one could prevent Mr Anderson and his friends appointing any committee or any number of committees they liked for managing games in Forfar; but that is very far from saying that they could in law supersede the committee of subscribers by any committee they chose to elect. Mr Anderson therefore, in acting as he did, proceeded in direct violation of his duty as secretary to the respondents. They were both entitled and justified in dismissing him as they did. But then Mr Anderson refuses to acquiesce in his dismissal, and insists that he is entitled to retain the books and other property confided to his charge for the use of this new committee, which has been appointed by the public, and not by the subscribers, while the committee itself claims to have transferred to it the balance of the subscribers' money lying in the old committee's hands. Such a contention and such a claim is not only quite unjustifiable, but most preposterous. I therefore think that the Sheriff's judgment must be sustained in both cases.

The other Judges concurred.

Agent for Appellants in both actions—G. K. Livingston, S.S.C.

Agent for Respondents—John Galletly, S.S.C.

Thursday, July 20.

SECOND DIVISION.

M'MILLAN *v.* M'MILLAN.

Husband and Wife—Aliment—Arrears. A husband in receipt of an annual income of £640 having deserted his wife, *found* liable to her for aliment at the rate of £140 per annum; but arrears of aliment *refused*, on the ground that the husband was liable for the debts contracted by his wife for her maintenance.

This was an action raised in October by Mrs M'Millan against her husband, who was a pawnbroker in Glasgow, for decree of £150 per annum as aliment from the term of Martinmas "next, 1870," and also for £50 as aliment from the date of the pursuer's being excluded from the defender's house till that term.

After a proof, the Lord Ordinary (JERVISWOODE) pronounced an interlocutor in the following terms:—"Finds that on or about the 12th July 1870 the defender removed or excluded the pursuer from the house in which, at the said date, they had their residence as married persons, and thereafter refused, and still refuses, to admit the pursuer to the said house, or to receive her therein: Finds that the defender has not established by proof facts relevant or sufficient to warrant or to justify such refusal; and with reference to the foresaid findings, finds as matter of law that the defender is liable in aliment to the pursuer; and farther finds it proved that the defender is in receipt and in possession of an annual income of £640 or thereby: Finds, with reference to the preceding findings, that the defender is liable in payment to the pursuer in aliment at the rate of £140 sterling per annum, payable to her at the terms, and in advance, as concluded for in the summons; and is also liable in payment to her of the sum of £46 sterling, in name of aliment, from the said 13th day of July 1870 until the term of Martinmas thereafter, together with interest at 5 per centum per annum on each of the said termly payments, as concluded for in the summons, and decerns for payment accordingly—but under deduction always of the sums of aliment already decerned for in favour of the pursuer."

The defender reclaimed.

FRASER and BLACK argued that the amount given by the Lord Ordinary was excessive. Arrears of aliment should not be given, as the husband was responsible for the debts contracted by his wife; *Donald* v. *Donald*, 22 D. 1118; *Macnaughton*, 12 D. 703.

SHAND and R. V. CAMPBELL for the respondent.

LORD JUSTICE-CLERK—It is quite clear that neither the previous rate of living of this husband and wife, while living together, nor the sum stipulated by the marriage-contract, is the test of the allowance which should be made to the wife now that her husband has turned her out. I think the sum of £140 allowed by the Lord Ordinary is reasonable; but I would qualify our interlocutor by the condition that either party may come back to us on any change of circumstances.

As to the arrears, it is a wholesome rule that a wife's allowance is not to be increased on account of debts for which her husband is liable. The husband here has no defence against payment of the accounts referred to, if the furnishings were made and justly charged.

I would therefore propose that the interlocutor of the Lord ordinary be altered as to the arrears, in respect the husband is liable for all his wife's just debts already incurred. *Quoad ultra* I would adhere.

The other Judges concurred.

Agent for Pursuer—T. F. Weir, S.S.C.

Agents for Defender—Muir & Fleming, S.S.C.

Thursday, July 20.

STEWART *v.* GELOT.

*Process—Reduction—Foreign Stamp Laws—Bill—*Res Noviter—*Competent and Omitted.* A bill drawn in a foreign country, and a letter requesting the drawee to accept it, were sought to be reduced on the ground of fraud, &c. After the verdict of a jury negativing fraud, but before decree had been pronounced, the pursuer raised another action of reduction, on the ground that the bill was not stamped according to the law of the country in which it was drawn. The pursuer averred that when he raised the former action he was ignorant of the foreign stamp laws. *Held* that this was not *res noviter*, and that the law of Scotland (the *locus solutionis*), which takes no cognisance of the fiscal laws of other countries applied, although the bill had not been accepted.

Observed that "competent and omitted" in a former action cannot be pleaded till final decree has been pronounced in it.

This was an action of reduction, brought by Dr Stewart, M.D., Paraguay, against Anthony Gelot of Paris, concluding for reduction of—"*First*, A pretended draft or bill of exchange, dated at Paraguay 8th May 1867, drawn by the said William Stewart, the pursuer, upon the said Robert Stewart, for £4000, payable thirty days after sight to the defender, and bearing to be indorsed by him to Perier Frères & Compagnie, bankers in Paris, and by the said Perier Frères & Compagnie to Robinows & Marjoribanks, merchants in Glasgow, and again by them without recourse to the de-

fender, who is now the holder of the same: *Second*, A pretended letter or order, dated at Paraguay November 9, 1868, addressed by the pursuer William Stewart to the said Robert Stewart, requesting him to accept the said draft or bill of exchange, and authorising him to draw upon a deposit in favour of the said pursuer in the Royal Bank of Scotland, Edinburgh, to the amount of £4000 sterling, and ordering the said Robert Stewart to pay the said sum to the defender."

The Lord Ordinary (JERVISWOODE) reported the case, in respect of the other depending action.

After hearing counsel, the Court allowed additions to be made to the statements of the parties, and pleas to be added.

The defender gave in the following additions to the record and pleas, which explain the state of the case:—

"STATEMENT OF FACTS FOR DEFENDER.

"1. On or about 5th March 1869 the present defender, Antoine or Antony Gelot, instituted an action before the Court of Session against the present pursuer William Stewart, M.D., in which he concluded, *inter alia*, for payment of the principal sum of £4000 contained in the bill of exchange libelled on and sought to be reduced in the present action, with interest from 10th December 1867 until payment. In the defences lodged by him in said action, Dr Stewart pleaded that the bill in question was null and void, in respect it had been obtained from him in Paraguay by Madame Lynch by force and fear, and without his having received any value therefor. The record in said action was closed upon 15th June 1869.

"2. It having been pleaded for the pursuer Mons. Gelot upon the closed record that the force and fear alleged were not pleadable *ope exceptionis*, Dr Stewart, on or about the 24th June 1869, raised a summons of reduction in aid of his defences, wherein he concluded to have the said bill reduced and set aside on the ground of its having been extorted from him by force and fear. Thereafter the said summons was held as repeated in the said action at the instance of Mons. Gelot, and issues were adjusted for the trial of the cause. In these issues Dr Stewart stood as pursuer, the questions sent to the jury being—(1) Whether the bill in question was obtained by Madame Lynch, then residing in Paraguay, from Dr Stewart by force and fear, without his having received any value therefor? and (2) Whether Mons. Gelot was not an onerous and *bona fide* holder of the said bill? The cause was tried under these issues before the Lord Justice-Clerk and a jury, upon the 21st and 22d days of December 1869, when the jury returned a verdict finding for the pursuer upon the first issue, and upon the second issue finding in special terms as arranged by the parties in the course of the trial.

"3. The pursuer Dr Stewart, in the said action at the instance of Mons. Gelot, and in the said action of reduction at his own instance, while admitting that he subscribed and granted the bill sought to be reduced in this action, did not state or maintain that the said bill was unstamped, or that it was null and void for want of a stamp, according to the law of Paraguay. On the contrary, he treated the said bill as a document of debt which would have been binding upon him except for the circumstances of force and fear in which he alleged that it had been granted by him. At the foresaid trial in December 1869 Dr Stewart put the said bill in evidence before the jury. On the same occasion he put in evidence and founded on the letter of 9th November 1868, which he is also seeking to reduce in this action.

"4. The Court, upon 19th March 1870, in the said action at the instance of Mons. Gelot, made absolute a rule previously obtained by him to shew cause why the verdict should not be set aside and a new trial granted, and accordingly set aside the verdict and granted a new trial, subject to such alteration on the record and issues as the Court might in the circumstances think necessary. The pursuer Mons. Gelot thereafter amended his revised condescendence by adding statements regarding the deposit in the Royal Bank of Scotland in name of Dr Stewart, and introducing the said letter of 9th November 1868 as a substantive ground of action. Dr Stewart also made additions to his defences and pleas, in which he stated and pleaded that the said letter had been obtained from him by Madame Lynch by force and fear, without his having received any value therefor. It was not in said action, or in said additions to the record, alleged or pleaded by Dr Stewart that said letter was unstamped, or that it was null and void from want of a stamp, according to the law of Paraguay.

"5. After these additions were made to the record, the issues in said action were amended by adding thereto an issue, putting to the jury the question whether the said letter of 9th November 1868 was written and subscribed by Dr Stewart, and was obtained by Madame Lynch by force and fear, without his having received any value therefor. At the second trial of the cause, which took place upon the 8th, 9th, 10th, 11th, 12th, and 13th days of May 1871, the jury found a verdict for the defender upon this new issue, whilst on the other issues they returned the same verdict which had been found upon the previous trial. At this trial the said bill and letter were again founded on and put in evidence by Dr Stewart. The verdict of the jury has not yet been applied, owing to the proceedings taken by Dr Stewart by motion for a new trial, and also by bill of exceptions. The motion for a new trial has been refused, and the exceptions have been disallowed.

"ADDITIONAL PLEAS IN LAW.

"3. The present action is excluded, in respect that the grounds of reduction therein maintained by the pursuer were competent, and are omitted in his defences to the said action against him at the defender's instance.

"4. The pursuer is barred from insisting in the present action, in respect of the proceedings set forth in the defender's statement.

"5. Neither the bill nor the letter sought to be reduced is a document falling to be stamped according to the law of Paraguay, nor does their validity as documents of debt fall to be determined according to that law.

"6. In any view, the pursuer having homologated the bill libelled, and the obligation therein contained, by his said letter of 9th November 1868, he is not entitled to insist for reduction of the bill.

"7. The pursuer having on his own showing violated the revenue laws of Paraguay in granting the documents sought to be reduced, he cannot plead his own fraud as a ground for reducing them.

"8. The pursuer having already pleaded that the said documents are null and void according to the law of Scotland, he is not now entitled to plead that their validity must be determined by the law of Paraguay."

The pursuer pleaded, *inter alia*—"2. The question of homologation of the bill by the letter, both now under reduction, is one falling to be determined by the laws of Paraguay, and as by the said laws no such homologation can be or has been effected, the pursuer is entitled to sue for reduction as craved. 3. *Separatim*—the defender is not now entitled to plead bar or homologation, the said pleas having been already departed from and no issue taken thereupon. 4. The pursuer was entitled to bring and insist in the present action, the same being laid upon grounds which came to his knowledge at the time and in the circumstances stated."

The Solicitor-General (CLARK), SHAND, and MACLEAN for the pursuer.

WATSON, TRAYNER, and BURNET for the defender.

The following authorities were referred to in the argument:—Addison on Contracts, 6th ed. p. 874; Chitty on Contracts, 8th ed. p. 92; Byles on Bills, 9th ed. p. 387; Story on Bills, §§ 146 and 147; Parsons on Bills, vol. ii, p. 330; Chitty on Bills, 10th ed. p. 76; Story's Conflict of Laws, 6th ed. p. 324; *Brestow* v. *Sequeville*, 7th May 1850, 5 Exchr. Reps. (Welsby, Hurstone, and Gordon), p. 275; *Allen* v. *Kemble*, 13th April 1848, 6 Moore's Privy Council Reports, 314; *Emly* v. *Collins*, 25th April 1817, 6 Maule and Selwyn, p. 144; *Ludlow* v. *Van Reusselaer*, 1 Johnston's New York Reports, p. 93; *Hanson* v. *Craig & Rose*, 20 D. p. 1306; *Clegg* v. *Levy*, 11th Jan. 1812, 3 Campbell's Privy Council Reports, p. 166; *Royal Bank of Scotland* v. *Scott, &c.* 20th January 1813, F.C.

At advising—

LORD JUSTICE-CLERK—This case raises some very important and interesting questions. It is an action for the purpose of reducing and setting aside two documents of debt, of which your Lordships have heard a good deal in another process, the first being a bill of exchange drawn by Dr Stewart, the pursuer in this case, on his brother Robert Stewart, writer in Galashiels, and in which bill Gelot the defender was the payee. It is drawn in favour of Gelot, or ordered by Dr Stewart, who was in Paraguay, upon his brother Robert Stewart, writer in Galashiels. The other document is a letter written by Dr Stewart to his brother, dated eighteen months afterwards, requesting him to accept the bill, and directing him to pay the amount of it to Gelot out of a special fund in his hands. This action is raised for the purpose of setting aside these two instruments as documents of debt, upon the ground that they are not stamped according to the law of Paraguay, where they were made and issued. The record has been added to since the case came here, by an addition on the part of the defender to his defences, in which he sets forth various pleas to exclude the action. There has been on the part of the pursuer also an addition, the last plea of which is as follows:—"The pursuer was entitled to bring and insist in the present action, the same being laid upon grounds which came to his knowledge at the time and in the circumstances stated." The substance of the defence, as brought out in these additional pleas is this,—they say this is an action which is brought for the purpose of aiding the defence of Dr Stewart in a separate process, which has already been the subject of a jury trial and a verdict, that process being an action brought upon the bill, and the letter which is also the subject of reduction having been the subject of an issue, although not the document on which the action was brought; they say this plea about the stamp was not raised in that process, and that it is competent and omitted, and that it is not competent by the device of a separate action of reduction to raise a question which was not raised in the principal process. Now, the first question is, whether this action can proceed, or whether that objection to it is fatal. I am of opinion that the plea of competent and omitted does not properly arise here at all, because that is a plea which forms one of the two alternatives of *res judicata*. *Res judicata* either consists of the plea of competent and omitted or of proponed and repelled, but as there has been no decree here, I do not think that the plea of competent and omitted can be held to exclude the action. The next question is one of more importance and difficulty. This, if it is viewed as an auxillary or supplementary action to the defence in the other suit, must be considered in the right of one question, whether the pursuer of the action can get the benefit of his ground of reduction as an answer to the claim in the original and primary suit. I am of opinion that in that view this action is entirely unfounded. And that it is brought in that view is made quite clear by the plea of *res noviter* which has been added to the record. What the result of the action might have been if it had been a substantive ground, apart altogether from the defence in the suit at the instance of Gelot, is another question, and I by no means say that if it had been brought against Mrs Lynch, or against any of the other parties in this somewhat complicated set of transactions, it might not have been competent for Dr Stewart to reduce and set aside the bill as having been granted contrary to the Paraguayan law, in a question with them, although by his own actings he had foreclosed himself from any defence founded on that ground against Gelot, a third party. But it is perfectly plain, from the plea of *res noviter* founded on here, that the real question we are asked to decide is, whether this action, brought in this shape, can be used as a defence in the other suit, and I am quite clear that it cannot. If there was no plea of *res noviter*, the position of the actions is just this—that Dr Stewart has gone to issue upon the assumption that the bill and the letter were documents which were producible in evidence, and on which action could proceed, unless they were excluded by the mode in which they were granted. He has made up a record on that footing; he has taken or allowed to be taken the verdict of a jury upon that question; and if he were now in that action, apart from the plea of *res noviter*, to ask us to allow him to state that the documents were null from want of stamp, on the authority of the case of *Hanson* v. *Craig & Rose*, I think it is quite certain that we should not admit any such statement. But then it is said that this is *res noviter*. Now, even in the case of *res noviter* in *Hanson* v. *Craig & Rose*, the Court refused to receive the allegation. But an allegation of *res noviter* must be looked at pretty strictly. It is not enough for a man to say—I did not know such and such a fact when I stated my defence or raised my action, or allowed decree to pass. *Res noviter* in that sense must mean coming to the knowledge a something, which not only was not known, but could not have been known, or that at all events could not, with reasonable care and precaution, have been known. And more than that—in its proper sense it must

be ignorance of a fact—supervening knowledge of a fact which was not within the knowledge, or within the means of knowledge, of the party previously. Now, can that be said here? I must say it is the feeblest allegation of *res noviter* that I ever remember to have met with. An alteration was made upon the statement on record to the effect of making it more specific, as regarded the description or definition of the thing which was said not to have been known, and it is this—that a decree was issued in 1864 in Paraguay when Dr Stewart was there to the effect that all bills of exchange were null without a stamp. Dr Stewart alleges that under that law, and with a view to that law, he granted the document which is called a bill of exchange, and he granted that letter, he being in Paraguay subject to the laws of that country. He now says that it is *res noviter* to him that any such law existed. I am quite of opinion that that is not a relevant allegation of *res noviter*. He could not have pleaded it in Paraguay if Gelot had sued him in that country, which, if not his domicile, was at all events the jurisdiction of his choice. If Gelot, not getting his money here, had gone to Paraguay and sued the drawer of the bill, and obtained his decree, could it ever have been listened to for a moment that Dr Stewart did not know what the law of Paraguay was? I think this is a plea which is entirely untenable. It is not necessary to go into authority upon that subject, because it has been well established in many cases, and by all the writers on these questions, that an allegation of *res noviter*, to elide a decree, must consist of an allegation of fact coming to the knowledge of the party making the allegation, and which he did not know, was under no obligation to know, and had not reasonable means of knowing at the time. I think this allegation entirely fails therefore in this action, and if made in the principal suit must necessarily be repelled; and if that be so, then this action, in so far as it is intended to assist the defence in the main suit, must, I think, be dismissed. But it may be said, no doubt, that although this is the case, the reduction stands as a substantive action. How far that may be I think is a different question; but I do not mean to proceed on a matter of form on the remaining points of the case, because I am quite satisfied that on its merits the action is ill-founded. I am of opinion, in the first place, that both these documents were Scottish instruments, that is to say, instruments to be construed by the law of Scotland. It was a Scottish contract that was so constituted; and I am also of opinion that the specific objection which is taken under the law of Paraguay to these documents is not one that we are bound to recognise, or that we ought to recognise in this Scottish Court. Now, the first question is one of very considerable importance in an international point of view. I imagine it to be settled, not only in this country, but throughout Europe and America, that a bill of exchange in the ordinary case is to be judged of by the law of the jurisdiction of the acceptor; in other words, that as the bill is drawn for the purpose of being paid by the acceptor, the law which is applicable to the place of payment where the acceptor is, is the law of that contract. That was not disputed in the ordinary case on the part of the pursuer, where the bill is accepted; but he said this bill was not accepted, and there is a different rule applicable where the acceptor refuses acceptance. In this case the drawer of the bill was a domiciled Scotchman, temporarily resident in Paraguay; the bill is drawn in favour of a Frenchmen resident in Paris, and it is drawn upon a debtor resident in Scotland. Now, it is said that the draft as between the drawer and the payee made a separate contract from that which would have existed and have been created by the bill if the acceptor had accepted. That is a head of law which has been treated of by a variety of writers, and it has been the subject of a variety of decisions. I am very far from saying that there is not to be found some authority for the notion that a bill of exchange may constitute a different contract to some effect between drawer and payee, or between drawer and indorser, or between indorser and indorsee, from that by which the rights of the acceptor are regulated. But I think, when these cases are properly examined, they result in this, that all the cases relate not to the constitution or substance of the contract made by the bill, but to resulting incidents—results and interests arising out of the debt when constituted. For instance, the case of *Allan*, which we were referred to, was not a question relating to the constitution of the debt. There was no question there raised as to the constitution of the debt. The bill was a bill drawn in Demerara; it had not been accepted, but it had been indorsed, and then it was sent back to Demerara, and action was raised by the payee against the drawer for the amount. The drawer pleaded compensation; he did not deny the constitution of the debt by the bill, although unaccepted. And really no question arose in regard to the law of the acceptor's jurisdiction. The question which did arise was whether that plea of compensation was good or bad as against the payee of the bill, both being resident in Demerara. And it was decided that, whatever might have been the law as between the parties as to the constitution and substance of the debt, the question whether that debt should be held to be liquidated by compensation pleaded by the drawer was not a question that depended on the law of the instrument, but that depended on the law of the *forum* of the parties where the question was truly raised. The case of *Don* v. *Lipman* was precisely of the same kind. Lord Brougham, in his elaborate judgment, decided that prescription belonged to the remedy. Much more is compensation part of the remedy, and not part of the constitution of the right. In the same way with the rules as to the proof or value or want of value. If Gelot had sued Stewart in Paraguay, Paraguayan law would probably have regulated the way in which he might have proved the existence of the debt. There are many cases of that kind, but these are all questions relating, not to the construction and substance of the contract, but to the incidents and consequences of it. But I imagine that, in all questions which relate to the construction and substance of the contract, the place of performance must rule throughout, and that there cannot be two different principles of interpretations applying to the same instrument. Where a bill is drawn upon a party in another country from that of the drawer, the country the law of which is contemplated is that where the acceptor resides, and that must be the same as regards the substance and constitution of the debt with reference to all the parties to it. For instance, had this bill been accepted, it would have been a Scottish debt, and if stamped according to the law of this country, it must have been good, not only as between the payee and the acceptor, but between the drawer and the payee, and that

seems to be admitted. The contract between the drawer and the payee is in no degree influenced by the acceptance or non-acceptance of the acceptor, and yet to say that it would be null if unaccepted, and a good contract if accepted, seems to imply an anomaly that is entirely inadmissible. Again, the bill, by the law of this country, and I suppose by the law of all countries where bills of exchange are known, operated as an assignment of the money in the hands of Robert Stewart. If Robert Stewart refused to accept, the payee of the bill could have sued him on the ground that he had funds though he had refused to accept. Could Robert Stewart have pleaded want of stamp, although, if he had accepted, he could not have pleaded that? I think these observations may illustrate, however imperfectly, the fallacy of the proposition as raised in this case, that there is a difference in regard to the international question between an accepted and an unaccepted bill. There can be none as regards the constitution and substance of the debt, whatever the result may be, or whatever the law applicable to it may be in the case of interests of third parties which do not depend on the constitution of the debt, but upon either the remedy to be sought, or the principles on which accounting is to be taken. This matter has been considered, and has been, I think, finally and conclusively decided in our own law. The case of *Armour* v. *Campbell* was a decision precisely in point. It was there held that an unaccepted bill rendered the drawer liable to action in Scotland, though the bill drawn in America was not accepted, and the drawer himself had been discharged by the American courts; and that case was quoted with approbation by Lord Meadowbank in the case of the *Royal Bank* v. *Scott and Steele*, in 1813, and has been held to be the law ever since. I think it will be found that Mr Thomson, in his work on Bills, p. 662, lays down the doctrine clearly, that it does not matter whether the bill is accepted or not; and in Wilson's edition, p. 85, there will be found some very sensible and acute remarks on the point I am now dealing with. He lays it down, in conformity with some remarks by Honey, that there may be a difference between a bill when accepted and not accepted, but he qualifies that, I think quite soundly, by drawing a distinction between the constitution of the debt itself and the collateral or resulting interests that may flow from it. There are two other cases which I think are very material, and in particular the case of *Robertson*, 6 Dunlop, 17, as illustrative of how far there may be a different contract, or a different rule for a contract between payee and acceptor, or between indorser and indorsee. That case underwent a great deal of discussion, and there is a very long, elaborate, and learned advising of the Second Division upon it. It was the case of a promissory-note granted in Edinburgh, and drawn payable to an Englishman; it was indorsed in England, but it was not payable to order, and the question arose, whether, it being a promissory-note payable of course in Scotland, it could be enforced in England, because the law there prohibited the indorsation of promissory-notes which were not payable to order, and the question therefore arose quite purely whether the contract between indorsation and indorsee was to be judged of by the law of England, where it was made, or by the law of Scotland, which was the law of the instrument; and the Court held that the law of Scotland was to prevail, and that, as a promissory-note drawn in Scotland was a Scottish debt, although the indorsation by the law of England would not have been good, still, as it was a Scottish debt it must follow the law of the country where the instrument was made. I recommend that case to the attention of the parties, because it seems to illustrate very clearly the general doctrine, that as between indorser and indorsee what relates to the nature and essence of the instrument must be regulated by the law of the country where it was made. The other case of *Maberley*, though not bearing so strongly on this matter, is also worthy of attention. That was a case of an unaccepted draft drawn by an Aberdeen firm on their London correspondent, but not accepted until the drawer and the payee had become bankrupt, and the question was whether an indorsation made in England during that period was available. It was an unaccepted bill drawn by an English acceptor, and therefore according to the ordinary rule would have been an English debt, but if the want of acceptance prevented it from being an English debt, the question as to the endorsation would have been ruled by the law of Scotland, but the Court held that that was a question to be determined by the English law; and having taken the opinion of English counsel, they held that the indorsation was bad, because of the knowledge of the insolvency. Therefore, on the whole of that matter, I am of opinion that here at all events there is no ground for saying that there was any separate contract between Stewart and Gelot apart from the contract that would have been created by the acceptance of the bill by Robert Stewart; but, on the contrary, the question we are now dealing with relates to the constitution and substance of the debt, or rather to this instrument as the constitution of the debt. That being so, if the instrument would be good by the law of Scotland, it is in all respects regular as regards that law, and therefore must be in regard to all the parties interested a good and valid constitution of debt. The question in regard to want of title is a different matter. There is no doubt that if the party who grants an obligation has no title by the law of his domicile to grant it, and no power to grant it, that may taint the whole transaction. But the question which I have been considering is, whether there is any separate rule applicable to this contract as between Stewart, who was in Paraguay, and Gelot, who was in Paris? and I am of opinion that there was none, and that the rule of the place of payment must regulate. Lord Brougham, in the case of *Don*, does make some observations very analogous to those that were made in the case of *Annan*, as to the possibility of there being a different rule for the debt between drawer and payee, or between indorser and indorsee, from that which would regulate the obligations of the acceptor; but that only illustrates more clearly what I have already said; and therefore upon that matter I am of opinion that this was a Scottish debt, it was a Scottish contract, it is good by the law of Scotland, and that the want of the Paraguay stamp is of no consequence. I may, however, only add, that if that be the law in regard to the bill of exchange, much more must it necessarily apply to the letter; and indeed I am at a loss to understand how the letter can possibly fall under the Paraguayan law. Dr Stewart, who was a Scotchman, writes to his brother in Scotland to tell him to accept a bill of exchange. That is not a bill of exchange; it is an authority or mandate, but it is not a bill, nor can it be considered in that light; and then he goes on to

authorise him to draw a bill on a deposit in his favour, which is deposited in the bank to the amount of £4000 sterling. That is not a draft upon the bank. That is not its nature. It is an authority or a mandate to a third party in his name to make a draft upon him. I do not think that by any construction that can be held to be a bill of exchange; and if the only law alleged is the law of Paraguay in regard to bills of exchange, I am quite clear that it could have no application to that instrument. That that is a Scottish instrument, to be construed by the law of the place where the payee was, and where the money was deposited, I can have no doubt. The other ground, and that which is quite sufficient for judgment in this case, is the general rule, that revenue laws are not regarded by foreign countries, and that I take to be the rule of the *jus gentium*, which has been given effect to, as far as I know, as long as there has been anything like international law. Whether it be a wise or an unwise rule is another matter. There have been very high authorities quoted to the effect that it is a very undesirable rule; but the rule, so far as I know, is universal, and no instance is known to me, or was quoted to us, in which the revenue laws of a foreign country were given effect to in the Courts of this. We have plenty of illustrations to the contrary, and without resuming the authorities that were quoted, I would simply state the authority of one of the last of the highest writers on this subject — I mean M'Laurence's edition of Wheaton's Commentary on Public International Law, published in 1863, at p. 179. He says, "But the tribunals of our country do not take notice of or enforce, either directly or incidently, the laws of trade or revenue of another state, and therefore an insurance of prohibited trade may be enforced in the tribunal of any other country than that where it is prohibited by the local laws;" and in a note the editor says, "On the other hand, a contract, though to do a thing illegal at the place where the suit was brought, and where the contract may have been made, has been enforced when it was legal at the place of execution, as in the case of lotteries, authorised in Kentucky, but prohibited in New York." Now I take it that that authority is quite conclusive as to the general law. There are in the notes the opinions of Storey and of Heffter and of some other jurists to the effect that on principle this ought not to be so, but I can have no doubt at all that that is the general international law. Some dicta were quoted to the effect that in this matter of stamp, which is only one of the branches of the revenue laws of a country, there was a distinction between laws which made the contract null, and laws which only affected the admissibility of the instrument as evidence. I take the liberty of thinking that these have been very hasty observations, but they have certainly never been reduced to practice by practical decision. It is quite certain that this principle of refusing effect to the revenue laws of other countries has been constantly applied where the contract was null by the laws of the place where it was made. A smuggling contract, or a contract contrary to the revenue laws—such as lotteries, which I have already referred to, or an insurance, such as that to which Wheaton referred—these are not cases in which the instrument in which the contract was expressed was null, but where the thing was struck at by the revenue laws of the country as being *contra bonos mores;* and yet in all these cases the contract receives effect in a foreign country, though null in the country where it was made. We had a case in this Court not very long ago—the case of *Clements* v. *Macaulay*—where, in a question of a contract between two blockade runners who contracted to run the blockade during the American War, the contract was given effect to in this country, though beyond all question it was not only null, but would have exposed the parties who made it to punishment in the country where it was made. Therefore I do not think we can recognise this Paraguayan statute at all. On the whole matter, I think we must dismiss this action. So far as it is pleaded to aid the defence in the other action, I think it is excluded because it was not timeously pleaded, and no *res noviter* was alleged. The bill of exchange, I think, constituted a Scotch contract, but even if it were not so, I think the law of Paraguay cannot be referred to so far as this matter is concerned.

Lord Cowan—This is an action of reduction of two documents, which are alleged to constitute obligation against the pursuer of the action. In the original record it was laid in the third plea in law, namely—"The said documents being by the laws of Paraguay null and void, in respect they were not written upon stamped paper, are liable to reduction." Therefore the whole matter raised under the original record was whether these documents, because they have not stamps which are alleged to have been necessary by the law of Paraguay, are to be declared by this Court null and void. A great number of defences were urged before us; and became the subject of an amendment of the record, in which pleas have been stated on the part of the defender, partly to the effect of dismissing the action on the ground that there was no *res noviter* which entitled the other party to come into the field because of the dependence of the other action and the stage at which it had arrived,—that it was too late. Other pleas stated in the amended defences go much deeper. They go to this, that there is no ground for the action as against the defenders; and if we sustain the two latter pleas, particularly the main plea to which your Lordship last adverted, the result must be to assoilzie the defenders from the conclusions of the action. I am rather anxious to draw this distinction, because I wish to avoid mere questions of form under which it might or might not be competent for us to dismiss this action, and to place the judgment of the Court, so far as I am concerned, on the main pleas stated on the merits of this reduction, which, if well founded, should, I think, lead not to the dismissal of the action only, but to the absolvitor of the defenders from its conclusions. I shall say very little indeed on the preliminary matters. The argument which Mr Watson latterly addressed to us was exceedingly powerful to the effect that it was a great deal too late, having regard to the stage at which the principal action had arrived, for a party to come forward with a proposed amendment of the record, or with a new action such as this, with pleas based essentially on *res noviter veniens*. I am not prepared to say that that would lead to our necessarily preventing the parties stating the plea had it truly fallen under the character and class of *res noviter veniens*. I am rather inclined to think that there is nothing in the stage at which the proceedings in the original action now stand which ought to prevent us from entertaining this plea, if it would otherwise be

such a plea as we ought to entertain, having regard to the position of the questions at issue between the parties. But upon the point of *res noviter veniens* I concur with your Lordship. If we were to regard this action as one going to supplement a plea in the original action, I should be of opinion that the action should be dismissed, because of the allegations as to the law of Paraguay not being properly *res noviter*. I cannot conceive any case in which a plea of that kind has ever been advanced in more unfavourable circumstances. The plea is, that by the laws of Paraguay, and in particular by an act passed in 1866, it was declared that documents of this nature should be null and void unless stamped; that act was passed in 1866 or in 1864, at a period when Dr Stewart was himself resident in Paraguay, and therefore must be held to have been acquainted with the laws of the country in which he then was, and in which he had been for many years. Notwithstanding that, he puts his name to these documents as real documents, capable of being enforced, though they were not stamped. I cannot conceive any circumstances in which a party could come forward and plead *res noviter* in more unpropitious and almost inadmissible circumstances than those in which Dr Stewart now stands. But what is it that he says is *res noviter?* What does he say has come to his knowledge? It is these laws of Paraguay, which were in existence, and which were passed at the time he was there. The law of Paraguay is very easily ascertained if it existed, but it was not a novelty to be introduced at a distance of five or six years, when Dr Stewart chooses to come forward in the exigencies of his case and say that the law is now perfectly new to him, and that he asks us to open up the record and admit this new matter, which was capable of being ascertained, and which he must be held to have known, anterior to the institution of the original action. But I wish more particularly to advert to the main pleas. After the elaborate and exhaustive views stated by your Lordship on the main plea in regard to the international law, I shall not attempt to diminish the weight of your Lordship's opinion by any expansion of the views already stated; because I concur with the result at which your Lordship has arrived. Putting aside in the meantime the peculiarity that the ground of this action is that this paper is unstamped, I would remark, in the first place, that by international law this case falls to be judged by the *lex solutionis*. The bill here was drawn by a Scotchman upon a party in Scotland, and it was payable in the domicile of the drawee, had he accepted it. But he has not accepted it. Now, under the authority of the case of *Armour* and *The Royal Bank*, the question is what is the law of Scotland, which was the *locus solutionis* contemplated by the parties at the time this bill was drawn? The laws of Scotland is clearly this, that the unaccepted draft was perfectly competent to assign any particular fund that might be in the hands of the drawee, though he thought fit to refuse to accept the document of debt. A great deal has been said about the necessity of enforcing the law of the place of the contract. Everything in reference to the constitution of the contract, it is true, must be regulated by the law of the place where the contract has been entered into and constituted; but when you come to a question of this kind, I think the law of the place of solution, and not the law of the contract, necessarily rules. I do not say that the principles laid down so elaborately by Lord Brougham in the case of *Don* v. *Lipman* necessarily rule the present, but the views there stated have always been regarded as well founded, and I think they go very far to put an end to the objection here taken to these bills. His Lordship says the *lex fori* must be held to rule—the place where the party ought to be met by the obligant in the document or obligation; and he goes on, besides the question of prescription, to deal with questions of evidence; and he says all matters of the admissibility of written evidence and of parole evidence in certain cases must be ruled by the law of the place where the remedy is applied for. Although made the foundation of the action, these two documents are truly evidence of the debt, and they are tendered as such; and if we are to take the rules as applicable to the admissibility of evidence, I imagine that these documents would be admitted by the law of Scotland. By the law of Scotland I apprehend that these documents do not require to be stamped, provided they have what the statute requires as to a foreign bill. And so, as regards this mandate, I apprehend it is one which the law of this country does not require to be stamped. It is, as Mr Watson says, like a delivery order, and I see no principle for saying that it is null and void because it is not written on stamped paper. It merely requests his brother to present the note at the Royal Bank of Scotland—"and I hereby authorise you to draw upon the deposit in my favour to the amount of £4000." It does not say that he is requested to pay the bill, but it says, I request you to go to the Bank and ask £4000 to pay M. Gelot. I apprehend that that document did not require any stamp at all in this country. I may here observe that a distinction must be taken between contracts that are null and void by the law of a foreign country, and contracts or laws relating to contracts which apply only to local usages and practices of the country in which they have been enacted. Where a thing is vitiated by immorality, the law of this country will refuse to recognise it, even although it is recognised by a foreign country. But in regard to smuggling contracts, or obligations under what may be called the revenue laws, that is a totally different matter. Smuggling contracts, if they are not vitiated by the law of this country, may be enforced. The case of *Clements* is illustrative of that. Now, the nature of the question raised under the original record here simply refers to the revenue laws of Paraguay, and probably all the discussion which we had about international law might have been omitted from the argument; because the simple question we have to solve is this—by the law of this country, are the fiscal regulations of the law of Paraguay to receive effect? These documents being capable of supporting an action in this country, are we to say that, because by the laws of Paraguay they are null and void, we are to refuse to give them any effect? Nay, we are to pronounce a judgment by which they are declared to be null and void in respect of their not being stamped. I shall not go over the authorities, which have been fully referred to. I have examined them with care, and I apprehend that the law of this country is now what it was declared to be in the days of Lord Mansfield—that no country shall take notice of the revenue laws of another country. That was the *dictum* of Lord Mansfield in the case of *Halman* v. *Johnson*, Cooper, 343; and notwithstanding the various decisions in the courts of England, and though there has been a *dictum*

by a very eminent judge to the contrary, I do not find any decision which goes counter to the principle thus stated by Lord Mansfield, that no country takes notice of the revenue laws of another country. Now, what is this but a revenue law? It is a law by which it is said these documents ought to have been stamped in Paraguay. It is calling upon us to act as revenue officers, and to enforce fiscal regulations of another country, which I apprehend has been repudiated by all the best Judges who have delivered any opinion on the subject. Therefore my humble opinion is, that from this action the defenders ought to be assoilzied.

Lord Benholme—I think this action ought to be dealt with as Lord Cowan proposes. There was a plea elaborately argued as to whether it ought not to be dismissed on the ground of competent and omitted; but as I think this action ought to result in absolvitor, it is of less consequence to dwell upon the preliminary arguments on which it was contended that it should be dismissed. Upon the merits of the reduction itself I shall not say much after the very exhaustive statements which have already been made. There is first an international question, viz., whether these documents are to be considered as foreign or as Scotch. It appears to me that they must be considered as either one or the other. If they are Paraguayan documents they cannot be Scotch documents, and *vice versa*. I make this observation in order to illustrate my opinion as to the supposed difference between a bill unaccepted and a bill accepted. When the bill is drawn, the matter of its acceptance is quite uncertain; and if it is to be supposed that the validity of the bill is to depend upon that which is contingent, I can see that the utmost confusion would arise in the application of international principles. I think the plain rule is that the country in which the document is intended to have effect should decide the matter; and it being so decided once for all at the time the bill is made, I do not think the international law can be changed by the contingent result of its not being accepted, for in that way we should have the anomaly of a bill which is null if it is accepted, and a good bill if it is not accepted, or *vice versa*. Now, I think that not only the bill, but also the letter, must be considered as Scotch documents. And here I think is the proper ground of absolvitor, that whether this bill required a stamp by the law of Scotland, or whether it required to be written on stamped paper as essential to its validity, I do not think that in this country we should pay any attention to the law of Paraguay. It is a law of the revenue, and these laws, in my opinion, have no effect beyond the country in which they are enacted. There is a host of authorities to the effect that the stamp law of a foreign country is not to be considered in this country; and I think the authorities go to this, that it is of no consequence whether the want of stamp is pleaded as a mere obstacle to the document being admitted (in which case it is clearly the law of the country where the remedy is taken), or whether it is pleaded as an essential nullity. I think we should pronounce absolvitor in this case.

Lord Neaves—I confess it appears to me to be of very little consequence what the form of the judgment is, because, whether we dismiss the case or assoilzie, the result will be the same. With reference to the question of *res noviter*, I understand it to arise in this way,—if this were an independent action, and had nothing to do with any other, the party would not need to urge *res noviter* at all. It is in order that he may get something sustained in this action imported into another action that he brings it. If he had brought it against Madame Lynch, or Lopez, or all the world except M. Gelot, he might have gone on with it as much as he liked—M. Gelot not being a party to it. But it is intended to be used against M. Gelot in the other action, in which there is no other defender but M. Gelot, and for that purpose the pursuer of this action is conscious that he cannot use it without complying with the condition that would have been imposed on him if he had brought it in at a late stage of the other action. That shows that he cannot succeed unless there is *res noviter*. I quite admit that the law as to the stamp of a bill drawn by a party in foreign countries cannot be considered as *res noviter veniens ad notitiam*. It is not that a man is ignorant, or says he is ignorant; for how can you tell what a man is ignorant of? How can you see into his breast? How can you know that a man is cognisant or ignorant of the law of the country which he is living in? He may swear it; that is very easily done if he is made a witness. But it is a matter entirely within his own breast. Above all, if there ever was a suit in which that plea seems most inequitably introduced, I think it is this. "You must judge of the case as if the parties were contracting according to the law of Paraguay, and give me a remedy against this bill, because of the presumption that you are acting on that law, and yet you must believe that I did not know that law." That is pleaded as the equity of the thing; but anything more inequitable cannot be conceived. But in order to make way for the plea of *res noviter*, it must be shown that the party was excusably ignorant of how matters stood; and I cannot hold that a man drawing bills, or having anything to do with money transactions in a country where he had been resident so long, and in the neighbourhood of the man who proclaimed this law, can say that he was ignorant of it. Therefore I hold this action excluded by the want of the element which I have stated. The next point is with reference to the locality of this bill. I shall not say anything about the letter, because your Lordships have clearly shown that it is a mere direction or authority to an agent, and requires no stamp. It is stated that the locality of the bill is Paraguay, but it is also stated, as I understand, that if it had been accepted by Mr Robert Stewart in this country, the locality of the bill would have been Scotland. This is a most extraordinary aspect of the law. A bill of exchange is a commercial document known all over the world, consisting in a request by one party to another party to pay money to a third party. In this case it is just a request by Dr Stewart in Paraguay to Robert Stewart in Scotland to pay money to M. Gelot in France. That is the nature of the document. Now it was of no validity at all as long as it was in Dr Stewart's possession; but when it reached M. Gelot, and M. Gelot was in a condition to send it to Scotland, and it was intimated to Robert Stewart, it was then a delivered document out of the granter's possession into the payee's possession, and intimated to the third party concerned. From that moment it surely became an existing document. Now, what is the position of it in that state of things? A bill

which has been so delivered, received, and intimated, constitutes immediately the relation between the three parties. The one is the drawer, the other is the payee, and the third is not the acceptor, but the drawee. Now, are these relations validly constituted at that time, or are they not? Is it only the stamp laws of the country where it is drawn that are to be looked to in this matter? and if these are defective, is the document null and void? It is admitted that if Robert Stewart had complied with the request to accept the bill it would have been a good obligation. I think it must be admitted that it would have been a good obligation, not only on him, but on Dr Stewart. But to say that it is a mere acceptance by Robert Stewart, without any redress against Dr Stewart, is to say that it is a bill between Gelot and Robert Stewart. If the drawee, by previous correspondence before the bill was drawn on him, had come under an obligation to accept it, would that not have been an obligation which he was bound to fulfil? Could he then have said, I will not accept this bill, because it is not stamped according to the law of Paraguay; or if Robert Stewart had accepted, could Dr Stewart then have said, "You have accepted, you are debtor to Gelot, but you are not entitled to claim against me credit for the money, or to ask me to re-imburse you?" These consequences seem to be utterly out of the question in a case of this kind, and just bring it back to this, that it cannot be a document that is a nullity from the first. It cannot depend for its validity on whether the drawee does his duty or not. If it was his duty to accept, his not performing that duty will not release him; if he did accept, the relation of the parties is then constituted; but the relation of drawee was equally obligatory before if the bill was properly drawn. I think there is no doubt that from the first this was a European document falling under the *jus gentium*, and must be enforced without reference to any other laws than those applicable to it when it comes to be sued on in the *forum* in which it is ultimately received. I can quite understand that if the drawee does not accept, or if, after accepting he fails to pay, there may be in the count and reckoning between the payee and the drawer coming upon him for his recourse many circumstances which may arise partly depending on the *forum* where the remedy is to be sought, and partly on the domicile of the party. The consequence of his contingent liability may be varied by the place in which he is resident; but having guaranteed by the act of drawing that the bill should not only be accepted but paid when he comes to be sued in his own country for the fulfilment of that cautionary obligation, there may be doubts about what interest shall be due, but how the validity of the document can depend on whether the drawee does his duty or not I cannot see. If a bill is drawn as a bill belonging to the country where it is meant to be fulfilled by specific implement, and if it is so stamped or so unstamped that it is perfectly adequate to fulfil its own purpose, it seems a most extraordinary thing to say that it can be null with reference to consequences which the want of specific implement may occasion. The obligation to fulfil by the drawee being constituted, how can it be said that it is not binding on the drawer? I concur also that the revenue laws of a foreign country are not binding upon us, whether they seek to enforce themselves by excluding documents as inadmissable, or whether they seek to enforce themselves by punishing the parties to these documents. In either case it is a sanction or penalty for a breach of revenue laws, and for us to interfere in one way or other would be making us what we are not—the tax-gatherers of a foreign country. Let them look after their own affairs; we have enough to do; we get quit of a number of international questions in that way, and are reduced to the position of judging of our own law. On all these grounds, I am quite prepared to concur in absolvitor, or in dismissing the action, though I think both would have the same effect. Perhaps the clearest course is to make it absolvitor.

Lord Justice-Clerk—In the observation I made, I did not intend to express any opinion as between these two modes of dealing with the action, because I concur with Lord Neaves that in this case the result is the same, but as we are prepared to deal with the action on its merits, I think the judgment should be absolvitor.

Agents for Pursuer—Fyfe, Miller & Fyfe, S.S.C.
Agent for Defender—Wm. Mason, S.S.C.

Monday, July 17.

TEIND COURT.

RICHMONDS *v.* THE OFFICERS OF STATE.
(*Vide* 24 D. 1344, and *supra* vol. vi. 614.)

Teinds—Sub-valuation — Approbation — Dereliction. Circumstances in which (*diss.* Lord Kinloch) decree of approbation was pronounced of a report of Sub-commissioners for valuing teinds made in 1629.

It being *held*—1. That the report was not itself, and on the face of it, invalid for want of sufficiently detailed specification of the method of proof, &c., to show that the directions of the Sub-commission had been duly complied with—the principle *omnia præsumitur a judice rite et solemnitur acta* being held applicable to the proceedings of the Sub-commissioners.

2. That dereliction had not taken place, even though—(1) After the sub-valuation, the heritor had taken repeated tacks of his own teinds at a rent differing from the sub-valuation; (2) An abortive valuation had been led, ignoring the existence of the previous sub-valuation; and (3) teind had been paid in excess of the sub-valuation, though for a number of years short of the prescriptive period.

Held, further, that, vicarage teinds not being due except so far as they have been paid by use and wont, a flaw in the valuation of vicarage teinds will not annul an otherwise effectual valuation of parsonage teinds.

Opinion, that dereliction is not easily to be inferred, it being a question of fact rather than of law, and not dependent entirely upon heritor's knowledge or ignorance of the existence of the sub-valuation; the question in each case being, Has the heritor, with or without precise knowledge of the sub-valuation, deliberately elected to hold that the teinds of his lands are unvalued?

The circumstances in which this action of