commissioners' consent is necessary to the affixing of any "projecting" signboard. But any signboard affixed to a wall or building must of necessity be a projection from the wall to the extent of its thickness, and if "projection" is here to be read in this, its strictest interpretation, the clause is self-contradictory, for in that case it provides that a thing may be done with consent of the owner, and then provides that it shall not be done except with the consent of the commissioners. It might have been provided, no doubt, that the consent of the commissioners as well as the consent of the owner should be necessary, but the structure of this clause excludes that idea. The clause plainly means that in the one case the consent of the owner shall be sufficient, while in the other case the consent of the commissioners shall be required. To bring the two parts of this clause into harmony, it is necessary, therefore, to give the word "projecting" a meaning other than the very strict one which I have already noticed, and such a meaning is, I think, afforded by the Act itself, where in section 159 it qualifies the term "projection" by the words, "which is an obstruction to the safe and convenient passage along any street." If that qualification is added to the clause said to have been contravened, all difficulty in its construction disappears. It would then read that any signboard, &c., might be affixed to a wall or building whose owner consented, but where such signboard, &c., affected the safe and convenient passage along the street, the commissioners' consent was necessary. This appears to have been the construction put upon a somewhat similar clause in another statute, in the case of *Goldstraw* cited by the appellant's counsel. To read the clause in this way leaves to the commissioners the fullest power of protecting what is the only or at all events the chief interest they are concerned to protect, namely, the safe and convenient passage of inhabitants and others along the thoroughfares of the burgh.

If this view of the clause under consideration is correct, then the appellant should not have been convicted. The board affixed by him to Mr Sinclair's wall with Mr Sinclair's consent, which gave rise to the complaint, was not, and from its description could not be any obstruction to safe and convenient passage along the street. And, indeed, the respondent does not say it was.

I think the same result which I have reached on my construction of the clause libelled may be obtained from a consideration of section 159 of the statute to which I have already referred. By that section it is provided that the burgh commissioners may require the owner of any house or building to remove, *inter alia*, any sign, signpost, showboard, or any other projection erected or placed in front of the house or building "which is an obstruction to the safe and convenient passage along the street." This implies the owner's right to erect or place any such projection in front of his building which will not obstruct the safe and convenient passage along the street. The showboard or advertising board in question, as I have already pointed out, was of that character. Mr Sinclair, the owner of the wall or building on which the advertisement board in question was placed, could therefore have placed that board there without any consent from the commissioners, and without their having any right to complain of it, or to require its removal. But what Mr Sinclair as owner could legally do, he could authorise his tenant, or any other to whom he communicated his right, to do; that is the state of matters here. The appellant was Mr Sinclair's tenant, and *quoad* the use of the subject let exercised his landlord's right, from which it follows that the commissioners have no right to complain, or to require the removal of the board in question. On these grounds I am of opinion that we should answer the second question put to us in the negative.

LORD RUTHERFURD CLARK—I agree, and will only say that I have had considerable doubt.

The LORD JUSTICE-CLERK concurred.

The Court answered the second question in the negative.

Counsel for the Appellant — Graham Stewart. Agents—R. R. Simpson & Lawson, W.S.

Counsel for the Respondent—Younger. Agents—Sturrock & Sturrock, W.S.

COURT OF SESSION.

Saturday, February 23.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

A *v.* B

Reparation—Rape—Averments as to Defender's Indecent Conduct with other Women — Relevancy — Deletion — Proof — Cross-Examination.

The pursuer sued for damages on the ground that on two specified occasions the defender had ravished her.

Held that averments made by the pursuer to the effect that the defender was a man of brutal and licentious habits, and that on two specified occasions he had attempted to ravish other women, should be deleted from the record as irrelevant—*Whyte* v. *Whyte*, March 15, 1884, 11 R. 710, *distinguished*.

Observed that while the averments were irrelevant to the issues raised on record, and could not therefore be proved, it might be competent to cross-examine the defender on them for the purpose of testing his credibility on matters relating to character.

A raised an action of damages in the

Sheriff Court of Aberdeen against B, averring that on two occasions specified, "notwithstanding her utmost endeavours to resist and escape from him, the defender succeeded in having carnal knowledge of her person forcibly and against her will." The pursuer further averred (Cond. 2) "The defender is a man of brutal and licentious disposition, and for a number of years past he has sought systematically to gratify his lust by ravishing girls and young women;" and in Cond. 5 and 6, that the defender had, "in accordance with his system," on two specified occasions in the years 1887 and 1893, attempted to ravish two other women.

The defender pleaded that the pursuer's averments contained in articles 2, 5, and 6 of the condescendence were irrelevant, and should be expunged from the record.

On 5th December 1894 the Sheriff-Substitute (DUNCAN ROBERTSON) allowed both parties a proof of their averments.

On 12th December 1894 the Sheriff (GUTHRIE SMITH) recalled the interlocutor of the Sheriff-Substitute, "in so far as it allows a proof of the pursuer's averments in the second paragraph of article 2, and in articles 5 and 6 of her condescendence, which averments are hereby held as deleted from the record.

"*Note.*—I think the articles proposed to be proved are clearly irrelevant to the issue raised on this record, which is, whether the defender committed a criminal assault on the pursuer on the day and at the place libelled. The rule on the subject is stated in Mr Justice Stephen's Law of Evidence, art. 10.

"If the pursuer is able by proper evidence to establish the charge which she prefers against the defender, she does not require any assistance from the inquiry which she seeks, and if the available evidence is insufficient she is not entitled to it. The case of *Whyte* v. *Whyte*, does not appear to me to be applicable, or to derogate from the rule as laid down by Mr Justice Stephen."

The pursuer appealed to the First Division for jury trial.

The issues proposed by her were, whether on the two occasions specified in the record the defender had ravished her?

Argued for the appellant—If it could be proved that the defender was in the habit of assaulting women, that would be corroboration of the pursuer's averment that he had assaulted her. The averments ought therefore to be admitted as evidence. In the case of *Whyte* v. *Whyte*, March 15, 1884, 11 R. 710, evidence of the defender's indecent conduct with women other than the alleged paramour was held competent in corroboration of a charge of adultery. Following that analogy proof of the defender's conduct with other women was relevant evidence here. If he were allowed to rebut the pursuer's charges by producing proofs of her immoral conduct with other men—as he would be allowed if he could do so—it was only fair that she should be allowed to prove these averments.

Argued for the respondent—The case of *Whyte* v. *Whyte* was not analogous to this, for (1) the defender there set up his character as a clergyman as one of his defences, and it was therefore legitimate for the pursuer to impugn it; (2) in a case of divorce all incidents instructing a breach of duty on the part of one of the spouses might be legitimately proved, as, being of the same nature, they would form a cumulative case, but that principle was limited to divorce cases, and even in them to evidence touching the spouses themselves exclusively—*King* v. *King*, February 2, 1842, 4 D. 590; Stephen's Law of Evidence, art. 11; Lord Stowell's opinion in the case *Forster* v. *Forster*, December 6, 1790, 1 Hogg, C.R. 144, if it extended to any but divorce cases, went further than the law at present would go—*Tolman* v. *Johnstone*, 1860, 2 Foster & Finlason, 66; Taylor on Evidence, i. 329; Phillips & Arnold on Evidence, i. 510.

At advising—

LORD PRESIDENT — I agree with the Sheriff. I think the Sheriff rightly describes the averments, a proof of which he has disallowed, as irrelevant to the issues raised upon record.

The issues to be tried between the parties are whether, on two specified days of June 1894, the defender ravished the pursuer. What the pursuer wishes to prove under the articles in question is substantially whether in July 1893 the defender attempted to ravish another woman, and whether in April 1889 he attempted to ravish yet another woman. Article 2 is merely a general averment of system founded upon those two instances.

Now, it is quite plain that if these articles went to proof, the two collateral issues about the two other women would have to be tried out on the same scale as the main issues themselves; and this would be done, not because either of the other women claims it, but merely in order to lend some probability to this pursuer's case.

I cannot but feel that good sense is against such a proceeding, and I am satisfied that the law does not allow it.

In pronouncing any averment to be irrelevant to the issue, it is not implied that the matter averred has no bearing at all on the question in hand. For example, if the defender admitted at the trial that he had attempted to ravish those two other women, I think the jury might legitimately hold that this made it the more likely that he ravished the pursuer. But, then, courts of law are not bound to admit the ascertainment of every disputed fact which may contribute, however slightly or indirectly, towards the solution of the issue to be tried. Regard must be had to the limitations which time and human liability to confusion impose upon the conduct of all trials. Experience shows that it is better to sacrifice the aid which might be got from the more or less uncertain solution of collateral issues, than to spend a great amount of time and confuse the jury with what in the end, even supposing it to be certain, has only an indirect bearing on the matter in hand.

The present case seems to me to be clearly one for the application of these principles. We were referred to the case of *Whyte* v. *Whyte*, and to the decision of Lord Stowell which was there followed. Those were divorce cases; and some of what is said by Lord Stowell seems to rest on grounds peculiar to cases of matrimonial injuries. If, and in so far as, Lord Stowell's ruling had a wider application, I can only say that it does not appear to represent the present state of English practice, for the case of *Tolman* v. *Johnstone*, decided in 1860, 2 F. & F. 66, seems to be a case directly in point, and if followed would exclude the evidence now sought to be adduced.

I am for adhering to the interlocutor of the Sheriff. It may be right to add that, while the three articles are struck out of the record, this does not preclude the defender from being cross-examined about those two matters, for his credibility may be tested on matters going to character, although not relevant to the issues. Whatever his answer may be, however, it will not be competent for the pursuer to lead evidence on the subject.

LORD M'LAREN—I am of the same opinion. If we were to hold that the statements as to indecent assaults on other women were relevant topics of proof, it would necessarily follow that in an action of fraud it would be legitimate to allow the pursuer to prove that the defender had defrauded other persons under equivalent circumstances. So in an action of damages for negligence, it would be competent for the pursuer to prove neglect of duty by the defender under similar circumstances but affecting entirely different persons and interests. The proposal therefore involves a wide extension of the limits of investigation in actions of damages. It may also be observed that in this particular case the interests of third parties are affected by the proposed inquiry. Supposing the statements in question to be true, the publicity proposed to be given to them, and the examination of the women alleged to be assaulted, would be a cruel aggravation of the wrong already suffered, without any corresponding benefit to the pursuer's case, because, after all, the facts could only prove that it was probable that the defender committed the wrong alleged to have been done to this pursuer.

LORD ADAM and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"Adhere to the interlocutor of the Sheriff dated 12th December 1894, in so far as it finds that the averments in the second paragraph of article 2 and in articles 5 and 6 of the condescendence for the pursuer are to be held as deleted from the record as irrelevant, and are not allowed to be remitted to probation: Approve of the said issues as adjusted and settled, and appoint the same to be the issues for the trial of the cause: Find the defender entitled to the expenses of the discussion upon the relevancy,' &c.

Counsel for the Pursuer—W. Thompson. Agents—Douglas & Miller, W.S.

Counsel for the Defender—Glegg. Agents—Macpherson & Mackay, W.S.

Tuesday, February 26.

FIRST DIVISION.

[Lord Low, Ordinary.

STEWART *v.* GREIG AND OTHERS.

Heritable and Moveable—Succession—Conversion—Division and Sale.

J, the owner of a *pro indiviso* share of heritable subjects in Scotland, went to America, where he disappeared in 1873. In 1876 an action for division and sale of the common property was raised by one of the co-proprietors, in which a factor *loco absentis*, who was appointed to J, appeared on his behalf. The property was ultimately sold by the direction of the Court, and J's share of the proceeds handed over to the factor *loco absentis*. A petition was subsequently presented under the Presumption of Life Limitation Act 1891, in which it was found that J. must be presumed to have died in 1880.

In a competition between J's heir-at-law and heirs *in mobilibus*, *held* (*aff.* judgment of Lord Low) that the effect of the sale was to convert J's *pro indiviso* right of property into a right to a sum of money, which on his death fell to his heirs *in mobilibus*.

John Macfarlane was the owner of one-sixth part *pro indiviso* of heritable subjects in Bridgeton and Gallowgate, and of one-seventh part *pro indiviso* of heritable subjects in Robertson Street and Commerce Street, Glasgow. In 1871 he went to America, and was not heard of again after 7th April 1873. He was never married, and in a petition presented in 1873 under the Presumption of Life Limitation Act 1891 it was found that "Macfarlane shall be presumed to have died on 7th April 1880."

In 1876 an action for division and sale of the common property in which John Macfarlane was interested was raised by John Hay Clarke, one of the co-proprietors.

Alexander Stewart, accountant, Glasgow, was thereafter appointed factor *loco absentis* to John Macfarlane, and he appeared in the action of sale and division. In 1877 the properties were sold by order of the Court, and the proceeds divided among the joint-proprietors, the amount due to the factor *loco absentis* being fixed at £2292, 8s. 3d.

Before John Macfarlane left the country he had authorised Alexander Stewart, who was then managing the properties, to pay over his share of the rents to his mother Mrs Macfarlane.

Alexander Stewart accordingly after the