v. *Pumpherston Oil Company, Limited*, 1911 S.C. 660, 48 S.L.R. 632; *Gane* v. *Norton Hill Colliery Company*, [1909] 2 K.B. 539.

Counsel for respondent were not called on.

LORD PRESIDENT—I do not think there is the slightest doubt that the learned Sheriff-Substitute has come to quite the right conclusion. I think it is very probable that if he had had an opportunity of reading the case of *Alloa Coal Company* v. *Drylie*—which he had not, because his judgment was given before that case was decided—he might very likely have expressed himself differently, because I think the way he has expressed himself is really an echo of what was said in the case of *Eke* v. *Hart Dyke* ([1910] 2 K.B. 677). But none the less I think that the result he has come to is obviously right, and I think we should be really casting the law completely adrift from the *ratio* of the *Alloa Coal Company* case if we came to any other conclusion.

In the *Alloa Coal Company* case the pit was flooded through an accident, and was flooded to such an extent that the men thought they were in danger of their lives, and rushed to the pit bottom in order to get up to the surface—not at the ordinary time and in the ordinary course of their business, but, as they thought, in order to escape from drowning. While there they were subjected to a severe wetting, and the learned Sheriff-Substitute, who acted as arbiter in the case, came to the conclusion that the disease of which the man died was contracted through the exposure to which he was then subjected. In that case it was held that there had been an accident, and that it occurred out of and in the course of the employment.

But what do we have here? We have, I agree, an accident in this way, that the pump broke down and there was water at the pit bottom; but there is no suggestion that there was the slightest danger to anybody owing to the amount of water at the bottom of the pit. The men were going up to the surface when their work was done, in the ordinary way, and if each man had waited his turn he would only have got his feet wet in getting to the cage—or, as the learned Sheriff-Substitute says, if they had been anxious not to get their feet wet they could have avoided even that to a large extent by crawling over some hutches which were pushed towards the cage. Instead of waiting their turn the workmen were all anxious to get to the cage at once, and this man walked into the water and stood there for at least thirty minutes, and in consequence of that the Sheriff-Substitute thinks it is probable that he got the chill which caused the infirmity from which he suffered.

It seems to me impossible to say that that was an accident which arose out of and in the course of the employment, and it is futile to say—as was pleaded by counsel—that the workman might have been just as ill if he had had an ordinary wetting of his feet instead of voluntarily staying in the water for thirty minutes. I think that the case is an exceedingly clear one, and that the questions should be answered in the negative.

LORD KINNEAR—I entirely concur. I only add, because I was not a party to the judgment in the case of *Drylie* v. *The Alloa Coal Company*, that I assent to all that was said by your Lordship and by Lord Mackenzie in that case. But I think the present case is to be distinguished for the reasons given by your Lordship.

LORD JOHNSTON—I agree.

LORD MACKENZIE—I concur.

The Court answered the two questions of law in the negative.

Counsel for Appellant—A. M. Mackay. Agent—J. Ferguson Reekie, S.S.C.

Counsel for Respondents — Carmont. Agents—W. & J. Burness, W.S.

Thursday, June 12.

FIRST DIVISION.

[Sheriff Court at Glasgow.

THE CLAN LINE STEAMERS, LIMITED *v.* EARL OF DOUGLAS STEAMSHIP COMPANY, LIMITED.

Diligence — Ship — Arrestment — Maritime Lien in respect of Collision—Execution—Process.

The owners of a steamer brought an action against the owners of another vessel for damages in respect of a collision, and on the dependence of the action arrested the vessel. A petition for recal of the arrestments having been presented, the respondents objected to their recal on the ground that they would thereby be prevented from working out their maritime lien over the ship.

Held that an arrestment on the dependence was not the appropriate form of diligence for working out a maritime lien against a ship and arrestments *recalled* on caution.

Observed (*per* Lord President) that while a ship might competently be arrested in order to make good a maritime lien, such a diligence would require a special application and citation of all parties interested.

On 30th April 1913 the Clan Line Steamers, Limited, *pursuers*, brought an action against the "Earl of Douglas" Steamship Company, Limited, *defenders*, for recal of arrestments.

On 24th April 1913 the Earl of Douglas Steamship Company, Limited, brought an action against the Clan Line Steamers, Limited, for £1400 damages in respect of their s.s. "Earl of Douglas" being, as they alleged, run into by the defenders' s.s. "Clan Ogilvy" while she, the "Earl of Douglas," was at anchor in the harbour of Newcastle N.S.W., and *separatim* for "declarator that the pursuers have a lien over

the said s.s. 'Clan Ogilvy' for the damage so sustained, *and for warrant to sell the said s.s. 'Clan Ogilvy' on said lien being declared, and to apply the proceeds in satisfaction of said lien towards the payment of said sum of* £1400, *being the loss and damage sustained by the pursuers.*" The crave of the initial writ was as follows:—"Therefore the pursuers crave the Court to decern against the defenders for payment to the pursuers of the sum of £1400, with interest thereon at 5 per cent. per annum from the date of citation till payment, *and meantime to grant warrant to arrest on the dependence*, and *separatim* to find and declare that the pursuers have a lien over the said s.s. 'Clan Ogilvy' for said damage; *to find the defenders liable in the expenses of this process, and on said lien being declared, to grant warrant for the sale of said ship at the sight of such person as the Court may appoint, and to appoint the free proceeds of sale after deducting the expenses of the said ship from the date of her arrestment, the harbour dues and other necessary charges, the expenses of sale, and the expenses of this process, to be paid to the pursuers to be applied towards payment of said sum of* £1400, *any balance thereafter remaining to be paid to the defenders, or dealt with in such other way as the Court may find just*; and meantime to grant warrant to arrest on the dependence." [The words in italics were added by way of amendment at the hearing on 2nd May 1913.] The warrant to arrest on the dependence was executed on 29th April 1913, the execution bearing that she, the "Clan Ogilvy," was "to remain in the said harbour of Glasgow under sure fence and arrestment at the instance of the said pursuers, aye and until sufficient caution and surety be found, acted in the Books of Court of the said Sheriffdom at Glasgow, that the same shall be made forthcoming to the pursuers as accords of law."

On 5th May 1913 the Sheriff-Substitute (A. S. D. THOMSON) recalled the arrestments on caution being found for £1500.

Note.—"The principal petition, as it originally stood, and as it was served on the defenders, therein contained two prayers, the first for payment of £1400, and the second for declarator that pursuers were entitled to a maritime lien over defenders' ship.

"Warrant to arrest on the dependence was granted. It was plainly competent to grant it in respect of the first conclusion. It would not, I think, have been competent to grant it had there only been the second conclusion as it stood before amendment.

"An arrestment was used, and the present pursuers now petition to have it recalled, so that the ship may proceed upon her voyage. I have found that the arrestment may be recalled, provided security be found for £1500, to meet a possible decree for £1400 and expenses, being the sums specifically concluded for.

"This is satisfactory to the pursuers but not to the defenders, who, with the view of strengthening their case, proposed at the Bar to amend the principal petition, which amendment I allowed in terms of their minute then and there produced.

"Four contentions, I understand, were proponed for the defenders. (1) That the second conclusion as it originally stood was of itself sufficient to justify the arrestment. This contention I have no difficulty in repelling. (2) That seeing the first conclusion justified the warrant for and the use of the arrestment, the arrestment became available for the purposes of the second conclusion. They contended that the vessel having been arrested, it was thereby rendered subject to the orders of the Court, so that the Court might not only provide for the specific pecuniary claim which was the subject of the first conclusion, but pronounce any further order or condition to safeguard the rights of the defenders in the event of the Court granting declarator of a maritime lien in terms of the second conclusion. This contention, I think, is unsound. As yet no maritime lien has been established and none attaches, although when established it may be retroactive. An ordinary lien depends upon possession of the subject, but in a case like the present the vessel is in the possession of its owners. It is by the arrestment certainly detained or arrested, but only in respect of a specific money claim, and when in the opinion of the Court adequate security or provision for that claim is made, it seems right that the vessel should be released. I fail to see any authority for the principle that an arrestment upon the dependence for one claim serves as an arrestment for all other claims which the defenders may have against the pursuers. (3) It is contended further that, apart from the arrestment altogether, the Court may detain the ship, the defenders stating that in England application may be made to the courts for the attachment of a vessel in respect of an alleged claim for a maritime lien consequent upon a collision. This may or may not be the law of England, but I am not aware of any authority at all justifying such a course in Scotland, and I am not prepared to sustain this contention. (4) The fourth contention arises out of the amendment of the petition in the original action. This amendment was, as I have already stated, proposed at the Bar, and I allowed it to be made. It seemed competent to allow it under rule 79 of the Sheriff Court Act of 1907. What its effect may be as regards the pursuers has now to be considered. What its effect may be as regards third parties is a matter to be decided when it is raised by some third party.

"It seems to me that the amendment leaves the matter as it stood before the amendment was made. The amendment consists in a craving for the various successive steps of procedure which will be required in order to give pecuniary effect to the maritime lien if declared. The final step of such procedure is payment of the free proceeds of the sale of the vessel to the defenders in satisfaction of their said

claim for damages and expenses. I am disposed to think that this conclusion may, on the authorities, be held to justify a warrant for and the use of an arrestment upon the dependence, but it would only be for and in respect of the specific pecuniary claim, and this claim is just the claim made in the first conclusion, and the matter stands therefore where it did. While I reach this result, which is favourable to the pursuers, I am against them on one of the arguments which I understood them to make, founded on the effect of the amendment, in view of rule 80 of the Sheriff Courts Act of 1907, viz., that there is no question here of 'validating diligence used prior thereto on the dependence of the action.' The arrestment, they contend, was valid from the first so far as it went, and does not require to be validated at all. If anything it requires to be enlarged, and they say that without a new arrestment the amendment can have no effect even in a question with the defenders. I doubt the soundness of this contention. The execution of arrestment bears that 'all is to remain in the said harbour of Glasgow under sure fence and arrestment aye and until sufficient caution and security be found . . . that the same shall be made furthcoming to the pursuers as accords of law.' This, I rather think, means until security be found that the vessel be made furthcoming to the pursuers as accords of law, or that the specific pecuniary claims made in the action, whether originally or by amendment, and in respect of which arrestment on the dependence might be and was competently used, be adequately provided for in lieu of the production of the vessel itself; and accordingly I am against the pursuers as regards this argument.

"But upon the whole case I am in their favour as regards the recal of the arrestment, and I allow it to be recalled on the terms stated in the interlocutor."

The defenders appealed, and argued—The arrestments had been wrongly recalled, for the effect of the recal was to deprive the appellants of their lien over the ship. *Esto* that the personal obligation would remain, that was not enough, for the appellants had a real remedy against the ship, which they were entitled to work out against the ship whether she was in the hands of her owners or under charter at the time she did the damage. In England the appellants would clearly have had a maritime lien over the vessel. That lien was part of the maritime law of Great Britain, and therefore applied in Scotland —*Currie* v. *M'Knight*, November 16, 1896, 24 R. (H.L.) 1, 34 S.L.R. 93, [1897] A.C. 97; "*The Bold Buccleugh*," (1851) 7 Moore P.C. 267. The lien attached to the ship and went with her wherever she went. As to how it was worked out in England, reference was made to the Annual Practice 1913 (Mathews, White, and Stringer), at p. 1309.

Argued for respondents—*Esto* that a maritime lien was part of the law of Scotland, it did not attach here, for this was an arrestment on the dependence, and such an arrestment could clearly be recalled on caution. The prayer of the initial writ in the principal action as originally framed contained merely a bare declarator that such a lien existed. Such a declarator was not equivalent to an action *in rem* against the ship. As to the procedure in such an action reference was made to Marsden's Collisions at Sea (6th ed.), p. 73. Such an action required the citation of all interested in the ship, and that had not been done here. An arrestment on the dependence was not the appropriate form for the working out of a lien against the ship irrespective of whose hands she might be in. A petition to the Inner House would probably be necessary. Moreover, an arrestment on the dependence could not be changed into a real diligence by subsequently amending the summons—Sheriff Courts (Scotland) Act 1907 (7 Edw. VII, c. 51), Sched. I, rule 80.

LORD PRESIDENT—The owners of a steamer called the "Earl of Douglas" brought an action in the Sheriff Court of Glasgow against the owners of a steamer called the "Clan Ogilvy" in respect of a collision which occurred by the "Clan Ogilvy," as they allege, having run into the "Earl of Douglas" while she was lying at anchor in the harbour of Newcastle, due, as was alleged, to the faulty navigation of those in charge of the "Clan Ogilvy."

The initial writ as served made a claim against the defenders (the pursuers in the action which is before us) and craved the Court to decern against the defenders (the pursuers in the action which is before us) for payment of the sum of £1400, and the initial writ went on with a crave "*separatim*, for declarator that the pursuers have a lien over the said s.s. 'Clan Ogilvy' for the damage so sustained," and the crave concluded with a prayer asking the Court to grant warrant to arrest on the dependence. In that state of the process an arrestment on the dependence of the action was executed, in ordinary form, of the "Clan Ogilvy" as she lay in the graving dock of the harbour of Glasgow.

The owners of the "Clan Ogilvy" then raised the process which is now before us, against the owners of the "Earl of Douglas," in which they prayed for a recal of the arrestments. Concurrently with that the pursuers in the original action moved for leave to amend, which leave to amend was granted; and the amendment which they made was that they added after the portion of the crave "for declarator that the pursuers have a lien over the said s.s. 'Clan Ogilvy' for the damage so sustained" the words "and for warrant to sell said s.s. 'Clan Ogilvy' on said lien being declared, and to apply the proceeds in satisfaction of said lien towards payment of said sum of £1400, being the loss and damage sustained by the pursuers."

The learned Sheriff-Substitute having considered the application for recal of the arrestment and the answers put in the original action, pronounced this inter-

locutor in the process for recal—"On the petitioners finding caution . . . to the extent of £1500 sterling for the payment of such sums—principal, interest, and expenses—as may be decerned for in the action on the dependence of which the arrestment in question has been laid, recals the said arrestment."

Now the owners of the "Clan Ogilvy" have appealed that interlocutor to your Lordships, and they object to the form in which the Sheriff-Substitute has recalled the arrestments, because they say—and they say truly—that what the Sheriff-Substitute has done does not make the arrestments available for that part of the process which seeks to declare and make good a real lien against the ship. The respondents did not argue—and I think, in view of the authorities, it would have been useless to argue—that the arrestment upon the dependence was not quite a good arrestment in so far as it could be made available for the purposes of the pecuniary conclusion against the defenders for the £1400; but they said, and they said with success, to the learned Sheriff-Substitute that that was all that the arrestment in dependence could be made good for. The appellants on the other hand argued before your Lordships that the arrestment was good to cover, so to speak, both branches of the prayer.

I am of opinion that the Sheriff-Substitute has come to a right conclusion, and I think, upon grounds which are generally right, although there is one part of the note which he attaches to his judgment with which I cannot agree for reasons which will become clear when I have finished my observations.

The arrestment on dependence, which is a matter of right in our law to anyone who raises an action, is a very familiar and well-known form of diligence, and its object is to arrest, that is to say, to keep fixed, some asset of the debtor, the defender in the action, in order that that asset may be made good to satisfy the decree which the pursuer assumes he is going to get. Ordinarily speaking, arrestment could never be in the hands of the debtor himself, but must be in the hands of some one else. But none the less it is a process for keeping something which may be made a fund of payment for what the debtor will be found to owe when a decree has been obtained against him under a petitory conclusion; and I may add that it is trite law that the next proceeding, in order to make that sum available, is a furthcoming. Arrestment of a ship is rather different. Arrestment of a ship is a diligence which is not used in the hands of somebody else, but which is used as a real diligence against the ship itself, and it is eventually made good not by an action of furthcoming but by a process of sale.

None the less I think it is absolutely settled in our law that it is quite good to have an arrestment in dependence directed against a ship, and I would remind your Lordships of the case, which I do not think was quoted to us in the argument, of *Carlberg* v. *Borjesson* (1877, 5 R. 188), where all through the learned Judges' opinions no doubt is expressed that an arrestment of a ship on the dependence is a perfectly good form of diligence. Of course the point in *Carlberg* v. *Borjesson* was quite different. In *Carlberg* v. *Borjesson* the vessel had taken no notice of the arrestment which had been put upon it *ad fundandam jurisdictionem*, and had sailed down the Clyde, and the way of executing the arrestment upon the dependence had been to man a steamer, go after it, and bring it back. It was held that all that was quite illegal. But none the less their Lordships recognise that arrestment of a ship upon the dependence was perfectly good, and that it would have been perfectly good in this case if the ship had stayed in Glasgow and been found at anchor in the harbour.

What I have just said is pointed out by Lord Shand in a passage in his opinion at p. 195—"The arrestment of a vessel differs from an ordinary arrestment in being a real diligence directed against the vessel itself, and unlike a personal diligence of arrestment directed against a custodier or debtor in a sum of money. Its effect as the term 'arrest' itself implies is to fix the vessel in the place in which she is found, and if there is any danger of her being removed from that place, the power to dismantle may be exercised." But although arrestment as applied to a ship is, so to speak, peculiar, none the less the underlying idea of it is precisely the same as ordinary arrestment, namely, to fix in the territory something which shall be a fund of payment for the decree which is got under the petitory conclusion. And accordingly I think the parties were quite right in not objecting to the interlocutor in so far as it did ordain caution to the extent to which it did.

But when we come to the second matter, that seems to me to be quite different. I think, probably as a mere technical point, that this case could have been disposed of upon the ground that diligence must always be viewed strictly, and that therefore the effect of the diligence must be viewed as the crave originally stood, without the amendment. But I do not care to base my judgment upon that point. For my present purpose I will assume that the original crave of the initial writ in the original action had been in the form in which it eventually stood after the amendment.

Now what is the second branch of the crave? It is to have a maritime lien declared. There is no question, after the House of Lords case of the "*Dunlossit*" (*Currie* v. *M'Knight* ([1897] A.C. 97, 24 R. (H.L.) 1), that this maritime lien exists for such claims in the law of Scotland. But the working out of the maritime lien must be by effectuating a sale of the ship as a real diligence against all and sundry, and not merely against the person who is called in the petitory part of this action and asked to submit to a decree. If it is a good lien the ship can be sold, and it does not matter

who the ship belongs to. Now if that is so, that seems to me to make an arrestment on the dependence an inappropriate form of diligence, because you are not there working out your payment out of the property of the debtor; you are not dealing with a debtor; you are dealing with the ship itself, which is supposed, so to speak, to be the living agent of the wrong that has been done to you. And therefore I do not think arrestment upon the dependence is an appropriate form of diligence.

I now come to the only part of the learned Sheriff-Substitute's note with which I do not agree, namely, that in which it is said—"It is contended further that, apart from the arrestment altogether, the Court may detain the ship, the defenders stating that in England application may be made to the Courts for the attachment of a vessel in respect of an alleged claim for a maritime lien consequent upon a collision, This may or may not be the law of England, but I am not aware of any authority at all justifying such a course in Scotland, and I am not prepared to sustain this contention." I think that if we could not keep the ship in order to make good the maritime lien it would be very little use having a maritime lien in our law at all. And therefore I have not a doubt that there may be a good arrestment put upon the ship in order to prevent the ship going away and, so to speak, withdrawing herself from the process of sale which is directed against her in respect of the maritime lien, and therefore I do not agree with the learned Sheriff-Substitute. But then I think that would have to be done by special application for arrestment, and there is ample authority for special application. In particular, it is to be found in the case of *Lucovich* (1885, 12 R 1090). This special application could be made in the Bill Chamber. That has not been done here; this is a mere arrestment on the dependence.

Accordingly for these reasons I am of opinion that the result to which the learned Sheriff-Substitute has come is quite right.

LORD KINNEAR—I agree entirely with what your Lordship has said.

LORD JOHNSTON — I am of the same opinion. Where there has been a collision between two vessels, there is a claim by the owners of the injured against the owners of the wrongdoing vessel, but that is a claim *in personam*. Since, however, 1897, when the case of the "*Dunlossit*" ([1897] A.C. 97, 24 R. (H.L.) 1) was decided in the House of Lords, it has been established that there may also be in Scotland as well as in England a remedy to the injured party through what is known as a maritime lien, but that does not involve an action *in personam*, but a process against the ship itself.

It is quite true that, as far as we know, since 1896 no case has occurred in which the doctrine there laid down as the law of Scotland has been applied. And everybody sympathises with the eminent firm who have initiated these proceedings in the difficulty they experienced in adopting an apposite form of procedure. But I think their mistake arose—and I am referring to the original petition, not as amended—in attempting to combine in the same procedure the action *in personam* and the effectuating of the remedy *in rem*. And for this reason—where you are proceeding with an action *in personam* and arrest on the dependence of that action, you are arresting only the interest of the owners whom you are pursuing. There may be other rights in the ship preferable to the owners', but those are not touched by your arrestment, and the protection of them is not necessary in the action. It is necessary, and is provided for where opportunity is afforded to all interested in the forthcoming, to bring forward their preferable rights, as, for instance, to mortgagees.

But where you are proceeding to enforce the right *in rem*, that is not in the same position, and you cannot, as it seems to me, declare your maritime lien and proceed to sell unless you have all parties at once in the field. And it is there that, it seems to me, the attempt to combine these two proceedings has been a mistake, because the pursuers here seek *separatim* for a declarator which could not be properly granted in the presence merely of the owners, who are the sole defenders in the action, but only where all other interests have been called into the Court, or, at any rate, given an opportunity of appearing. It seems to me, therefore, that the second part of this proceeding is inept, because it is impossible to proceed *in rem* except after calling a different set of defenders. And I think, further, that even if all interested were convened the combination of the two processes would be very inconvenient.

LORD MACKENZIE—I agree with your Lordship in the chair.

LORD PRESIDENT—I must not be taken as agreeing with a portion of what Lord Johnston has said. I only say this because the question will arise what is the proper procedure to be adopted in making good a maritime lien. Although I quite agree that the conclusion to make good the lien is quite different from the petitory conclusion against the one person who is called, and although certainly in any process which has for its object the making good of the real lien there would have to be at least edictal citation of everybody concerned, I do not see any absolute incompetency in combining these two conclusions in the same process if you like. I think it right to say that in this case.

LORD KINNEAR—I concur in what the Lord President has said.

LORD MACKENZIE—I also concur.

The Court dismissed the appeal, affirmed the interlocutor of the Sheriff-Substitute dated 5th May 1913, and remitted the cause to him to proceed as accords.

Counsel for Pursuers (Respondents)—Clyde, K.C.—Hon. W. Watson. Agents—Webster, Will & Co., W.S.

Counsel for Defenders (Appellants)—Sandeman, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Tuesday, June 17.

FIRST DIVISION.

(SINGLE BILLS.)

TAYLOR *v.* STEEL-MAITLAND.

(Reported *supra*, p. 395.)

Expenses — Taxation — Sheriff — Employment of Counsel—Sheriff in Interlocutor Disposing of Merits of Case Sanctioning Employment of Counsel — Interlocutor of Sheriff Recalled by Court of Session—Auditor Allowing Fees to Counsel.

Where a Sheriff-Substitute in an interlocutor disposing of the merits of a case had sanctioned the employment of counsel in the Sheriff Court, and that interlocutor had been recalled by the Court of Session, it was *held* that the Auditor was entitled to treat the certificate of employment of counsel as still in force.

The arbiter appointed by the Board of Agriculture and Fisheries in a reference under the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII. cap. 64) between Mrs M. R. Steel-Maitland of Barnton, Midlothian (*respondent*), and James Taylor, farmer at Easter Drylaw, on the said estate (*claimant and appellant*), submitted a case, under section 9 of the Second Schedule of the Act, for the opinion of the Sheriff of the Lothians and Peebles at Edinburgh.

On 23rd August 1912 the Sheriff-Substitute (GUY) pronounced an interlocutor disposing of the merits of the case and sanctioning the employment of counsel in the Sheriff Court.

The claimant appealed to the Court of Session, and on 28th January 1913 the Court recalled the interlocutor of the Sheriff-Substitute.

The respondent having been found entitled to expenses, and the Auditor having lodged his report on the respondent's account of same, the appellant objected thereto in so far as he (the Auditor) had allowed, *inter alia*, fee to counsel in the Sheriff Court. The ground of objection was that the interlocutor in which the Sheriff-Substitute had sanctioned the employment of counsel had been recalled, and there was no longer in force any certificate of the Sheriff entitling the Auditor to allow that fee.

The Court repelled the objection.

Counsel for the Appellant—Guild. Agents—Guild & Guild, W.S.

Counsel for the Respondent—Mitchell. Agents—John C. Brodie & Sons, W.S.

Wednesday, June 18.

SECOND DIVISION.

[Sheriff Court at Dundee.

FLORENCE *v.* SMITH.

Parent and Child — Filiation — Proof — Intercourse Subsequent to Date of Conception—Denial by Defender of Intercourse.

In an action of filiation where the parties were living in the same neighbourhood at the date of the conception, but no meeting was proved to have occurred, *held* that proof of intercourse at a date subsequent thereto, together with the defender's denial of such intercourse, was sufficient corroboration of the pursuer's story.

Catherine Eleanor Florence, Warthill, Aberdeenshire, *pursuer*, brought an action of affiliation and aliment in the Sheriff Court at Dundee against George Smith, Dundee, *defender*.

Proof was allowed, the import of which sufficiently appears from the note (*infra*) of the Sheriff-Substitute (NEISH), who on 26th July 1912 assoilzied the defender.

Note.—"The parties to this case resided on neighbouring farms in Aberdeenshire, their fathers were related, they were at school together, and have known each other from childhood. The pursuer has always resided with her father at Knowley, except for a period from January 1909 to May 1909, when she was in Aberdeen attending cooking classes.

"The defender on leaving school in January 1906 went to a bank in Inverurie. In May 1908 he was transferred to Durno. He remained there till January 1910, and during this period resided at home. From Durno he was transferred to Huntly, and remained there till September 1911, when he was transferred to Lochee. While at Huntly he came home at times for the week-end.

"The pursuer says she was sweethearting with the defender, and this is the view taken of their relations by her father, her sister, her brother, Adam Addison, and John Addison. On the other hand, the defender's mother will not admit that her son was more friendly with the pursuer than with any other girl, although she admits that she knew that 'Eleanor was fond of George.' The defender's brother Robert did not look upon them as sweethearts. The defender admits that he was 'on pretty friendly terms' with the pursuer, and walked her home pretty often from church and choir practice. He has taken her arm and put his arm round her