that water into the common sewer in order that it may not again reach the stream. They then substitute for the water thus pumped out a certain proportion of water which they get from the Loch Katrine supply for Glasgow, and which they send down the stream in place of the water extracted. Now, if they substitute a certain amount of Loch Katrine water for a certain amount of the water of the stream which they have soiled, it may be that there is no harm done, but I do not think that that consideration at all settles the question whether as matter of legal right they are entitled to do so. The right of the lower heritor is to have the water of the stream sent down to him undiminished in quantity and undeteriorated in quality, subject only to this, that it may be used by the upper proprietors for primary purposes. Now, I do not think that it can be required of any lower heritor to litigate with an upper proprietor as to whether or not he is damaged by the abstraction of a certain amount of water which belongs to the stream, if there is substituted for that water a certain quantity of water which comes from somewhere else. I think the right of the lower heritor is to have the stream transmitted down to him undiminished in quantity and undeteriorated in quality, except in so far as used by the upper proprietors for primary purposes, and that it is not a good answer to his objection that water is being abstracted for the upper proprietor to say—"Oh, I am putting in some other water which I think is just as good as or even better than the water I am abstracting." I feel bound to say that it appears to me according to the decisions in the past that an upper proprietor has no such right, and if he has no such right, he cannot defend himself against an action which calls on him to carry out what is his duty at common law, viz., to restore to the stream any water which he takes out of it except what is used up for primary purposes, and that he cannot remove water for any other purpose without restoring that water in its entirety and in as pure a state as that it was in when taken from the stream. Therefore I cannot concur with the fourth finding of the Lord Ordinary. . . .

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD TRAYNER concurred.

*The Court recalled the Lord Ordinary's interlocutor, found, *inter alia*, (4) "that the pursuer has right to the whole water of the said stream as it flows out of Hoggan field Loch, and that the defenders by withdrawing the same for other than primary purposes have materially diminished the volume of water flowing from the said loch through the lands of the pursuer," and remitted to the Lord Ordinary for further procedure.

Counsel for the Pursuer—H. Johnston—Guthrie—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Defenders—Comrie Thomson—Ure. Agent—R. Ainslie Brown, S.S.C.

*Interlocutor signed November 26, 1892.

Friday, November 18.

SECOND DIVISION.

[Sheriff of Dumfries.

COSTLEY *v.* LITTLE.

Parent and Child — Paternity — Proof — Corroboration.

In an action of affiliation and aliment, it was proved that there was opportunities for the connection alleged by the pursuer. The defender denied the connection. He also denied that he had written any letter to the pursuer. The pursuer produced a letter expressed in familiar terms, and proved that she received it from the defender. *Held* that the letter was sufficient corroboration of the pursuer's evidence to entitle her to decree against the defender.

Margaret Costley, residing in Stranraer, brought this action of affiliation and aliment against William Little, yearlyman, Auchmantle, Wigtownshire, for inlying expenses and aliment for an illegitimate female child, of which the pursuer alleged the defender was the father.

The child was born upon 25th October 1891, and it was proved that the defender had opportunity of having connection with the pursuer during the months of January, February, and March of that year. The pursuer averred that at that time the defender was courting the pursuer with a view to marriage, and that in January 1891 he wrote a letter to her in these terms—"My dear Maggy i wood like to see you But i cant see you i am send you this card i hope you will like this and when i see you I will kiss you time. Be kind and Good to Wm. Little My Dear."

The evidence as to the letter was as follows. The defender deponed—"I never carried on any correspondence with the pursuer. I never wrote any letters to her, never the scrape of a pen. I never sent her any Christmas cards. (Shown above)—Did you ever send that letter to the pursuer?—No. (At this stage the defender was asked to give a specimen of his handwriting, which is produced and marked as relative hereto.) *Examination continued*—I never told the pursuer afterwards that I had sent that letter to her, but she said she had got a letter. I just happened to say I sent the letter, but I didn't."

The pursuer deponed—"I remember receiving a letter from the defender. I am shown the letter already produced. That is the letter I received. That letter mentions at the bottom the name 'William Little.' The defender afterwards told me that he had sent me this letter. He asked me to let him see the letter, and I said I had it burned. He used language implying that he had sent that letter to me."

Upon 9th July 1892 the Sheriff-Substitute (WATSON) found that the defender was the father of the pursuer's child, and gave decree accordingly.

"*Note.*—The pursuer has produced a love letter which she says she received from the

defender. The latter now denies the genuineness, although he admits that he once said to the pursuer that he had written it. The Sheriff-Substitute is of opinion, comparing the letter with the specimen of the defender's handwriting taken in Court, that the letter was written by the defender. It does not appear that any other man was on a footing of intimacy, or had opportunity of intercourse with the pursuer during the period in question, and, in the whole circumstances, the Sheriff-Substitute has no hesitation in giving decree in favour of the pursuer."

Upon appeal the Sheriff (VARY CAMPBELL) adhered.

The defender appealed.

At advising—

LORD JUSTICE-CLERK—In this case the Sheriffs have come to one conclusion. The grounds on which they have done so may be summed up very shortly. The pursuer and the defender had ample opportunities of meeting. The defender's case is that he never was on familiar terms with the pursuer. I think the answer to this case depends upon the answer to the question, "Did the defender write the letter produced in process?" as it is a letter which could not have been written to any woman by a man who was not on familiar terms with her.

I have looked at the letter, and compared it with the specimen of the defender's handwriting taken in Court on the day of the trial, and I think no one, except for the purposes of pleading, would say that both documents were not written by the same person. The occurrence in both of similar characteristics is remarkable, such as the way in which the letters were formed, and I think it is palpably evident that the same person wrote both.

I hold, therefore, that the defender wrote this letter. But the letter indicates familiarity on his part in the plainest manner, and destroys his case. It also sufficiently corroborates the pursuer's case, and justifies the conclusion at which the Sheriffs have arrived.

LORD YOUNG—I am of the same opinion. As regards the evidence in cases of this nature I would like to make the following observations. I do not think that falsehood on the part of either party to the case is ever altogether unimportant; it may be of more or less importance according to circumstances. I do not think it would make out the pursuer's case that the defender admitted that he had once or twice or more frequently been convicted of perjury. The proof of any number of falsehoods on the part of the defender unconnected with the case would not support the case of the pursuer; it would only discredit the testimony of the defender. But where the falsehood is on matters connected with the case, it may be of great importance, and indeed may be conclusive, taken in connection with other evidence which would not have been sufficient without it. Thus it would not support the pursuer's case to have evidence that the defender had frequently called at her house and written to her letters which have nothing in them that would suggest the idea of familiarity. Such evidence would be no corroboration of her testimony. But if he denied having called or having written the letters or denied all knowledge of the defender; if he averred that the letters had been written by some-one else in imitation of his handwriting, and that he knew nothing of the woman, that falsehood would be conclusive in support of the pursuer's case, because it suggests the question "Why does the defender falsely deny having written to or called on or known the woman." It thus leads to the conclusion that the defender's connection with the pursuer was of such a character that he wanted to conceal it. It thus forms some corroboration of the pursuer's testimony, and if the pursuer's testimony is believed by the Court to be trustworthy, it may entitle the Court to find for the pursuer.

LORD RUTHERFURD CLARK—I think the Sheriffs have come to a right conclusion.

LORD TRAYNER—I think this is a very narrow case, and should have been prepared to hold that the pursuer had failed to prove her case had it not been for the letter written by the defender to her which she had produced. That letter, however, affords such corroboration of the pursuer's testimony as enables one to agree with your Lordship in holding that the pursuer has established her right to decree against the defender.

As Lord Young's remarks upon the evidence necessary in such cases as the present were occasioned by an observation made by me in the course of the debate, I wish to say, that in making that observation I was not alluding to anything his Lordship had said in previous cases. The observation had reference to an opinion expressed by one of the learned Judges who decided the case of *M'Bayne* v. *Davidson* (22 D. 740), to the effect that the defender's "false account of the matter" afforded corroboration to the pursuer's case. I have heard the same view expressed more recently. I dissent from that view entirely. If a defender in his evidence denies the pursuer's statement, that cannot, in any view of it, be regarded as a corroboration of the pursuer. For if the defender's denial is true, it is a contradiction of the pursuer; if it is false, or is believed to be false, it is not evidence to any effect—it is simply discarded as false. A false statement cannot afford any corroboration; it is not believed.

The Court adhered to the Sheriff's interlocutor.

Counsel for the Appellant—M'Lennan. Agent—Robert Broatch, L.A.

Counsel for the Respondent — Gunn. Agent—William Douglas, S.S.C.