authorised the Sheriff, if he should see cause, to report *ad interim* to the Lord Ordinary.

The Sheriff reported in favour of the petitioner, the report being boxed to the Court on 12th May, and on the same day the petitioner boxed a note craving the Court to grant warrant for taking possession of the child. The agents for the respondent having ceased to act for her, the Court appointed the report and note to be intimated to the respondent personally, and sent the case to the Summar Roll. Intimation was accordingly made to the respondent.

The factor now presented a note to the Court, stating that the house recently occupied by the respondent and Milligan, to whom she had been recently married, had been shut up for some days; that they had not been seen lately; and that it was supposed they were on their way to Liverpool, with the view of going to America and taking the child with them. He therefore craved the Court to grant warrant to messengers-at-arms and Sheriff-officers to remove the pupil from the custody and charge of the respondents; to dispense with the reading of the order in the minute-book; and to authorise the warrant to be executed upon a copy of the order certified by the clerk of Court; or to decern *ad interim;* or to do otherwise, &c.

CLARK, for petitioner, cited the case of *Earl of Buchan* v. *Lady Cardross*, 27th May 1842, 14 Jur., 415.

The Court pronounced this interlocutor:—

"*Edinburgh, 22d May* 1868.—The Lords having considered the note for William Muir of Mains Beith, factor *loco tutoris* to Robert Kerr of Auchengree, son of the late Bryce Kerr of Auchengree, No. 21 of process, along with the report by the Sheriff of Ayrshire, No. 17 of process, and whole proceedings, grants warrant to messengers-at-arms and other officers of the law to take the person of the said pupil Robert Kerr into their custody wherever he may be found, whether in the custody of Mrs Marion Kerr or Milligan and Joseph Milligan, her spouse, or in any other custody, and to convey and deliver the said pupil into the custody of the petitioner William Muir, to be kept by him till the farther orders of the Court; and authorise all Judges Ordinary, and their procurators-fiscal in Scotland, to aid said messengers and officers in the execution of this warrant; and recommend to all magistrates in England and elsewhere to give their aid and concurrence in carrying this warrant into effect: Farther authorise execution hereof to pass, on a copy hereof certified by the Clerk of Court."

Agents for Petitioner—M'Ewen & Carment, S.S.C.

Friday, May 22.

SECOND DIVISION.

LANG *v.* LANG.

Husband and Wife—Separation and Aliment—Sævitia. Circumstances in which the Court pronounced decree of separation and aliment.

This is an action of separation and aliment at the instance of Mrs Elizabeth Pettigrew or Lang, residing in Glasgow, against her husband, insisted in on the ground of abuse and maltreatment.

The Lord Ordinary (JERVISWOODE), on advising a proof, pronounced the following interlocutor:—

"*Edinburgh, 20th March* 1868.—The Lord Ordinary having heard counsel, and made avizandum, and considered the record, with the proof adduced, and whole process—Finds it proved, as matter of fact, that the defender has been guilty of grossly abusing and maltreating the pursuer, his wife: Therefore finds that the said pursuer has full liberty and freedom to live separate from the said defender, and decerns and ordains the defender to separate himself from the pursuer, *a mensa et thoro*, in all time coming; and, with reference to the conclusions of the summons for aliment, appoints the cause to be enrolled, with a view to further procedure.

"*Note.*—The Lord Ordinary, in pronouncing the present interlocutor, has adopted and followed the form which has for a long period been in use in consistorial causes of the class to which it belongs; and he has done so not only in respect of that usage, but because mere findings of prominent facts in a case of this complexion would altogether fail to convey an adequate or just impression of the real habits and conduct of the parties in their respective relations as husband and wife, and it would therefore still be necessary to have resort to an examination of the whole evidence in detail.

"The Lord Ordinary heard that evidence, with a minor exception, and he has since considered the case with anxiety, increased by the feeling, that, comparing the proof adduced on the part of the pursuer, with the statements on record which were admitted to probation, there appears to be a certain amount of exaggeration and high colouring in the latter, which tends to lower the estimate of their value.

"Still, the Lord Ordinary cannot but feel that the conduct of the defender to his wife, as proved in evidence, was on many occasions such as no person in her position could be bound to submit to. A blow might be pardoned, if given in sudden heat, and without premeditation. But, as the evidence strikes the Lord Ordinary, there is proof of a considerable course and amount of actual maltreatment, accompanied by conduct of that contumelious and overbearing character which, more than a sudden blow in passion, is calculated deeply to wound the feelings of the pursuer, or of any other female of ordinary sensibility.

"The Lord Ordinary assumes that, without proof of actual violence, the pursuer cannot prevail here. But in judging of the weight to be attributed to the acts proved, the Lord Ordinary is of opinion that he is entitled and bound to have regard to the whole history of the daily life of the parties as disclosed in the evidence.

"A suggestion of some plausibility was made in course of the argument on the part of the defender as affording in his view an explanation of the conduct of the pursuer in now insisting in this action, to which it may be right that the Lord Ordinary should shortly advert.

"This was founded upon the fact, as spoken to by Robert Lang, the eldest son of the defender, that the pursuer, Janet, and John Lang, are now residing with him, and it is said that this action is truly the result of a design on the part of Robert to obtain means from his father to keep up a separate residence. The Lord Ordinary is not inclined to adopt this view. But his impression is rather that the fact referred to did open up to the pursuer a prospect of escape from the treatment she had received from the defender, and so may have encouraged her to seek redress. But if the facts be truly

such as to support the action, the circumstance that she now lives with her son will not operate further than as a circumstance in the case, which is to be taken along with the other incidents in their history which tend to throw light on the motives and conduct of the parties."

The defender reclaimed.

PATTISON and CRICHTON for him.

CLARK and BLACK in answer.

At advising—

LORD JUSTICE-CLERK—In this unfortunate case we have to consider, upon the evidence, the truth of the averments made by the pursuer as justifying a decree of separation *a mensa et thoro* that her husband used and threatened personal violence to her, and that she cannot return without reasonable apprehension of her personal safety. In one part of his note the Lord Ordinary deals with the case on the assumption that personal violence must be proved in order to warrant a decree of separation in favour of the defender. I do not understand this as affirmed absolutely, but as applicable to the condition of the question as raised in this particular case. That doctrine, broadly stated, would be inconsistent with the judgment of the House of Lords in the case of *Paterson*, recalling the interlocutor of Lord Cunningham embodying that proposition. But this case, which is laid upon averments of actual personal violence, accompanied by menaces of further violence, and supported by an allegation that these are proved, the actual case before him being raised on that question only; the Lord Ordinary's views were naturally directed to consider whether the acts of alleged personal violence were proved, and, as he held them established, he gave judgment for the pursuer.

The evidence, if it is to be believed, seems to establish a course of intemperate conduct and of personal violence on the part of the defender directed against the person of his wife. There are various scenes described by members of the family which, if they are to be credited, seem to establish this beyond question. It is said that they are not corroborated by independent evidence. It is said that there is manifest exaggeration in the statements made by the leading witnesses, who are sons and daughters of the parties, particularly as to the frequency of the father's indulgence in dissipation; that there is an absence of complaint on the part of the wife when complaint might have been looked for; and that there is no evident marks of violence detected on the wife's person; and consequently that we are to disregard the statements of these witnesses. Giving every effect to these observations, and to the circumstances which may lead to some exaggeration in the evidence, I have found it to be impossible to withhold credence to the statements as to the acts of violence, which are circumstantially and minutely detailed, and all of which seem to me to be in substantial accordance with each other. It would be impossible to do so without assuming a case of perjury, for which there is not the slightest warrant in anything which appears on the face of the proof. Nor do I think that the statements of these witnesses is uncorroborated by the testimony of parties not members of the family. The witness Hume proves that the defender admitted that he had struck the pursuer, and had ordered her out of the house. The defender's witness, Henrietta Clark, on cross-examination stated that in the month of May 1867, a month before her leaving, she remembered the defender following the pursuer into the kitchen, and she adds, "on that occasion he gave her a shake, and put her down on a chair." He did this "with considerable force, but not using extreme violence;" after which, she says, he shook his fist in her face; and further, she speaks to an admission the defender made to her that he had struck the pursuer. She stated indeed that he had done it only once, and that in a way not implying much personal injury. On the circumstances detailed in the evidence of the pursuer's witnesses as to the immediate cause of the pursuer leaving the house, this witness gives, as it appears to me, most material confirmation, and it is further confirmed by the policeman who was invited to come to the house, and who came there in compliance with the invitation.

The Lord Ordinary, who took the evidence, saw nothing to impeach the credit of these witnesses in the way in which the evidence was given, and has given effect to it. I see no reason to differ. If credible, these witnesses prove that the defender did do personal violence to the pursuer on the repeated occasions not distant from the time of separation. It is proved that on one occasion, in December 1866, after the eldest son had been ordered to leave, the defender rose and threatened to strike the pursuer, and on her going from him he followed and pushed her violently into the lobby, kicking at her, though the kick does not seem to have reached her. It is proved that on a Sunday morning in the end of May, while the parties were at Dunoon, he directed a blow against his wife which she evaded, but which was with the closed fist; that soon after he renewed the attempt to strike; that he pushed her with violence into the garden, locking the door of the house after her compulsory exclusion.

I have already adverted to the violent shaking spoken to by Henrietta Clark, and I think it necessary only further to advert to what happened at the closing scene, where the mother was found by her daughter in a fainting condition, during the night of Sunday, and the father cursing and swearing and foaming at the mouth. He is proved to have left the pursuer with the daughter, but soon coming to the bedroom where the mother and daughter were, he renewed cursing and swearing, saying, among other things, "that she would not get an hour's rest while she stayed in the house."

If a husband who has so acted can compel a wife to adhere to his society, I should conceive it a most unfortunate condition of the law. A single blow, given in the heat of blood, might not be sufficient, if there were not strong grounds for apprehending its repetition. Here there were repeated acts of violence, and, both in the past history of the husband's conduct, and in the threats held out for the future, there was ample ground for serious apprehension of future personal violence. The actings and conduct of the husband well warranted the inference that she could not safely and securely remain in the house of the husband; and she had therefore a good ground for separation. I may also add, that I see no ground for imputing to the wife any acts which could be held to be a provocation to such acts of violence; on the contrary, it appears to me that she was singularly patient. The defender's witness Henrietta Clark says that the pursuer's conduct was not always kind and respectful—"I mean by this," she says, "that she did not speak to him, and was often sulky towards him;" but she adds, "the only cause for this which I saw was his drinking. She was sometimes sulky when he was not drinking." That she should have indicated such a state of mind in reference to her

husband's dissipated habits was not to her discredit; in any view it could neither excuse nor palliate the violence which he used towards her. With justifiable apprehensions as to her personal safety, I cannot think we have any alternative but to decern in the separation.

The other judges concurred.

Agent for Pursuer—W. H. Muir, S.S.C.

Agent for Defender—James Young, S.S.C.

Friday, May 22.

UNIVERSITY OF GLASGOW *v.* POLLOK.

Teind—Titular—Valuation—Cumulo *Lands*—Cumulo *Teind-duty—Heritor—Intromitter—Interest. Held* that where a heritor has intromitted with the fruits of a portion of lands valued *in cumulo* to an amount equal to the value of the whole, he is bound, before the valuation is divided, to pay the titular the full amount of the *cumulo* teind-duty.

Interest on a claim by the titular for arrears of *cumulo* teind-duty *disallowed*, in respect it was not brought *tempestivè*, and the heritor was thereby exposed to the danger of not operating his relief.

This is an advocation from the Sheriff-Court of Lanarkshire of an action at the instance of the University of Glasgow against Mr Pollok of Rhindmuir, in the parish of Old Monkland. The summons concludes that the defender should be decerned to pay to the pursuers "the sums of teind or teind-duties after-mentioned, due and payable to the said University and College of Glasgow, as titulars of the teinds, parsonage and vicarage, of the said parish of Old Monkland, out of the lands of Rhindmuir and lands of Hole and Atkinson, all lying in the said parish of Old Monkland, of which, or of parts and portions of which lands, the said defender is proprietor, and has been since the year 1846 and previously proprietor, and, as such, has intromitted with and uplifted the stock and teind, or the rents both for stock and teind, of the said lands for the several crops and years after mentioned, viz., the sum of £10 sterling of teind-duty, being the valued teind of the said lands of Hole and Atkinson for crop and year 1847, and £1 sterling of teind duty, being the balance remaining due and unpaid by the defender of the sum of £6, 12s. sterling, being the valued teind of the said lands of Rhindmuir for the same crop and year," There are conclusions of the same nature applicable to the subsequent years. The whole sum amounts to £198, and there is a conclusion for interest on the several sums from the term of Candlemas in each year respectively following the reaping of the corn for which said teind-duty is payable.

The pursuers make the following statements:—"(1) The pursuers are titulars of the teinds of the subdeanery of Glasgow, which includes the parishes of Old and New Monkland, with the teinds, parsonage, and vicarage, thereof; and particularly, they are titulars of the teinds of the lands of Rhindmuir and Hole and Atkinson, lying within the barony of Glasgow, and shire of Lanark; and they have been in the immemorial possession of the teinds of the said lands, in virtue of their rights and titles thereto. (2) By decree of valuation of this date, obtained at the instance of Mr Matthew Morthland, then proprietor of the whole lands of Rhindmuir, Hole, and Atkinson, the teinds of these lands were valued at the sum of £16, 12s. sterling, of which, as appears from the proven rental, on which the decree proceeded, the teind of Rhindmuir amounted to £6, 12., and the teind of Hole and Atkinson amounted to £10. (3) The lands of Rhindmuir, Hole, and Atkinson were thereafter acquired by Mr Andrew Stirling of Drumpellier; and Mr Stirling subsequently sold to Mr James Mylne, Professor of Moral Philosophy in the University of Glasgow, *inter alia*, 'All and Haill these parts of the fifteen shilling land of Rhindmuir, lying on the north side of the parish road passing Swinton and Rhinds;' item, 'All and Haill these parts of the fifteen shilling lands of Rhinds and Rhindmuir of Hallhill, now called Rhinds.' Mr Mylne having thus acquired only a portion of Rhindmuir, it appears to have been arranged between him and Mr Stirling that Mr Mylne should pay £5, 12s. of the valued teind applicable to Rhindmuir, and that Mr Stirling should pay the balance of £1 in addition to the sum of £10 payable for the lands of Hole and Atkinson; and this was, accordingly, the mode of payment down to the year 1846. The pursuers, however, were not parties to this arrangement, and they never entered into any agreement limiting their right to levy the whole teind-duty from the fruits of any portion of the lands, or intromitters therewith. Neither has any judicial division of the *cumulo* valued teind ever been obtained. (4) The defender is now, and has been ever since the year 1846, proprietor of the whole lands of Rhindmuir, valued by the foresaid decree, or of the greater part thereof. He is, and has been since 1846, also proprietor of a portion of the lands of Hole and Atkinson. As proprietor, he uplifts and intromits with the whole fruits, both stock and teind, of the lands so belonging to him, or at least the rents and profits of the same, and has done so yearly since 1846. The fruits or rents and profits of the same which the defender has so uplifted annually since 1846 far exceed in value or amount the yearly teind-duties sued for in this action. (5) The defender has paid to the pursuers and their predecessors the sum of £5, 12s. sterling annually since 1846, to account of the teind-duty payable for the lands of Rhindmuir; but he has not paid, and refuses to pay, the balance of £1 sterling per annum of teind-duty payable for these lands; and he has not paid, and refuses to pay, the teind-duty of £10 sterling per annum, payable for the lands of Hole and Atkinson; and Mr Stirling of Drumpellier having ever since 1846 declined to pay these sums, or any portion thereof, on the ground that, at and prior to that date, he had feued the whole lands which formerly belonged to him, and thereby entirely divested himself of the *dominium utile* thereof, both the said yearly sums remain unpaid and owing to the pursuers from and since crop and year 1847 inclusive, until the present time."

The pursuers further state that before raising the present action they called upon the defender to obtain a judicial division of the *cumulo* valued teind of the said lands of Rhindmuir and Hole and Atkinson between himself and the other proprietors, and intimated their willingness to defer exacting teind-duties till the result of the division, but that the defender refused to do so.

The defenders maintained the following pleas:—"Acquiescences. The pursuers having since 1846 accepted from the defender £5, 12s. sterling per annum as his share of teind-duty for his lands of Rhindmuir, and granted receipts therefore, are not