ties, but looking to the intention of the testatrix, I am of opinion that the first term six months after her death brings us to Martinmas 1880.

Lord Gifford—I concur in thinking that such a result is entirely in accordance with the intention of the testatrix.

Lord Young—I have arrived at the same opinion with your Lordships. We have got the word "month" to interpret, and we must do so. We are called on to say what is the meaning of six months in a will which directs something to be done at the first term six months after the death of the testatrix.

Now, north and south of the Tweed "month" means two things. Its primary signification is the period of the moon or twenty-eight days. The other and only other signification is a calendar month—that is to say, one of the twelve months into which the year is divided in the almanac. In Scotland we have had very little occasion for referring to the distinction, and consequently there is a paucity of decision on the point, but we are nevertheless alive to the distinction, and this is specially evident in every sentence of the Supreme and Inferior Court. Where a prisoner is ordered to be confined for six or twelve months, we say it is to be for calendar months, and I know no authority to regard it as mere surplusage. If not expressed, I take it that the law would adopt the primary sense of the word, and this shows that we make and know the distinction.

In the case of bills of exchange, merchants who deal with them have by long usage made a law unto themselves, and fortunately the same custom on both sides of the Tweed has adopted in this case the use of calendar months.

In other respects, if, as far as I can ascertain, we have no decisions nor practice on which rights are founded and established, there is a great advantage in having the same law all over the land. At the same time, the computation by calendar months is more easily made, and therefore in 1850 a general statute was passed directing that in Acts of Parliament a month should be a calendar month unless otherwise expressed, and this Act extends to Scotland, and further, goes on the assumption of a distinction between calendar and lunar months. Now, here I think the first term six months after the death of the testatrix, taken in the primary signification of the term, leads to Martinmas following on the Whitsunday on which she died, and this is a reasonable result, and probably accords with the intention of the testatrix. There is nothing to show that she meant to make the six months after her death exactly twelve and the anniversary of her death; and so reasoning strictly on this I come to the same conclusion as your Lordships, and answer the question put to us that the first term six months after Miss Campbell's death was Martinmas 1880.

The Court answered the question put to them in terms of these opinions, and found that the first term six months after the death of the testatrix was Martinmas 1880.

Counsel for First Parties—Guthrie Smith—A. Gibson. Agents—Mitchell & Baxter, W.S.

Counsel for the Second Parties — Solicitor-General (Balfour, Q.C.)—Ferguson. Agent—W. G. L. Winchester, W.S.

Thursday, October 21.

SECOND DIVISION.

[Lord Adam, Ordinary.

MP.—LYONS *v.* ANDERSON AND OTHERS.

Poinding of Ground—Right in Security—Service of Summons.

Held that a heritable creditor who has served a summons of poinding of the ground on his debtor has thereby asserted his real right so as to interdict his debtor from removing the moveables or otherwise defeating his right in them.

This case arose out of a multiplepoinding to have the right ascertained to the proceeds of certain furniture which had been handed over by Matthew Thomas Anderson and others to Isaac Lyons, an auctioneer, residing at Greenock, for the purpose of being sold by public roup. The sale took place on the 15th of October 1879, and the sum of £76, 15s. 0½d. was realised, out of which Lyons deducted the sum of £41, 4s. 10½d., being the amount of certain advances made by him and expenses as detailed in the roup-roll, leaving a balance of £35, 10s. 2d., which he alleged to be the amount of the fund *in medio*.

Francis Woodrow Manford, who was called as a defender, objected to the condescendence on the fund *in medio* on the following grounds:—By bond and assignation and disposition in security, dated 3rd, 4th, and 7th August 1876, Matthew Thomas Anderson and others, who were also called as defenders, granted them to have borrowed from him the sum of £2000, which they bound themselves to repay at Martinmas 1876, and in security they disponed to him certain heritable subjects therein particularly described. As they however failed to pay the interest due under the said bond after September 1877, in order to secure his right to the subjects in the bond, he on 7th August 1879 raised an action of poinding the ground against them, which was duly served on 13th, 15th, and 19th August 1879, and decree in absence was pronounced against them on 21st October 1879. After the service of the summons the furniture belonging to the said heritable subjects was conveyed to Lyons' premises on the instructions of the defenders Anderson and others; on this coming to the knowledge of the objector he presented a note of suspension and interdict against them, praying, *inter alia*, for interdict against the sale and against the said Isaac Lyons paying the proceeds thereof to any other person than the objector. The said note was served on Lyons on 12th October 1879, and on 25th November 1879 the Lord Ordinary pronounced an interlocutor suspending and interdicting in terms of the prayer and declaring the interdict perpetual. It was explained that Lyons had no knowledge of the proceedings referred to before 12th October, when the said note was served upon him.

The objector pleaded—that "Having by the execution of the said summons of poinding the

ground, and decree following thereon, acquired a real and preferable right to the said furniture, the said Isaac Lyons is not entitled to deduct or retain from the proceeds thereof any sums said to have been advanced by him to the granters of the said bond, or any of them."

The Lord Ordinary (ADAM) sustained the objections for the objector Francis Manford.

Lyons reclaimed, and argued—The execution of the poinding alone, and not the mere service of summons, gave the preference here.—2 Bell's Com., pp. 57, 61.

The objector argued—The service of summons was quite sufficient. It was equivalent to a seizure of the debtor's property by the creditor, and vested him with the right to that property. His future course was only to realise the property.—*The Royal Bank* v. *Bain*, 6th July 1877, 4 R. 985; *Campbell's Trustees* v. *Paul*, 13th Jan. 1835, 13 Shaw 237; *Barstow* v. *Mowbray*, 11th March 1856, 18 D. 846.

At advising—

LORD JUSTICE-CLERK—My impression was certainly strong that a heritable creditor who raised an action of poinding the ground could not compete with personal creditors executing diligence until he had actually executed his poinding. But the cases which have been quoted indicate otherwise, and guided by them here we must hold that the poinder as soon as he executed his summons of poinding interpelled his debtor from conferring rights in the subjects poinded.

LORD GIFFORD—I concur. We are shut up by these cases, which must rule the present case.

LORD YOUNG—As soon as the facts of the case were explained it was quite plain that the dispute between the poinder and the defenders turned on the question whether any, and if so, what, virtue existed in the execution of the summons of poinding the ground, and at an early stage of the case I asked whether the question was not determined by authority. If no virtue attached to the mere execution of the summons in the way of restraining the debtor from dealing with the goods and conferring a right by his voluntary act on others, then it is plain that the heritable creditor's right of poinding the ground would be worthless, for the actual poinding of the ground by him is the end of a somewhat long course of procedure, beginning with the execution of the summons, which is only a long notice to the debtor. I am therefore not surprised that it has been distinctly decided that the execution of the summons has virtue in restraining the debtor from dealing with the goods as before.

This is the view of the law as established by these cases, and we now proceed on it, though it is an anomalous one undoubtedly, and in the opinion of many objectionable, viz.—that a creditor having a security over land has also a real right in the moveables on the land of a peculiar character, for it does not operate in restraining the debtor from conferring rights on other persons over them so long as he is not interpelled; but then the execution of the summons acts as an interpeller, so that thereby the poinding of the ground is made valuable, which it would not be if the creditor had to depend on the actual completion of diligence. I therefore agree that this is decided by authority, as alone it could be consistently with the practical existence of the real right in the heritable creditor. That right I repeat is anomalous, and in the opinion of many objectionable, but so long as it exists it would be worthless to hold that it was not to be efficacious till a long process of law had been gone through.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuer and Nominal Raiser—Millie. Agent—Andrew Clark, S.S.C.

Counsel for Respondents and Real Raisers—Strachan. Agents—Mack & Grant, S.S.C.

Friday, October 22.

FIRST DIVISION.

[Lord Adam, Ordinary.

MONTGOMERY *v.* MONTGOMERY.

Husband and Wife—Divorce—Aliment—Expenses.

A husband obtained divorce in the Outer House against his wife, who reclaimed and presented a note for aliment to the Court after the case had gone to the roll. *Held* that she was entitled to aliment from her husband until the final judgment of the Court on her reclaiming-note, and to payment of a sum towards expenses of process incurred in the Outer House.

This was an action of divorce on the ground of adultery at the instance of James Montgomery, feuar and portioner in Airdrie, against Margaret Edmistone or Montgomery, his wife. The Lord Ordinary (ADAM) on 20th July 1880 pronounced decree of divorce. Against this interlocutor Mrs Montgomery presented a reclaiming-note. After the case had been put to the roll Mrs Montgomery presented a note to the Court in Single Bills applying for an allowance of aliment since 15th August 1880, up to which time she had received aliment from her husband, and pending the final decision upon her reclaiming-note; as also for a payment to account of expenses of process. It was admitted that Mrs Montgomery had received aliment up till 15th August 1880, under an agreement of voluntary separation, dated 2d March 1878, at the rate of 28s per week; and that while the action was in the Outer House, and before the proof was led, an allowance of £10 to account of expenses of process had been given by the Lord Ordinary.

Authority—*Ritchie* v. *Ritchie*, March 11, 1874, 1 R. 826.

At advising—

LORD PRESIDENT—We think the reclaimer should have the aliment continued under that agreement at the rate of 28s. a-week from the date of the last payment, and that a sum of £30 should be paid towards the expense of leading the evidence. It must be distinctly understood that it is towards the expense of the proof that this sum is to be applied, and not towards the expense of printing the proof, which is a different matter, and forms part of the reclaiming-note.