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*