Tuesday, June 5.

(Before the Lord Chancellor (Herschell), and Lords Watson, Halsbury, and Shand.)

PALMER *v.* WICK AND PULTENEY-TOWN STEAM SHIPPING COMPANY.

(*Ante*, vol. xxx. 343, 20 R. 275.)

Reparation—Contribution among Wrongdoers—Joint and Several Decree against Both—Action by Payer of Whole Damages for Contribution.

A widow and children raised an action against a shipping company for damages, on account of the death of her husband and their father, who was killed while unloading a steamer, by being hit on the head by the pulley of a crane, the hook of which had suddenly given way. The fault alleged was defective tackle. Thereafter a supplementary action was raised on the same grounds by the same parties against the stevedore, the fault alleged on his part being that he had handled the tackle in a defective manner. The actions were conjoined and went to trial. The jury returned a verdict for the pursuers, and the two defenders were decerned to make payment conjunctly and severally of the damages found due.

The pursuers in the conjoined actions having charged the Shipping Company for the whole sum, and received payment thereof from them, and granted in exchange a receipt and assignation of the sums so paid, together with the extract decree, and the stevedore having refused to pay his portion on the ground that he and the respondents being joint wrongdoers they had no claim of relief—*held* (*aff.* the decision of the First Division) that the stevedore was liable, the foundation of the company's claim resting on a decree which created a civil debt.

Merryweather v. *Nixan*, 8 T.R. 186, is not founded on any principle of equity and ought not to be extended.

This case is reported *ante*, vol. xxx. 343, 20 R. 275.

Palmer appealed.

At delivering judgment—

LORD CHANCELLOR (HERSCHELL) — The question raised in this case is a somewhat novel one. On the 17th of March 1892, in two conjoined actions in which Mrs Fowlis and others were pursuers, and the present appellant and respondents were the defenders, the Court of Session decerned and ordained the defenders jointly and severally to make payment of sums amounting to £600. On the 24th of May 1892 a similar decree was made as regards the sum of £239 4s. 1d., the pursuers' costs of the action. The pursuers, as they were entitled to do, sought payment of the entire sum of £839 4s. 1d. from the present respondents, who were by the decrees made severally as well as jointly liable. The respondents paid the entire amount, but took from the pursuers an assignation of the judgment, and of the moneys thereby secured. The respondents thereupon commenced an action to recover one-half of the amount so paid by them from the appellant. This action the appellant maintained was incompetent on the ground that there is no contribution between wrongdoers, that the judgment had been satisfied, and that the assignation of it to the respondents was ineffectual to confer on them any right to recover in this action.

The first of the two conjoined actions was instituted by Mrs Fowlis on behalf of herself and some of her children, and by others of her children, who were majors, against the respondents, to recover damages for the loss of her husband and the father of the children, whose death was alleged to have been due to the negligence of the defenders. His death was occasioned by the fall of a part of the tackle which was being used in the discharge of a vessel belonging to the defenders. They denied the negligence imputed to them, and alleged that if there had been any negligence it was that of the appellant, a stevedore employed to discharge the ship. The pursuers thereupon brought an action against him also, and the two actions were by order conjoined. The jury found negligence on the part of both the defenders. The decree of the 17th of March, to which allusion has already been made, was the decree applying this verdict. The decree of the 24th of May related to the costs.

My Lords, we have before us in the present action only the pleadings and verdict in the conjoined actions. It is at least consistent with these that the jury may have found their verdict of negligence against the shipping company, not on the ground of any personal default on the part of the company or its managers, but by reason of some negligence imputable to the master of the vessel. It is important to bear this in mind.

The learned counsel for the appellant did not contest the proposition that in general, where one of two co-obligants discharges the entire debt, he is entitled, unless there be some equity to the contrary, to call for an assignation of it, and to use such assignation for the purpose of enforcing payment of the share of his co-obligant. It is no answer to such an action to say that the whole of the debt has been discharged, and that there was therefore nothing to assign. There can be no doubt that the decrees of the 17th of March and 24th of May created joint and several debts. Why, then, should a co-debtor, who has paid the entire sum due, and received an assignation (it is unnecessary to inquire whether he could have demanded it), when he seeks to recover the share of his co-debtor, be subject more than other co-obligants to thé answer that, the entire debt having been discharged, nothing remains due on the judgment, and that it can therefore no

longer be proceeded on? The only answer, as it seems to me, must be that the joint debt resulted from a joint wrong, and that the law will not permit or assist any wrongdoer to recover contribution from another. It will be observed, however, that this is to allow the defender to set up his own wrong by way of answer, for the pursuer makes out a *prima facie* case by the production of the judgment and assignation. He has no need to rely on the joint wrong, or to go behind the judgment and assignation. On principle I can see no reason why, when a joint judgment debt has resulted from a joint wrong, each co-debtor should not pay his share; or why, if one be compelled by the creditor to pay the whole debt, the other should be enabled to go free by setting up his own wrong. Suppose a settlement were arrived at before the case was tried, and the wrongdoers gave a joint and several bond in discharge of the pursuer's claim, can it be doubted that, if one of them were forced to pay the whole he could recover from the other his share? Why should the case be different where the issue is a decree that they shall jointly and severally pay? The learned Judges in the Inner House, differing from the Lord Ordinary, have decided in favour of the pursuers in the present action. I am not disposed to dissent from their conclusion unless it can be clearly shown to be contrary to the established law of Scotland.

.There is certainly no express decision on the point. The appellant relied mainly on a *dictum* of Baron Hume. That learned Judge said—"It is all *unum negotium* in regard to those who are so far engaged in the wrong as to be liable for the consequences, and there is no principle here, as in the case of cautioners binding for the same debt, on which to imply any tacit agreement among them for mutual relief or division of the loss. Nor is the law at all inclined to distribute the damages out of tenderness to the delinquents." The observation that there was no right to mutual relief was not in any way necessary to the decision. It was a mere *dictum*. On the other hand, Lord Bankton and Lord Kames have both indicated views favouring the right to relief by a person bound *ex delicto* against his co-obligant.

It is not necessary in this appeal to decide whether there can be any right to contribution in the case of a delict proper when the liability has arisen from a conscious and therefore moral wrong, nor even whether in every case of quasi-delict a delinquent may obtain relief against his co-delinquent, though I see, as at present advised, no reason to differ from the opinion which I gather my noble and learned friend Lord Watson holds, that such a right may exist. In circumstances such as those with which your Lordships have to deal, I cannot but think that equity and justice are in favour of the conclusion arrived at by the Inner House, and there seems to be no authority compelling a contrary decision. It was urged that the person seeking relief might be the more culpable of the delinquents, but it is just as likely that he should be the less culpable. In selecting from which of his co-debtors he will obtain payment, the creditor will be guided usually by considerations wholly independent of the relative culpability of those from whom he may recover it.

Much reliance was placed by the learned counsel for the appellant upon the judgment in the English case of *Merryweather* v. *Nixan*, 8 T.R. 186. The reasons to be found in Lord Kenyon's judgment, so far as reported, are somewhat meagre, and the statement of the facts of the case is not less so. It is now too late to question that decision in this country, but when I am asked to hold it to be part of the law of Scotland, I am bound to say that it does not appear to me to be founded on any principle of justice or equity or even of public policy, which justifies its extension to the jurisprudence of other countries. There has certainly been a tendency to limit its application even in England. In the case of *Adamson* v. *Jarvis*, 4 Bing. 66, Best, C.J., in delivering the judgment of the Court, referred to the case of *Philips* v. *Biggs*, Hard. 164, which he said was never decided, "but the Court of Chancery seemed to consider the case of the two Sheriffs of Middlesex, where one had paid the damages in an action for an escape, and sued the other for contribution, as like the case of two joint obligors." He then proceeded as follows:—"From the inclination of the Court in this last case, and from the concluding part of Lord Kenyon's judgment in *Merryweather* v. *Nixan*, and from reason, justice, and sound policy, the rule that wrongdoers cannot have redress or contribution against each other is confined to cases where the person seeking redress must be presumed to have known that he was doing an unlawful act." If the view thus expressed by the Court of Common Pleas be correct (and I see no reason to dissent from it), the doctrine that one tortfeasor cannot recover from another is inapplicable to a case like that now under consideration.

For these reasons I move your Lordships that the interlocutor appealed from be affirmed, and the appeal dismissed with costs.

LORD WATSON—The respondent company are owners of the steamship "Fergus," which in April 1891 carried a cargo of pig-iron from Middlesborough to Grangemouth, where it was discharged by the appellant. In the course of that operation, David Fowlis, one of the workmen in his employment, was killed by the fall of a block, which formed part of the ship's tackle used in unloading.

The family of the deceased brought an action of damages against the company, in which, besides alleging that the ship's tackle was of slighter make than is usually employed in vessels built for carrying pig-iron, they attributed the fall of the block to the defects of an iron hook to which it was attached. They raised a second action of damages against the appellant, in which they repeated some of these averments,

and further alleged that it was the obvious duty of the appellant either to reject the tackle or to use it with great caution; and that, in breach of such duty, he recklessly subjected the tackle to severe and unnecessary strains, by putting loads upon it which would have been sufficiently heavy for tackle made for the express purpose of unloading pig-iron.

The cases were sent to trial together, when the jury found against each of the defenders that the fall of the block, and its fatal consequences, were due to their fault: and they assessed the total damage sustained by the pursuers at £600. There is certainly room for speculation as to the process of reasoning by which the jury arrived at that double result; but I can find nothing in their verdict, or in the record from which the issue was taken, which can be held to impute personal fault to the company or its directors, in this sense, that they knew of any flaw in the tackle of the "Fergus," or were affected by any other knowledge which could make them conscious wrongdoers.

The Court applied the verdict, by decerning against the parties to the present appeal, jointly and severally, for the full amount of the damages fixed by the jury, and found the pursuers entitled to expenses in both actions. These were subsequently taxed at £237, 19s. 9d., for which sum also the pursuers obtained a joint and several decree. They extracted both decrees, and gave a charge to the respondent company, who paid their demands in full, and took an assignation to the decrees. The appellant having declined to relieve them of any part of the sums thus paid by them, the company brought this action, in which they ask decree against him for a moiety of these sums. The Lord Ordinary (Wellwood) dismissed the action, on the ground that the company, being joint wrongdoers with the appellant, had no claim of relief. Their Lordships of the Second Division unanimously recalled his judgment, and gave the company decree as craved.

At the Bar of the House the appellant mainly relied on the proposition, which he endeavoured to establish by authority, that by the law of Scotland there can be no right of contribution among persons who are jointly responsible for the civil consequences of any delict or quasi-delict. Delicts proper embrace all breaches of the law which expose their perpetrator to criminal punishment. The term quasi-delict is generally applied to any violation of the common or statute law which does not infer criminal consequences, and does not consist in the breach of any contract, express or implied. Cases may and do often occur in which it is extremely difficult to draw the line between delicts and quasi-delicts. The latter class, as it has been developed in the course of the present century, covers a great variety of acts and omissions, ranging from deliberate breaches of the law, closely bordering upon crime, to breaches comparatively venial and involving no moral delinquency.

In considering the authorities which were cited on both sides of the Bar, as bearing more or less directly upon the present case, it is necessary to distinguish between these two points—(1) The right of the party injured to select any one or more of the co-delinquents, and to exact full reparation from him or them, without making the rest parties to the suit; and (2) the right, if any, of the co-delinquent who pays to recover a contribution from those persons who were under the same responsibility as himself.

In the case of delicts proper the first of these points has been established in the law of Scotland from a very early period. Before, and for a considerable time after Lord Stair wrote, the Court of Session was very familiar with claims of reparation for manslaughter, spulzie, and other grave delinquencies; whilst claims of damage in respect of breach of duty by persons in a position of trust and in respect of the negligence of servants, which in recent years have occupied so much of its time, were practically unknown. The result is that the early text-books refer almost exclusively to delicts proper. But the same rule of procedure has been extended to claims arising *ex quasi delicto*; and a recent instance of its application is to be found in *Croskery* v. *Hendrie and Others*, 17 Court Sess. Cas. 4th Series (Rettie), 697, a case to which I shall have occasion to refer hereafter. The enforcement of the rule in all cases falling within the wide category of quasi-delict has led to consequences which in my opinion are inconvenient, if not absurd. Thus, if a body of private trustees commit a wilful breach of directions given by the truster to the great detriment of the trust estate, all its members must be made parties to any suit for reparation, because they are held in that case to be liable *ex contractu*; whereas if the same body commit a comparatively venial breach of duty in violation of the general law regulating trust administration, any member may be sued for the whole loss resulting because he has been guilty of a quasi-delict.

The second point which is of crucial importance in this case has never been the subject of judicial decision, and the authorities which have any direct bearing upon it are somewhat conflicting.

Lord Bankton and Lord Kames both affirm in the widest terms that a right of relief *inter se* is competent to all persons concerned in and responsible for the civil consequences of the same delict, a rule which must apply *a fortiori* in the case of quasi-delicts. Lord Bankton, after referring to the rule that each co-delinquent is liable, and may be separately sued for the whole, goes on to say (i. 10, 4)—"Yet payment and reparation by one liberates the rest, and in equity he ought to have relief against them proportionably since by his money they are freed from the obligation." In his treatise upon the Principles of Equity Lord Kames adopts the same doctrine. He discusses (edit. 1800, p. 89) the principle of mutual relief between co-cautioners, and

points out that the same principles are equally applicable to *correi debendi*, adding —"and it makes no difference whether the *correi debendi* be bound for a civil debt, or be bound *ex delicto*, for in both cases equally it is the duty of the creditor to act impartially, and in both cases equally equity requires impartiality."

Baron Hume, in commenting upon *Smith* v. *O'Reilly and Others*, February 13, 1800, Hume's Dec. 605, expresses a different view. That case raised no question of relief. A band of young men acting in concert had broken a number of street lamps. They were brought before the Sheriff upon a complaint by the contractor to whom the lamps belonged, with concurrence of the fiscal, and were found jointly and severally liable in a fine of £5 payable to the fiscal, and in £30 of compensation to the private prosecutor. In so far as it related to the fine the Sheriff's decree was plainly erroneous, because conjunct and several liability is unknown to the criminal law. The cause was carried by the accused to the Court of Session, where a fine of £1, 5s. each was substituted for the penalty awarded by the Sheriff, and the compensation reduced to £20. No objection was taken except to the *quantum* of the decree for damages. In the course of his remarks the learned Baron said—"It is all *unum negotium* in regard to those who are so far engaged in the wrong as to be liable for the consequences, and there is no principle here, as in the case of cautioners binding for the same debt, on which to imply any tacit agreement among them for mutual relief or division of the loss. Nor is the law at all inclined to distribute the damages out of tenderness to the delinquents. On the contrary, what the law mainly considers on such occasions is the convenience of the injured party, that he may recover his damages as speedily and certainly, and with as little trouble and expense as may be." It is possible that the observations of the learned Baron were directed to the form of the decree which the judge ought to give to the party injured, when, as in that case, all the delinquents are sued for reparation. If he obtains a joint and several decree against them all it can in nowise obstruct his convenience in recovering that the delinquent who pays him should have relief from the rest.

I do not think it necessary to cite in detail the passages in Lord Stair's Institutions (i. 9, 5), which were relied on by both parties. They deal with the question whether one co-delinquent can be sued for the whole, which his Lordship states to be not clear in equity though settled by positive law, and such expressions as might be held to refer to the right of relief are in my opinion susceptible of different constructions. It is, however, material to note that Lord Stair expressly limits the operation of the rule to those persons who have either taken an active share in committing the delict, or who knowingly sanctioned its commission. Mr Erskine (iii. 1, 15), after stating the rule of procedure, says—"As soon as the damage is repaired or made up to the party hurt by any of them, the obligation is extinguished as to the rest, for an obligation founded upon damage cannot possibly continue after the damage ceaseth to exist." That is certainly true in so far as the injured party is concerned. His claim is "founded upon damage;" the claim of relief rests, not upon any injury sustained by the claimant, but upon the fact, as Lord Bankton puts it, that by the use of his money the rest have been freed from their obligation — a circumstance which in ordinary cases is sufficient according to the law of Scotland to raise a right of relief.

Nor do I consider it necessary to refer in detail to the observations made by the late Lord President (then Lord Justice-Clerk) in *Liquidators of Western Bank* v. *Douglas and Others*, 22 Court Sess. Cas. (2nd Series), pp. 475, *et seq*. That was an action against directors based on gross and wilful malversation and on gross habitual and total neglect of duty, in which all were participant, and, alternatively, on fraudulent concealment or fraudulent misrepresentation or gross negligence in which all of them were implicated. Some of these allegations if proved would have amounted to delict. The defenders pleaded that the action could not proceed until an official of the bank, who appeared on the face of the record to be a co-delinquent, was called as a party. The Court rejected the plea upon the ground that the action was founded upon delict or quasi-delict. The observations of the Lord President, upon which the appellant relied, do not appear to me to carry the doctrine beyond that limit; and it is necessary to notice in connection with them the views expressed by the learned Judge at a subsequent stage of the same case, in *Liquidators of Western Bank* v. *Bairds*, 24 Court Sess. Cas. (2nd Series) (Dunlop), pp. 911, 912. His Lordship said—"In an ordinary action brought against trustees or managers, or mandatories acting under authority from others, where liability is sought to be enforced simply on the ground of gross neglect or omission, it may be fairly questioned whether all the parties implicated ought not to be called, so that, although liable, it may be conjunctly and severally, they may yet *inter se* be entitled to relief. The effect of gross neglect may be to deprive trustees of the protection expressly conferred by the trust-deed, or, as in this case, by contract, against liability for omission or for each other. But it does not follow that their liability on that ground, although each may be subjected in *solidum* for loss caused by the gross neglect of all, is of such a nature as to deprive the trustee who is made liable of his relief against co-trustees equally culpable with himself." These remarks appear to me to indicate that in the opinion of the learned Judge the rule of procedure applicable to delicts had in the case of some quasi-delicts been carried beyond equitable limits, and also that the nature of a quasi-delict may be such that one co-delinquent, upon whom liability has been

fixed, may have relief against the rest.

An opinion to the same effect was expressed by my noble and learned friend Lord Shand in the subsequent case of *Croskery* v. *Hendrie and Others*, 17 Court Sess. Cas. (4th Series) Rettie, 697, already referred to. The action was one of damages against trustees, and was held by the Court to be founded, not upon contract, but upon quasi-delict. In repelling the plea that all the co-delinquents had not been called as defenders Lord Shand said——"If I thought that by so holding we were prejudicing the question whether, when one of the trustees has been found liable for a breach of trust duty, and there has been no fraud, he could claim a contribution from those who have not been called, but who were also parties to the acts of negligence or violation of duty which created the liability to the beneficiaries, it might have been different. But when a pursuer has reasons for selecting one defender rather than another, there can be no prejudice suffered, as amongst the trustees themselves, in the subsequent question whether those who have not been called, but who were, it may be, equally to blame, must bear a share of the loss to the estate."

From these authorities, which are to some extent conflicting, and in other respects are not so definite as one could wish, I think the following conclusions may be derived. They are at variance in so far as they directly relate to the existence or non-existence of a right of relief among those persons who have incurred civil liability by acting together in the perpetration of an offence against the criminal law. But it does not appear to me that the *dicta* of those writers who negative the existence of such a right can be held to contemplate every case of quasi-delict, whatever be its nature. They *prima facie* refer to proper delicts, and might *ex paritate rationis* be extended to every quasi-delict which, according to the phraseology of Scotch law, *sapit naturam delicti;* but they cannot, in my opinion, be fairly read as referring to quasi-delicts which involve no moral offence on the part of the delinquent. The opinions expressed by Lord President Inglis, and more recently by Lord Shand, point strongly to that interpretation. These opinions refer, no doubt, to persons who, in their trust capacity, have been guilty of acts or omissions injurious to the estate under their charge, and amounting to quasi-delict; but it is obvious that the exception which they suggest cannot be founded on the circumstance that the co-delinquents were trustees, but must rest on the principle that a right of relief exists, and is available to a co-delinquent whose acts or omissions are not tainted with fraud or other moral delinquency.

I do not find it necessary for the purposes of this appeal to determine whether and how far the doctrine of Bankton and Kames or that laid down by Baron Hume ought to be accepted. I have already indicated my opinion that the circumstances of this case bring the respondent company within the scope of the principle just stated, which I do not hesitate to affirm upon its own merits whether it be regarded as an exception from the general rule or not. There is weighty and recent authority in its favour, there is no tangible authority against it, and it appears to me to be founded on substantial considerations of equity.

Owing to the novelty of the questions which it involves I have been led to discuss this branch of the case with, it may be, unnecessary detail. But I desire also to rest my decision upon another and in some respects a broader ground which is very shortly and forcibly stated in the judgment of Lord Rutherfurd Clark. This is not an action brought by one delinquent against whom decree has passed in order to obtain contribution from his co-delinquent who has not been sued. The respondent company do not require to allege and prove either delict or quasi-delict as the foundation of their claim, which rests upon a decree constituting a civil debt against the appellant as well as against themselves. There might be some principle in a court of law refusing to permit a suitor to aver and prove his own crime or moral delinquency as the medium for recovering from one whom he alleges to have been a co-delinquent. But the case is very different where the injured party's claim of damage is liquidated by a joint and several decree against all the delinquents. In that case—which is the present case—the sum decreed is simply a civil debt and the meaning which the law attaches to a decree constituting a debt in these terms is, that each debtor under the decree is liable in *solidum* to the pursuer, and that *inter se* each is liable only *pro rata*, or in other words, for an equal share with the rest. In this case it is the appellant who seeks to escape from the natural import of the decree by going behind it in order to establish his own co-delinquency.

It was urged for the appellant that seeing it is impossible to determine the exact proportion of the total damage attributable to the fault of each debtor, the whole loss must fall upon the debtor against whom the creditor chooses to enforce the decree, otherwise contributors might have to pay in excess of their real share. I cannot appreciate the force of that reasoning. The creditor is not bound to recover the whole from one; he may take it from all in what proportions he chooses; but that right of selection is not given to him in order that he may assess the damage due by each, but for his own convenience and in order that he may get in his money with the least possible trouble. And I fail to see how any inequality in contribution, such as the appellant suggested, could be redressed by the adoption of a rule which would practically leave it to the creditor to determine whether his damages should be borne by one or more or all of the debtors, and if by all in what proportions. The result of the rule in many cases would be that the whole loss

would fall upon the debtor who had the least share in causing the injury.

I have not hitherto noticed the English case of *Merryweather* v. *Nixan*, 8 T.R. 186. Assuming it to be an authority establishing the general rule for which the appellant contends—a proposition which seems to admit of doubt—I can only regard it as a positive rule of the common law of England, which is inconsistent with and ought not to override the law and practice of Scotland. The merits of the rule are not, in my opinion, such as to commend it to universal acceptation.

For these reasons I am of opinion that the interlocutor appealed from is right, and ought to be affirmed with costs.

LORD HALSBURY—I concur with the proposition that the case of *Merryweather* v. *Nixan*, 8 T.R. 186, has been so long and so universally acknowledged as part of the English law that even if one's own judgment did not concur with its principle it would be now too late to question its applicability to all cases in England governed by the principle therein enunciated; but I am not prepared to differ from the views entertained by the Lord Chancellor and my noble and learned friend Lord Watson when dealing with the jurisprudence of Scotland.

The difficulty which has arisen is, I think, one of words. The word "tort" in English law is not always used with strict logical precision. The same act may sometimes be treated as a breach of contract and sometimes as a tort. But "tort" in its strictest meaning, as it seems to me, ought to exclude the right of contribution which would imply a presumed contract to subscribe towards the commission of a wrong. It seems to me, therefore, that the distinction between classes of torts or quasi-delicts and delicts proper is reasonable and just, though I doubt whether in dealing with an English case one would be at liberty to adopt such a distinction. It becomes unnecessary to consider the form of the suit, but I think that in England the transmutation of the cause of action into a judgment would not prevent the application of the principle of *Merryweather* v. *Nixan*, 8 T.R. 186.

LORD SHAND—I also am of opinion that the appeal in this case should be dismissed, and having had an opportunity of reading and considering the opinions which have just been delivered by the Lord Chancellor and my noble and learned friend opposite, Lord Watson, I have nothing to add to the reasons which have been given by him.

The House affirmed the decision of the First Division, and dismissed the appeal with costs.

Counsel for the Appellant—Sir R. Webster, Q.C.—T. Shaw. Agents—Parker & Ponsford, for Macpherson & Mackay, W.S.

Counsel for Respondents—Sol.-Gen. for Scotland (Asher, Q.C.)—Salvesen—T. F. Dawson Miller. Agents—Thomas Cooper & Company, for Boyd, Jameson, & Kelly, W.S.

Tuesday, June 5.

(Before the Lord Chancellor (Herschell) and Lords Watson, Ashbourne, Macnaghten, Morris, and Shand.)

STEVENSON *v.* STEVENSON.

(*Ante*, vol. xxxi. p. 350.)

Parent and Child—Custody of Children—Husband and Wife—Guardianship of Infants Act 1886 (49 *and* 50 *Vict. cap.* 27), *sec.* 5.

This case is reported *ante*, vol. xxxi. p. 350.

Mr Stevenson appealed.

The House, on the undertaking of the appellant to abandon the proceedings in England and to commence without delay an action for judicial separation in Scotland, and to proceed therein with due diligence, recalled the interlocutor appealed against, and remitted the cause to the Court of Session to sist the proceedings appealed against *in hoc statu* pending the decision of the wife's action; the wife to have the interim custody of the children; the husband to have reasonable access.

Counsel for the Appellant — The Lord Advocate (J. B. Balfour, Q.C.) — Levett, Q.C. Agents—Bower, Cotton, & Bower, for J. Murray Lawson, S.S.C.

Counsel for the Respondent — Graham Murray, Q.C.—H. Tindal Atkinson. Agents—Murray, Hutchins, & Company, for Maconochie & Hare, W.S.

Monday, June 11.

(Before the Lord Chancellor (Herschell) and Lords Watson, Morris, and Russell.)

INSTITUTE OF PATENT AGENTS *v.* LOCKWOOD.

(*Ante*, vol. xxx. p. 375, and 20 R. 315.)

Patents, Designs, and Trade-Marks Acts of 1883 (46 *and* 47 *Vict. cap.* 57), *sec.* 101, *and of* 1888 (51 *and* 52 *Vict. cap.* 50), *sec.* 1 *—Board of Trade—Power to Make Rules—Rules Laid before Parliament and not Objected to, Held ultra vires.*

By section 1 of the Patents, Designs, and Trade-Marks Act 1888, amending the Patents, Designs, and Trade-Marks Act 1883, it was enacted (1) that after 1st July 1889 no person should describe himself as a patent agent unless registered as such in pursuance of the Act; (2) that the Board of Trade should from time to time "make such general rules as are in the opinion of the Board required for giving effect to this section," and the provisions of section 101 of the principal Act should apply to all rules so made; (3) "provided that every person who proves, to the satisfaction of the Board of Trade, that prior to the passing of this Act he had been *bona*