged failure to prove the assignation. However, the assignation was available for the sheriff to consider. The excerpts lodged had proved the debt, the assignation and title to sue.

Ground of appeal

[9] The sole ground of appeal to this court is that the Sheriff Appeal Court erred in holding that section 77 of the 2014 Act permitted the documents to be treated as evidence in the claim. The appellant contends that section 77 does not remove the requirement to prove the provenance of documents to allow them to be treated as evidence but simply removes the ordinary restraints on admissibility of evidence. Permission to appeal on this ground was refused by the Sheriff Appeal Court, the court stating at paragraph 8 of the decision:

> "The common law of evidence requires a document to be spoken to, but the common law is displaced by the terms of section 77 [of the 2014 Act]. The attempted distinction between admissible evidence and evidence is not coherently analysed, and appears to create a class of evidence which is admitted but thereafter must not be relied upon. Such a distinction appears to be unknown to the law."

In any event, the court found that the appeal was unlikely to succeed. Moreover, there was no important point of principle or practice in play, nor any other compelling reason to hear the appeal.

[10] On a further application to this court, permission was granted, on the basis that, contrary to the view of the Sheriff Appeal Court, the point raised as to the proper interpretation of section 77 of the 2014 Act was one of wider importance.

Submissions

Appellant

[11] Section 77(1) of the 2014 Act did not give the sheriff the power to treat as evidence a document which had neither been spoken to nor admitted by parties. The plain purpose of the provision was to discourage legal debates regarding admissibility, but it did not empower the sheriff to disapply any and all laws of evidence in relation to simple procedure actions, nor did it remove the need for a party to prove its case. Contrary to what the Sheriff

Appeal Court had said in refusing permission (in a passage which betrayed the error into which it had fallen), the question of admissibility was wholly distinct from the question of what constituted evidence. An analogy could be drawn with membership of a club. Someone might be eligible to join a club, but did not become a member until so admitted. Similarly, admissibility was a gate-keeping device, which permitted the court to refuse to allow a document to be treated as an adminicle of evidence on various legal grounds. On a proper construction of section 77(1), it simply removed the gate-keeping function of objections on admissibility grounds. It did not have the effect of making all documents lodged in a simple procedure case self-proving. Evidence, and in particular real evidence, still required to be spoken to by a witness to establish its provenance unless the legislature had expressed otherwise: *Raitt on Evidence* (3rd Ed) at 2-32. Documents were real evidence. The language used by the legislature in section 77(1) was of significance. The words "evidence being led" demonstrated a clear legislative intention that evidence would still require to be led for a document to become evidence. Had the statutory intention been for documents lodged in a simple procedure claim to be treated as proved without the need for them to be spoken to, the legislation would have said so. This construction was reinforced by Simple Procedure Rule 10.3, which permitted a party to bring to a hearing documents which had not been lodged, but provided that the sheriff may refuse to consider these. That made no sense if the documents were evidence, since a sheriff is not entitled to refuse to consider evidence in a cause.

[12] The Sheriff Appeal Court's reading of the provision produced absurdity. It would open simple procedure actions to intolerable uncertainty since parties could not know what documents the sheriff would treat as evidence in their dispute. In the context of the present dispute, the documents erroneously treated as evidence by the sheriff were crucial to proof

of the respondent's claim. There had been no agreement that the documents were what they bore to be and the respondent led no witnesses to speaking to them. The respondent had failed to prove its case and the appellant ought to have been assoilzied.

Respondent

[13] Informality was at the heart of the Simple Procedure Rules. The clear import of those rules was that documents lodged, or simply brought to a hearing, were evidence which the sheriff was entitled to consider. Formal proof of documents was required in ordinary procedure in the Court of Session and the sheriff court but not in simple procedure. There was a distinction between evidence which was put before the court, and what was formally proved. It was for the sheriff to determine what factual matters were genuinely in dispute. It would be absurd for there to be a requirement for documents to be formally proved in such a forum. That would be entirely contrary to the principles of simple procedure. Here, there was never any dispute as to the provenance of any of the documents. The sheriff had identified what was in dispute, and at the hearing had proceeded to determine those issues.

[14] Section 77(1) disapplied any requirement for formal proof of a document. The desire to remove technical, legal rules reflected the fact that simple procedure was designed with unrepresented litigants in mind. Section 77(1) mirrored section 18 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 [which amended section 35 of the Sheriff Courts (Scotland) Act 1971]. The legislature's consultation paper on that provision explained that:

> "the Government recognises that certain features of the proposals - in particular an informal adjudication at which the normal rules of evidence would not be applicable – cannot be introduced until amending primary legislation has been passed."

That made clear the legislature's intention to make the rules of evidence in summary cause claims significantly less strict. Similar wording to that in section 77(1) had been adopted by the legislature in the context of Fatal Accident Inquiries. The normal rules of evidence did not apply to Fatal Accident Inquiries, as they did not apply to Simple Procedure actions. The documents before the sheriff objectively constituted evidence in the case. Properly characterised, the issue which the appellant raised related to admissibility of evidence rather than the extent to which it could be regarded as evidence. Section 77(1) permitted the sheriff to receive and consider the evidence. Even if the Sheriff Appeal Court was wrong to say that section 77 alone permitted the sheriff to take the approach he did, the rules nonetheless permitted him to take that approach, which achieved the legislative aim of deciding simple procedure cases as quickly and informally as possible.

The Courts Reform (Scotland) Act 2014 and the Simple Procedure Rules

[15] Simple procedure was introduced by the 2014 Act, to replace small claims procedure. The Policy Memorandum which accompanied the Courts Reform (Scotland) Bill 2014 offers some insight to the purpose of the new procedure, commenting at paragraph 157:

> "The rules will, therefore, be based on a problem-solving or interventionist approach, closer to the inquisitorial approach taken in some other jurisdictions. The new approach to be adopted should permit the court to identify the issues and specify what it wishes to see or hear by way of evidence or argument. This is clearly a fundamental shift away from the adversarial approach where the parties control evidence and argument."

[16] Several provisions of the 2014 Act are material for present purposes, in determining whether the legislation achieved the aims of the Policy Memorandum. Section 72(1) provides that there is to be a form of procedure to be known as "simple procedure". By

virtue of section 72(2), further provision is to be made by act of sederunt under section 104(1). Section 75 provides:

> **"75 Rule-making: matters to be taken into consideration**
>
> The power to make provision relating to simple procedure by act of sederunt under section 104(1) is to be exercised so far as possible with a view to ensuring that the sheriff before whom a simple procedure case is conducted—
>
> (a) is able to identify the issues in dispute,
> (b) may facilitate negotiation between or among the parties with a view to securing a settlement,
> (c) may otherwise assist the parties in reaching a settlement,
> (d) can adopt a procedure that is appropriate to and takes account of the particular circumstances of the case."

[17] Section 104(1) provides that the Court of Session may by act of sederunt make provision for or about the procedure and practice to be followed in civil proceedings in the sheriff court. Section 104(2) provides that without limiting that generality, the power in subsection (1) includes power to make provision for or about: "...(o) witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings."

[18] Further, the Explanatory Notes for section 77 state that:

> "Subsection (1) is based on section 35(3) of the Sheriff Courts (Scotland) Act 1971 and is a reflection of the desire to make the simple procedure less bound up in technical, legal rules."

(For completeness, section 35(3) was worded slightly differently: "No enactment or rule of law relating to admissibility ... before a court of law shall be binding in a small claim." It may be observed that this was in broader terms than section 77(1), at least insofar as it contains no reference to the leading of evidence nor, indeed, does it invite arguments as to what is evidence and what is not.)

[19] The Court of Session duly exercised its section 104 power to regulate simple procedure, approving (with such modifications as thought appropriate) draft rules

submitted to it by the Scottish Civil Justice Council. Schedule 1 to the Act of Sederunt (Simple Procedure) 2016 (SSI 2016 No 200) contains the Simple Procedure Rules.

[20] It is next necessary to explain something of the structure of the rules so as to place rule 12, which governs the conduct of hearings, in context. The sheriff's powers are listed in rule 1.8 and include powers to: decide the case without a hearing (1.8(10)); dismiss a claim at any time which obviously has no real prospect of success (1.8(11)), or where it is incompetent (1.8(12)); and to decide a case at any time where the response obviously has no real prospect of success (1.8(11A)), or where it obviously will not succeed because it is incompetent (1.8(13)). A claim is initiated by a Claim Form in which the claimant must set out the essential factual background to the dispute: rule 3.3. If a claim is disputed, the respondent must set out which facts are disputed and which not; and state why the respondent thinks the claim should not succeed: rule 4.4. Where a claim is disputed, the sheriff must consider it "in private" (rule 7.5(1)) and send first written orders to the parties within 2 weeks from the date the response form was received. In the first written orders, the sheriff may, in terms of rule 7.6, do any of five things: refer parties to alternative dispute resolution; arrange a case management discussion; arrange a hearing; if the sheriff thinks that a decision could be made without a hearing, indicate that the sheriff is considering doing so; or use the sheriff's powers to dismiss a claim or decide a case under rule 1.8(11), (11A), (12) or (13). Part 10 is headed "Documents and other evidence". Rule 10.2 provides that parties must provide each other and the court with a List of Evidence Form at least 2 weeks before the hearing, which must set out the "documents and other evidence" that they are lodging with the court; and that all documents and other evidence must be lodged with the court at least 2 weeks before the hearing also. Rule 10.3

provides that a party may bring to a hearing "documents and other evidence" which have not been lodged with the court but that the sheriff may refuse to consider these.

[21] Rule 12 is of critical importance and bears setting out in full, insofar as material:

> "**12.1 What is this Part about?**
>
> (1) This Part is about the hearing at which the dispute between the parties should be resolved.
>
> **12.2 What is the purpose of the hearing?**
>
> (1) The purpose of the hearing is to help the sheriff to resolve the dispute between the parties.
>
> **12.3 How will the dispute between the parties be resolved?**
>
> (1) The sheriff may refer parties to alternative dispute resolution at a hearing.
> (2) If the sheriff thinks a negotiated settlement is possible, the sheriff must help the parties to negotiate a settlement to the dispute.
> (3) If no negotiated settlement is possible, the sheriff must resolve the dispute by deciding it at that hearing.
> (4) The sheriff may continue the hearing to another day without resolving the dispute only if it is necessary to do so.
> (5) But the sheriff must not continue a hearing to another day solely because a witness did not appear.
>
> **12.4 What will the sheriff do at the hearing?**
>
> (1) The sheriff must ask the parties about their attitudes to negotiation and alternative dispute resolution.
> (2) The sheriff must identify the factual basis and legal basis of the claim and the response to the claim.
> (3) The sheriff must identify the factual and legal matters genuinely in dispute between the parties.
> (4) The sheriff must take a note of the hearing. This note is for the sheriff's own purposes and must be kept until any appeal is no longer possible or until any appeal has been concluded.
>
> ...
>
> **12.6 How will evidence be given at the hearing?**
>
> (1) Before evidence is heard, the sheriff must explain to the parties the way the sheriff has decided to consider evidence at the hearing.

(2) The sheriff may impose conditions on how evidence is presented or dealt with, including conditions on how witnesses are questioned or setting time limits on how long witnesses may be questioned.
(3) The sheriff may decide whether the evidence of a witness is to be taken on oath or affirmation or not.
(4) The sheriff may ask questions to the parties or to witnesses.
(5) The sheriff may inspect any evidence with the parties or their representatives present.
(6) The sheriff may inspect any place with the parties or their representatives present."

We observe at this stage that the repeated references to "documents and other evidence" being lodged in advance of any hearing strongly suggests that "evidence" is being used in the Rules in a non-legal sense.

Analysis and decision

[22] It is axiomatic that at common law, in adversarial procedure, the terms of a document cannot - subject to a few well-recognised exceptions - become evidence unless spoken to by a witness: *McTear* v *Imperial Tobacco Ltd* 2005 2 SC 1. Lord Nimmo Smith expressed the position thus:

> "There are procedures … under which the terms of a document may be agreed to be accurate, and in such an event it is not necessary for it to be put to any witness. Otherwise, evidence is required to establish its terms. I do not regard it as being open to me to take account of any passage in any document, the terms of which were not agreed, and to which reference was not made in the course of the evidence of any witness. This is because of the fundamental rule that I must decide the case on the basis of the evidence led before me..."

[23] The first question which must be answered, therefore, is whether section 77(1) of the Courts Reform (Scotland) Act 2014 displaces that common law rule for the purposes of simple procedure claims. The principles which should be applied when construing a statutory provision are well known and were restated by the Inner House in *Faculty of Advocates and Judicial Appointments Board for Scotland* [2025] CSIH 5; 2025 SLT 171 at [25].

The court requires to ascertain the meaning of the words used in light of their context and the purpose of the statute. External materials, such as explanatory notes or policy memoranda may be relevant to understand the context of a provision. They may reveal an ambiguity or uncertainty, but if the words used, in context, are clear and unambiguous and do not produce absurdity then that is an end of the matter: (*R (O)* v *Home Secretary* [2022] UKSC 3; [2023] AC 255, Lord Hodge at 29. Absurdity is to be given a "very wide meaning, covering, amongst other things, unworkability, impracticality, inconvenience, anomaly or illogicality": *In Re JR 222* [2024] UKSC 35; [2024] 1 WLR 4877, Lord Stephens at paragraph 76. Finally, Parliament is presumed not to have intended to change the common law unless it has clearly indicated such intention either expressly or by necessary implication: *R* v *Home Secretary, ex parte Pierson* [1998] AC 539, at 573-4, Lord Browne-Wilkinson at 573-4.

[24] The explanatory note accompanying section 77 of the 2014 Act, which refers to a desire to make the simple procedure "less bound up in technical, legal rules" and the Policy Memorandum, which refers to a "fundamental shift away from the adversarial approach where the parties control evidence and argument" are indicative, as the Memorandum puts it, of a new approach to simple procedure cases. That said, all that section 77 does is to disapply any rule of law which prevents evidence being led on the grounds that it is inadmissible. The reference to any rule of law excludes any argument that the concept of inadmissibility is being invoked in a non-legal sense. There is a distinction between, on the one hand, the doctrine, in law, of admissibility (an assessment of whether evidence which it is either proposed to lead, or which has been led under reservation of its admissibility, is relevant and in accordance with the peremptory rules of evidence: *Walkers on Evidence, 6th Edition*, paragraph 1.1.1); and, on the other hand, whether the evidence has actually been led

before the court. To illustrate that with an example, a question may arise, in ordinary procedure, as to whether evidence which it is proposed to lead from an expert witness is admissible or not. If the court were to rule that the evidence was admissible, the party who wished to rely upon that evidence would then require to call the expert as a witness. When the words used in section 77(1) are read according to their ordinary meaning and in their statutory context, they address only the first of these matters, but not the second. It follows that section 77(1) cannot be read as permitting a document to be treated as evidence where it is not spoken to by a witness. The words used do not contain a clear expression, far less convey a necessary implication, that Parliament intended to displace the common law rule as expressed in *McTear*. Where the provenance of a document is genuinely in dispute, a witness will still be required to speak to it. The Sheriff Appeal Court therefore fell into error insofar as it said that section 77 permitted the sheriff to admit, into evidence, documents which had not been spoken to by a witness.

[25] However, that does not represent the complete picture nor is it determinative of the appeal. It is worth rehearsing that litigation governed by Court of Session and sheriff court ordinary procedure is adversarial in nature. With regard to each disputed issue of fact arising in the course of a litigation (that is, a fact which is not admitted by the other party), where an action proceeds to an evidential hearing, the burden of proof rests on one party or another. This has the consequence that if on any issue of fact no evidence is led, or the evidence leaves the matter in doubt, the party upon whom the burden of proof rests has not discharged it and accordingly fails on that issue: *Walkers on Evidence*, 2.1.

[26] However, even in the Court of Session and in sheriff court cases governed by ordinary procedure, the common law rule applies only where there is a proof. There are other situations where the court commonly does have regard to material which has been

lodged, but not formally spoken to by a witness, in reaching a decision: one example is when deciding a motion for summary decree; another is in petition procedure in the Court of Session. This brings us back to the broader question posed at the outset of this opinion: do the Simple Procedure Rules permit the sheriff at the hearing of the case to have regard to material not formally spoken to in evidence? We consider that they do. If nothing else, section 77 of the 2014 Act at least signals that a more informal approach is to be taken in simple procedure than in other forms of procedure. Perhaps the legislative intention can be seen more clearly in section 75, which provides that in cases governed by simple procedure, the sheriff was to be imbued with a broad range of powers so as to enable the sheriff, among other things, to identify the issues in dispute and to adopt a procedure appropriate to the particular case. The Rules duly imbued him with such powers.

[27] Rule 12.4 requires the sheriff to exercise a considerably more interventionist role than in ordinary adversarial procedure and confers at least a semi-inquisitorial function. As the Policy Memorandum to the Bill put it, the sheriff is able to control whether evidence is led, and if so, how that should be done. So, it is for the sheriff to identify the facts which are *genuinely* in dispute and to tailor the procedure accordingly. It follows that it is a mistake to describe the hearing as an evidential hearing, as the sheriff did. It is not. It is a hearing at which the sheriff is to decide the case. How to go about that is a matter for him or her. Any evidence, in the formal sense, is to be restricted to the issues which are genuinely in dispute. It is at that stage that section 77 may have a role to play in allowing a party to lead evidence which in other forms of procedure would be inadmissible; but it is a *non-sequitur* to say that at the hearing, or for that matter in considering the papers prior to the hearing, the sheriff may not have regard to material which has been lodged. Such material *is* evidence in the colloquial sense used in the Rules. Indeed, the Rules expressly contemplate that the sheriff

may consider the case in private, determine whether it may be decided without a hearing, and in some circumstances decide it at any time. The sheriff's considerable powers would be toothless were the sheriff not able to consider material which had been lodged by either party in support of claim or response, as the case may be. That a sheriff, in deciding a case is not confined to evidence in a strict legal sense is confirmed by Rule 12.6(3), the effect of which is to enable the sheriff to have regard to what a witness has stated, whether taken on oath or affirmation or not.

[28] To give an example, suppose a claimant averred that he had incurred a cost of £350 in having his car repaired in consequence of the other party's negligence, and lodged an invoice from the garage in support of that. At common law, the invoice would not be evidence until spoken to by a witness, but in a simple procedure case, by contrast, the sheriff would ascertain from the parties whether the fact, and cost, of repairs was genuinely in dispute. Only if it was, would evidence then be required to prove those facts; otherwise, regard could be had to its terms (the weight to be attached to it, of course, remaining a matter for the sheriff).

[29] We do not consider that this construction of the rules leads to uncertainty or absurdity, as the appellant claimed. It is not unreasonable to expect a party to know, and to inform the court, which facts relied upon by the other party are disputed, and which are not. If there is a fact which the sheriff identifies as genuinely disputed, it must be proved (presumably on a balance of probabilities) by evidence. If facts (or documents) are not genuinely disputed, the sheriff may have regard to them in reaching a decision.

[30] Viewed through the prism of the rules, the sheriff's conduct of the hearing cannot seriously be faulted. Although he did not expressly state that he identified the factual and legal matters genuinely in dispute, it is clear from his judgment that only legal issues were in

dispute. The appellant had formally admitted: entering into an agreement with the Bank; running up a debt to the Bank, the amount of which was not in dispute; receiving intimation of the assignation to the claimant; and making payments to the claimant's agents (which, although the joint minute did not expressly say so, can only have been done after the date of the intimation). There was therefore no requirement for evidence on any of those issues. It was for the sheriff, not the parties, to determine what evidence was required. It is not insignificant that the arguments presented on behalf of the appellant proceeded on an implicit acceptance that the documents were all genuine, and were what they bore to be. Finally, as the sheriff himself pointed out, he was entitled to infer the fact of assignation (and therefore, find that the claimant had title to sue) from the letter C2 of process, the terms of which were agreed in the joint minute.

[31] Accordingly, although for different reasons than those given by the Sheriff Appeal Court, we refuse the appeal.