out of the question. They are expenses connected with the trial in which the verdict was bad and had to be set aside, and the party is not allowed the expenses of that trial; and my own opinion, apart from authority, would be that he is not entitled to the expenses incurred when that abortive trial was set aside. But I hold that this view is strongly confirmed by the case quoted to us of the *Earl of Fife* v. *Duff*.

LORD LOW—I have great doubts in this case, but I think it seems to have been decided in the *Earl of Fife* v. *Duff* that the expenses of discussing a rule for a new trial are part of the expenses of the trial to which it relates. That being so, I do not think it would be expedient to disturb a decision upon a question of this sort pronounced so long ago. Therefore I agree in the result which your Lordship proposes.

LORD ARDWALL—I have no doubt about this matter. I am of opinion that the expenses connected with the setting aside of the verdict in the first trial which have been allowed to the pursuer by the Auditor were really part of the expenses of the first trial. The proceedings in connection with the first trial never came to anything; the verdict was set aside and a new trial was granted. When the Court finds a party entitled or not entitled to certain expenses, that is not necessarily confined to the expenses of the specific piece of procedure mentioned in the finding, but includes expenses properly connected with such piece of procedure. When the Court says a party is to be entitled to the expenses of the first trial, or is not to be entitled to the expenses of the first trial, these expenses consist not merely of the expenses of the proceedings before the Judge at the trial, but of everything properly connected with the first trial, including the expenses of the discussion in this Court in obtaining a new trial. That view is entirely in consonance with what was decided in the case of the *Earl of Fife*, 5 S. 524, which has been quoted to us. That was a very clear case of this point coming up for decision, because there were in that case two jury trials which, in consequence of the judgment of the House of Lords, were held to be absolutely useless, and one of the parties got expenses of these trials but no other expenses. Therefore it is a direct decision as to what falls and what does not fall within the expenses of a particular jury trial. On these grounds I am clearly of opinion that the judgment proposed by your Lordships is the right one.

LORD STORMONTH DARLING was not present.

The Court sustained the objection.

Counsel for the Pursuer—Orr, K.C.—Lippe. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defenders (Objectors)—Scott Dickson, K.C. — Grierson. Agent—James Watson, S.S.C.

Wednesday, January 15.

SECOND DIVISION.

[Sheriff Court at Selkirk.

HAVERY *v.* BROWNLEE.

Parent and Child—Affiliation—Presumption of Paternity—Admission of Intercourse by Defender at Dates Subsequent to Date of Conception—Corroboration.

In actions of affiliation in which the defender admits an act or acts of connection other than the alleged act or acts founded on by the pursuer, but little corroboration of the pursuer's evidence will be required if the act or acts admitted are prior in date to the act or acts founded on. Where, however, the act or acts admitted are subsequent to the date of the alleged act or acts founded on, the corroboration must be substantial.

Mary Wilhelmina Havery, dressmaker, Galashiels, brought, in the Sheriff Court at Selkirk, an action of affiliation and aliment against Robert Brownlee, dyer, Galashiels.

A proof was taken by the Sheriff-Substitute (SMITH).

The pursuer deponed that she had known the defender for a number of years; that she and her sister had the privilege of drying their washing in the defender's father's stove-house and that the defender often helped them; that upon an evening in the middle of March 1906 the defender was alone with her in the stove-house and that he there had connection with her against her will, as a result of which she gave birth to an illegitimate child on 29th December 1906. She further deponed that the defender had connection with her on other two occasions when they were out cycling in April and in July.

The defender denied that he had connection with the pursuer in March, but admitted the two acts in April and July.

There was no evidence directly corroborative of the stove-house incident; there was evidence that the defender sometimes went to the stove-house with the pursuer and her sister, but none that he had been there alone with her on the occasion in question.

The pursuer's sister deponed that in September the pursuer told her of her condition and that she had had connection with the defender in the stove-house about the middle of March.

There was evidence from various members of the pursuer's and defender's families which showed that the pursuer had at first been willing to marry her when he became aware of her condition, but had subsequently declined, apparently when it had become evident that she was further advanced in pregnancy than he had at first supposed.

The defender averred upon record that the pursuer had repeatedly had connection with another man in March, April, and

May, but at the proof he entirely failed to substantiate the charge.

On 29th April 1907 the Sheriff-Substitute gave judgment in favour of the pursuer.

Note.—"The defender admits connection about two months subsequent to what would be presumably the date of conception. With such an admission proof of opportunity at a time which would account for paternity has been generally regarded as sufficient corroboration of the woman's evidence that connection actually took place. The nature of the opportunity and the whole circumstances must of course be taken into account. In this case these, in my opinion, are such as to establish the pursuer's case.

"I see no reason to doubt the evidence of the pursuer's sister, who impressed me as being a reliable witness. Her evidence is quite enough, along with the unchallenged facts, to show opportunity of a special kind. The exact day when the pursuer and defender were alone in the stove-house is not fixed, but I think it established that it was not earlier than the beginning of March, and most probably nearer the end than the beginning. If connection took place in March at all it would be sufficiently within the time recognised by our Courts as the possible period of gestation. The testimony of the Haverys that they dried their clothes in the stove-house until April is not really contradicted by anyone but the defender. The Brownlees speak merely from hearsay and from their own actings. The witness Seton, who undertook that duty for them, apparently knew nothing about the Haverys using the place at all. It would not readily occur to one that the weather would change so decidedly in March as to put it out of the question that reasonable people would continue to prefer to dry their clothes in the stove-house rather than in the open air. The Brownlees might quite well elect to make a change while other people might not.

"There is no substance in the suggestion that the stove-house was a place where connection would have been impossible or even improbable. It might indeed have been an awkward place in which to commit a rape, but there is nothing said by the pursuer to indicate that her resistance was of a determined character.

"The defender's account of his relations with the pursuer is not a convincing one. He was clearly on very friendly terms with the pursuer, helping her and her sister regularly with their weekly washing, yet, according to him, from the end of February to the 26th of May he never spoke to her except possibly in the most casual way until the day he had connection with her.

"There is no attempt to account for this renewal of friendship, and no circumstances adduced to explain how she was led to yield herself up to him so suddenly. But the case against the defender does not stop there. His conduct after the pursuer told him of her condition is not reasonably explicable except in the view that he then accepted responsibility. He would have it believed that from the first he only accepted at most a conditional responsibility. He even goes the length of saying that he repudiated it altogether when first charged with it by the pursuer. Although he knew he had had connection with her four months previously, he says he told her he could not be the father. That must have meant that he then believed she was too far gone in pregnancy for the connection of 26th May to account for her condition. He indeed says that was his belief, and although the pursuer told him she had been going with no other man who could have been the father, he was so satisfied that his belief was well founded that he urged her to see a doctor for the purpose of ascertaining how far gone she was. Why he should expect her to help to prove her own statements false it is not easy to imagine, but the most extraordinary thing is that notwithstanding his suspicions, and his anxiety to have them confirmed, he never mentioned them even to his own parents when he was tackled about the paternity. He says himself he has no doubt he led his father to believe he was the father of the child. This appears to me to be quite incredible. His whole conduct up to the day he returned from his visit to Eskbank is incompatible with the idea that he had any such doubts as he now says he had. His evidence strikes me as being just an attempt to make statements of what occurred at the time which will square with his present defence. I think he has only succeeded in showing that his testimony is not worthy of credence. The pursuer's story, on the other hand, appears to me to be quite credible and consistent all through.

"Regarding the interviews between the Haverys and the Brownlees when the pursuer's condition was made known to them, I do not think it necessary to say much. Allowing for such minor discrepancies as to the terms of conversations as are not unusual between perfectly honest witnesses, I do not find any material conflict, and, taking it in the most favourable light for the defender, it does not help him.

"The attempt to prove familiarities between Wintrup and the pursuer has admittedly completely failed."

The defender appealed, and argued that there was no corroboration of the March incident.

The pursuer argued that there was corroboration, but that proof of opportunity at the date of conception was sufficient, in view of the defender's admission of acts of connection in April and July, founding strongly on *M'Donald* v. *Glass*, October 27, 1883, 11 R. 57, 21 S.L.R. 45.

LORD JUSTICE-CLERK—These cases are very trying, I must say, but I cannot see that in deciding them we are entitled to go contrary to the rules of evidence under which it is necessary that the pursuer should have some reasonable and substantial corroboration of her evidence before she can be successful. No doubt, in many

of these cases the defender in his conscience must know that a decision in his favour would be a wrong decision. With that we have nothing to do. Our business is to do justice by applying the rules of evidence to the evidence before us. In this particular case I look in vain for any reasonable and substantial corroboration of the evidence of the pursuer. It is true that the defender admits that he had connection with the pursuer about two months after the date on which she founds. That is a kind of admission which cuts both ways. In this case I think that it is rather in favour of the defender that he makes such an admission, because it is plain that the pursuer never could have proved the acts of connection which the defender admits, and the admission also goes to explain what took place between the families when the matter of the defender's marriage to the pursuer was mooted. I quite agree that where a defender admits an act of connection before the date on which the pursuer founds she requires very little corroboration to bring home to him the act which she alleges. It is different when the admission refers to a date after the date on which the pursuer founds. In that case she requires to bring forward substantial corroboration of her evidence, and this, I think, the pursuer here has failed to do. There is no evidence of any previous familiarities between the parties, and I have difficulty in holding that the stovehouse in which the pursuer alleges the act of connection took place was a suspected place. Mr Brown founded on evidence to the effect that in September the pursuer told her sister about the connection which she alleges in the previous March. I think that that is not competent evidence, for it is evidence as to a statement made, as I gather it was made, outwith the presence of the defender, and later by several months than the date of the alleged occurrence. After what had happened between them, the defender, when he was told of the pursuer's condition, was at first not prepared to deny the paternity and was willing to marry her. It was only on ascertaining that she was so far advanced in pregnancy that he repudiated the idea of marrying her and denied the fact of paternity. On the whole matter I think that there is not any sufficient corroboration of the pursuer's story, and consequently that she has failed to prove her case.

LORDS LOW and ARDWALL concurred.

LORD STORMONTH DARLING was absent.

The Court recalled the Sheriff-Substitute's interlocutor and assoilzied the defender.

Counsel for the Pursuer (Respondent)—Scott Brown. Agent—S. F. Sutherland, S.S.C.

Counsel for the Defender (Appellant)—M'Lennan, K.C.—Ingram. Agent—J. Ferguson Reekie, Solicitor.

Thursday, January 16.

SECOND DIVISION.

COPLAND'S EXECUTORS *v.* MILNE AND OTHERS.

Succession — Testament — Destination — "Cousins."

When the word "cousins" is used in a deed it must be construed as meaning first cousins, unless there is something in the context of the deed or in the circumstances of the case to show that it is used in a different and wider sense.

Succession—Testament—Words Importing Gift of Heritage.

Terms of a testamentary writing which were held to carry heritage.

Thomas Milne Copland died on 16th October 1905 leaving a holograph will and codicils in the following terms:—

"26 Castlenau Mansions,

"Barnes, Surrey, 13th April 1904.

"I, Thomas Milne Copland, residing at above address, hereby appoint as my executors my brother-in-law Joseph Calder, farmer, Seaton of Usan, Montrose, along with the Town Chamberlain of Montrose acting in the capacity at the time of my death. After paying all debts due by me at the time of my death I hereby instruct my executors to divide the income of the balance half-yearly between my sister Margaret Copland or Calder, wife of the said Joseph Calder, and my brother John Copland, residing at Scotston of Usan, Montrose. On the death of either my sister or brother the whole income to be paid to the survivor, and on the death of the survivor the whole income to be paid to the said Joseph Calder during his life if he shall survive my sister and brother, and on his death or on the death of the survivor of my sister and brother, if my said brother-in-law be dead, I wish my whole estate realised and equally divided between my cousins on my mother's side who shall be alive at the time of my death. Signed by me this thirteenth day of April, Nineteen hundred and four, Written by myself. (Signed) Thos. M. Copland. J. J. Gibbs, witness, 74 Langham Road, West Green, London, D. G. Donaldson, witness, 132 Becklow Road, Shepherds Bush, London, W.

"Codicil No. 1—28th April 1904—I hereby instruct my executors to sell at the time of my death sufficient of my investments to pay at once the following legacies, to Edie Peach of 11 Bridge Avenue, Hammersmith, Two hundred pounds, and to Nellie Goodman, Mogsden, Wallington, Fifty pounds. (Signed) Thos. M. Copland. J. J. Gibbs, witness.

"Codicil No. 2—I hereby appoint as additional executors my brother John Copland and my sister Mrs Margaret Copland or Calder. (Signed) Thos. M. Copland. J. J. Gibbs, witness."

The testator was survived by his brother and sister and by eight full first cousins on his mother's side. The testator was also