that he had sent the note to you. As, however, no further reply has reached me, I am anxious to know whether you have got it, and if so, whether you think of making any reply to it at all."

The defenders' answer to this is dated the same day, and is in these terms—"On receipt of your letter addressed to Mr Wieland, we forwarded it to the Boiler Insurance & Steam Power Co., 67 King Street, Manchester, who take charge of these matters for us, & to whom we are to-day sending your second letter." That is to say, there is under the hand of the defenders a distinct acknowledgment that the letter forwarded by Mr Wieland had been received by the defenders.

I think that there was here sufficient notice, for the pursuer's letter was *de facto* received by the defenders within the time limited by section 4 of the statute.

LORD MURE—I have no difficulty about this case.

It is plain that the letter written by the pursuer to Mr Wieland reached the Forth Bridge Railway Company, and when they get it they deal with it as a notice which they have received, and send it on to their agent in Manchester.

I do not think it is necessary to say anything about the meaning of the term delivery used in the statute, but it does not seem to me that a letter can be said not to be "delivered" because it is sent and delivered through the post. I agree, however, that the letter would require to be registered in order to raise the presumption that it had been delivered.

LORD ADAM—The defenders' argument is this, that if the pursuer was to avail himself of the post, he could only do so by means of a registered letter. I do not think, however, that the statute prescribes that as a solemnity, for it only says that the notice "may be" served by post by a registered letter. If it is served by post by a registered letter, then that throws the *onus* of proving that he never got notice upon the defender. But here there can be no question that the defenders got notice, for there is evidence of that fact under their own hand.

LORD SHAND was absent.

The Court repelled the first and second pleas for the defenders, and ordered issues.

Counsel for Pursuer and Respondent—Rhind—Gunn. Agent—Robert Stewart, S.S.C.

Counsel for Defenders and Appellants—Comrie Thomson—Hay. Agents—Reid & Guild, W.S.

Saturday, June 26.

FIRST DIVISION.

[Sheriff of Lanarkshire, at Airdrie.

STRAIN *v.* STRAIN JUNIOR.

(*Ante*, p. 90).

Sheriff—Appeal—Competency—Civil Imprisonment (Scotland) Act 1882 (45 *and* 46 *Vict. cap.* 42), *sec.* 4.

Held that an appeal against a deliverance of a Sheriff-Substitute refusing to grant a warrant under section 4 of the Civil Imprisonment (Scotland) Act 1882 is incompetent.

In an action of separation and aliment at the instance of Mrs Mary Thomson or Strain, residing (at the date of this process) at 7 Ornatus Terrace, Wyndham Road, Rothesay, against her husband, Hugh Strain junior, coalmaster, residing at Merrybank Cottage, Nettlehole, Airdrie, the Court of Session on 2d November 1885 pronounced decree of separation, and decerned the defender to make payment to the pursuer of the sum of £52 yearly of aliment, commencing as at 15th December 1884, with expenses.

On 16th December the defender was charged to make payment of aliment then due, with interest and expenses. The defender failed to make payment.

This petition was presented by the pursuer in the Sheriff Court of Lanarkshire at Airdrie, under the provisions of the Civil Imprisonment (Scotland) Act 1882, for warrant to cite the defender to appear and show cause why he had failed to pay to the pursuer the sums of aliment with interest and expenses therein specified, "and in the event of the defender failing to appear at such diet as the Court shall appoint, or to prove that his failure to pay said sums was not wilful, to grant warrant to officers of Court to apprehend the defender and commit him to the prison of Glasgow, therein to be detained for such period, not exceeding six weeks, as the Court shall appoint, or till he pay the sums aforesaid to the pursuer, or such instalment or instalments thereof as the Court may appoint, or till the pursuer is otherwise satisfied."

The Sheriff-Substitute (MAIR) on 18th June 1886 pronounced this deliverance:—"Finds it proved to the satisfaction of the Sheriff-Substitute that the respondent Hugh Strain junior has not, since the commencement of the action in which the decree referred to in the petition was pronounced, possessed or been able to earn the means of paying the sums of aliment and expenses contained in the charge on the said decree, and that he has not wilfully failed to pay the same; therefore dismisses the petition."

The pursuer appealed to the Court of Session.

On the case appearing in the Single Bills the respondent objected to the competency of the appeal, on the ground that the matter was left entirely to the discretion of the Sheriff or Sheriff-Substitute—*Tevendale* v. *Duncan*, March 20, 1883, 10 R. 852.

Argued for the appellant—The Sheriff-Substitute had here pronounced a judgment, and that was appealable to the Court of Session, unless

by express enactment that right of appeal was taken away.

At advising—

LORD PRESIDENT—The Debtors Act of 1880, which abolished imprisonment for civil debt, made an exception in the case of decrees for aliment, and therefore under that statute, of course, a party holding a decree for aliment could proceed to do execution in the ordinary form by charging the debtor, and then following that up by imprisonment. But then this new statute of 1882 interposed between the creditor and his debtor a provision that the creditor should not imprison his debtor unless upon an application by the creditor the Sheriff shall grant a warrant to that effect. This application, it is enacted, the Sheriff shall dispose of summarily, and without written pleadings, and the only ground for stopping the diligence of the creditor is that the debtor is unable to pay.

That is a very singular form of process. It is a statutory obstruction to the diligence of the creditor; there is to be no judgment by the Sheriff, but the statute just vests in the Sheriff a discretionary power of saying whether the creditor is to imprison his debtor or no. The provision of the statute is as follows:—that "the failure to pay shall be presumed to have been wilful until the contrary is proved by the debtor, but that a warrant of imprisonment shall not be granted if it is proved to the satisfaction of the Sheriff or Sheriff-Substitute that the debtor has not, since the commencement of the action in which the decree was pronounced, possessed or been able to earn the means of paying the sum or sums in respect of which he has made default, or such instalment or instalments thereof as the Sheriff or Sheriff-Substitute shall consider reasonable." Now, in speaking of proving "to the satisfaction of the Sheriff," taken in connection with the provision that the procedure is to be summary, it is obvious that the statute does not contemplate a regular proof, but merely that the Sheriff shall satisfy himself, by calling the parties before him, whether the debtor is able to pay the sum decerned for, or whether he is wilfully withholding funds which he has got. Under such a proceeding the Sheriff is not to pronounce any judgment or decree capable of being extracted, but is merely to grant or refuse a warrant. Just as in a criminal application for a warrant to apprehend a prisoner the magistrate merely grants or refuses a warrant, so it is the same here. There is a considerable resemblance between the two classes of cases, because imprisonment under this statute is intended to be *in pœnam*. That is made clear by subsection 6 of section 4, which provides "that the creditor, upon whose application the warrant of imprisonment is granted, shall not be liable to aliment or to contribute to the aliment of the debtor while incarcerated under such warrant; but that the incarcerated debtor shall be subject to the enactments and rules as to maintenance, work, discipline, and otherwise applicable to the class of prisoners committed for contempt of Court." It is plain also that the imprisonment is nothing more than a penalty on the debtor from the provision in the statute that the imprisonment is not to operate as a discharge of the debt, and that though the debtor suffers imprisonment the debt is to subsist. It is also provided that after imprisonment has been suffered a new warrant may be issued at intervals of not less than six months, provided the Sheriff is satisfied that the refusal to pay on the part of the debtor is wilful.

Now, I think that the proposal to bring such a deliverance of the Sheriff here by way of appeal is incompetent. I quite assent to the observation made by Mr Dickson that the right of appeal to this Court cannot be taken away except by express enactment. But that applies only to the case of judgment, and we have no judgment here. The statute has thought fit to give a discretion to the Sheriff, and his deliverance upon the application is final as regards that application. If the party can show better grounds, then another application to the Sheriff can be made.

LORD MURE—This statute confers on the Sheriff or Sheriff-Substitute a discretionary power to grant imprisonment in certain circumstances, and I think the matter should not go further than the particular officer to whom the application is made. There are no written pleadings, and there is before us no evidence, nor is there any provision for a record of it being kept to enable us to say whether the Sheriff was right or wrong. It seems to me to be just like refusing an application for cessio *hoc statu*.

LORD ADAM—I am of the same opinion. It appears to me that all the Sheriff could competently do was to grant or refuse a warrant. He was bound to grant a warrant unless the debtor satisfied him that he had not earned anything since the date of the decree. It is left entirely to the discretion of the Sheriff to say whether that is the case or not, and the fact that no record of the proceedings is to be kept shows that it was not intended that the deliverance should be appealable. I cannot see that the refusal or granting of a warrant is a decree in any sense. I think this resembles the applications made in criminal proceedings, for the imprisonment under the statute is *in pœnam*.

LORD SHAND was absent.

The Court refused the appeal as incompetent.

Counsel for Appellant—Dickson. Agents—J. & A. Hastie, S.S.C.

Counsel for Respondent—Rhind. Agents—Robert Menzies, S.S.C.

Friday, June 18.

FIRST DIVISION.

STEWART *v.* M'CLURE, NAISMITH, BRODIE, & MACFARLANE.

Agent and Client—Reparation—Culpa—*Extent of Agent's Duty—Patent.*

Held that a law-agent employed to lend money on the security of a patent is not bound to inquire into whether the patent is good in respect of being novel in subject-matter, and not anticipated by other patents or prior use, and therefore is not bound to examine the index of specifications kept under the patent laws, such inquiries not being within