Statute of 1877 imposed the whole burden upon the owners of heritage within the counties, whereas from and after the passing of the Local Government Act owners were required to pay only the average rate as it stood in 1889, and in the future any increment in the rate was to be divided equally between owners and occupiers. In the year 1896 there was a further alteration in the incidence, because the occupiers of agricultural lands in paying the county rate, which included the lunacy assessment, were required to pay only upon three-eighths of the value in the valuation roll. All these changes were in the case of counties effected by public general statutes. But when one turns to the royal and parliamentary burghs one finds, as was only natural, that in the case of the larger burghs the matter was regulated by private Acts of Parliament. In the Edinburgh Act of 1879 there is language which seems to me to be clear and imperative to the effect that all assessments except the land tax which were levied in the city of Edinburgh were to be levied as part of what the statute describes as the "burgh assessments." The exception of the land tax—a tax no longer leviable in burghs—exemplifies the universality of the rule as to assessments leviable within the burgh of Edinburgh. The statute enacted with reference to the "burgh assessments," including as I think the lunacy assessment, that these were to be levied upon one-fourth only of the yearly value of railways and certain other heritages. In the Glasgow municipal statutes one finds legislation to the same effect.

That carries one down to the year 1913, immediately before the passing of the Mental Deficiency Act of that year. Now it seems to me that there is no doubt as to the meaning of section 65 of that statute. That section deals with two different cases. The first sub-section deals with what I may call the normal case, where the district board of control, or as it used to be called the district board of lunacy, was a separate entity from the parish council. In such cases the assessing authority remained the same as before, namely, the county councils in county areas and the magistrates in burgh areas. Further, the assessment which was to cover the purposes not merely of the Lunacy Acts but of the Mental Deficiency Act was to be levied precisely as the lunacy assessment had been levied prior to 1913. But it was necessary to make provision for an abnormal class of cases with which we have to do in the present litigation, namely, where it so happened that the district board was identical with the parish council. In such cases it was thought desirable that the power of imposing the assessment should be transferred from the county councils and magistrates and vested in the parish council. That is the case provided for in the second sub-section. But that sub-section makes it plain that the incidence of the tax shall be exactly the same as it would have been if the case had been a normal one and the assessment had been levied by the county council or by the magistrates.

For these reasons I agree with your Lordships that the first question put to us in both of these special cases ought to be answered in the negative, and that the second question in each case ought to be answered in the affirmative.

The Court answered the first question in both cases in the negative, and the second in the affirmative.

Counsel for Edinburgh Parish Council—The Solicitor-General (Morison, K.C.)—Lippe. Agents—R. Addison Smith & Company, W.S.

Counsel for Glasgow Parish Council—Horne, K.C.—T. G. Robertson. Agents—R. Addison Smith & Company, W.S.

Counsel for Glasgow Corporation, the Caledonian Railway Company, and the North British Railway Company—The Dean of Faculty (Clyde, K.C.)—Macmillan, K.C.—Gentles. Agents—Simpson & Marwick, W.S.—James Watson, S.S.C.

Friday, March 17.

SECOND DIVISION.

[Lord Anderson, Ordinary.

MURRAY *v.* FRASER.

(Reported *ante*, 52 S.L.R. 277.)

Reparation — Seduction — Girl under Sixteen—Arts and Wiles.

In an action of damages for seduction at the instance of a girl who was under sixteen at the time, against a man of about thirty, it was proved that the pursuer was but a child at the period in question, that she was ignorant of sexual matters, that the defender was her parents' friend, and that she trusted and liked him. *Held* that these facts, together with proof of intercourse, amounted to seduction and entitled the pursuer to decree.

Observations per curiam on the amount of corroboration necessary to establish the evidence of the pursuer on an incidental point in her case.

Observations per Lord Justice-Clerk on the importance to be attached in a proof to the opinion of the judge who heard the witnesses.

Kilpatrick v. *Dunlop* (H.L.), November 24, 1911, *per* the Lord Chancellor (Loreburn) and Lord Halsbury, reported *infra, followed.*

Miss Kate Murray, daughter of and residing with Alexander Murray, Elgin, *pursuer*, with her father's consent and concurrence as her curator and administrator-in-law, brought an action of damages against David Fraser, Elgin, *defender*, for £750 for seduction.

The pursuer averred—"(Cond. 3) During the summer of 1912 the pursuer was attending the Technical School in Elgin. On one occasion while the pursuer was cycling home from the Technical School the defender overtook her. Defender was cycling. The pursuer cycled with defender for about

two miles, when the parties dismounted at the brae near Castlehill, a lonely and unfrequented part of the road. While walking up said brae the defender told the pursuer to stop a minute as he had some chocolates to give her. The pursuer stopped, and defender laid his own and pursuer's cycle down at the side of the road. Defender then placed a hand round pursuer's waist and drew pursuer close to him, while holding a bag of chocolates in the other. At this juncture the defender, noticing some people in the distance coming along the road, let the pursuer go, having given pursuer the chocolates. The parties then proceeded to their respective homes. After this the defender called more frequently at the Schoolhouse, and called pursuer by her Christian name in a more familiar manner than hitherto, and kissed her on several occasions. The pursuer was fond of and had great regard and respect for the defender. On or about the 25th day of December 1912, between seven and eight in the evening, the defender called at the Schoolhouse, Birnie. The pursuer answered the door. The defender handed the pursuer a couple of hares, and asked her where he could put his bicycle as he had to go down to the hall in Thomshill village, which is the village of the district, distant from the pursuer's house about half a mile. The pursuer told the defender that she would get her brother Allan, who was then in the house, to put his bicycle in the shed at the back of the house. The defender told the pursuer not to bother but just to come round and show him the shed herself, which she did. The defender asked the pursuer to come inside the shed, which she did. The defender thereupon shut the door of the shed, seized the pursuer round the waist, lifted her on to a platform, and put his hands up her clothes. The pursuer protested against the defender's conduct, and endeavoured to free herself from the defender. The defender in order to overcome the pursuer's will and gain access to her person, *falsely and fraudulently* told her that she need not be frightened, and that anything he would do would not do her any harm. *The pursuer was entirely ignorant of the sexual relations, and she believed the false and fraudulent assurances given to her by the defender as above stated, and in reliance thereon allowed the defender to have carnal connection with her on the said occasion. The defender thereby seduced the pursuer.* The defender succeeded in having carnal connection with the pursuer on said occasion, the pursuer being wholly innocent of his intentions, believing what he told her and relying on his assurances. This the defender did, although he was aware that the pursuer was only fifteen years of age, and that he was acting in contravention of section 5, sub-section 1, of the Criminal Law Amendment Act 1885. With regard to defender's explanation in answer, admitted that while the pursuer was inside the shed defender asked pursuer if she was coming to see the decorations in the hall for the dance the next evening, and that the parties discussed said dance, that on the way from the shed to the hall the parties met pursuer's father and mother, and pursuer returned home with her mother. Admitted further that about ten o'clock on the same evening the pursuer went down to the hall and met her sister Barbara, that pursuer, defender, Miss Barbara Murray, and others returned to the Schoolhouse, that defender and Miss Barbara tried a new dance. Explained that pursuer was not present when said dance was being tried, she having retired to bed. *Quoad ultra* the defender's explanations so far as not coinciding herewith are denied." [*The words printed in italics were added by amendment in the Extra Division.*]

The pursuer pleaded—"(1) The defender, having seduced the pursuer as condescended on, is liable in reparation to her as concluded for."

The defender pleaded—"(1) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed."

On 7th February 1914 the Lord Ordinary (ANDERSON) sustained the first plea-in-law for the defender and dismissed the action.

The pursuer reclaimed, and on January 7, 1915, the Extra Division recalled the interlocutor of the Lord Ordinary and remitted the case back to him for a proof before answer.

The opinions of the Lord Ordinary and of their Lordships of the Extra Division are reported *ante*, 52 S.L.R. 277.

On June 12, 1915, the Lord Ordinary, after a proof, sustained the first plea-in-law for the pursuer, and decerned against the defender for payment to her of the sum of £100 sterling in full of the amount sued for.

Opinion.—"I refer to my former opinion for a statement of the facts of this case and of the law which falls to be applied to these facts.

"The views I expressed as to the pursuer's case, as based on the Criminal Law Amendment Act 1885, were approved by the Judges of the Extra Division. Accordingly it has been determined that the pursuer's claim as laid upon that statute is not well founded. I assume that my opinion as to the common law case made by the pursuer was also acquiesced in by the Extra Division, as I find that the pursuer was allowed by way of amendment to make a case of fraud against the defender. The record as amended thus discloses a relevant case at common law against the defender, and the pursuer will succeed if she proves these essential averments—(1) That the defender had connection with her in December 1912; (2) that she was then, owing to her youth and upbringing, entirely ignorant of the sexual relations; and (3) that she allowed connection to take place in reliance upon the defender's false and fraudulent assurance that 'anything he would do would not do her any harm.'

"The two questions of fact which have to be decided are therefore these, the burden of proof in each case being on the pursuer—(1) Is the defender the father of her child? and (2) Did he seduce her?

"1. I have no difficulty in holding that the pursuer has proved that in consequence

of connection on 25th and the morning of 27th December 1912 the defender is the father of the child which she bore on 13th October 1913. I was favourably impressed with the pursuer; I regarded her as an entirely credible witness; and I believed the whole of the evidence which she gave in the witness-box. Her testimony was that the defender had kissed her on several occasions, had shown a certain predilection for her society, had expressed the wish to see her alone some night, and on the two occasions condescended on had had connection with her. It is not, however, enough that I should believe the pursuer's evidence; it is necessary that it be corroborated. In a case of this sort, however, where the pursuer is regarded as a credible witness, and where there is not a tittle of evidence to implicate another man, but slight corroboration is required. In the present case I find ample corroboration of the pursuer's evidence. Her brother Allan is corroborative of what took place at the door of the schoolhouse on 25th December. The defender admits being alone with the pursuer in the bicycle shed, and on the morning of the 27th on the roadway a considerable distance beyond the schoolhouse. Finally the father and mother of the pursuer, whose evidence I entirely believed, satisfied me that the defender in April 1913, although he denied being the prospective father of the child, admitted that he had had connection with the pursuer.

"The defender adduced some evidence with the object of discrediting the pursuer's testimony as to the hour at which the alleged acts of connection took place. I was not in the least impressed by that evidence. The defender's witnesses were merely guessing at the hour of his arrival at the hall on the 25th, and on the morning of the 27th at the hour when the defender and pursuer and the witnesses themselves left the hall, and the time spent by the witnesses on the roadway before meeting the parties thereon.

"2. The second point is more difficult of determination. I had at an early stage of the case great difficulty in accepting the pursuer's evidence as to her amazing ignorance of everything sexual. I ultimately, however, reached the conclusion that the pursuer had established this part of her case. Even now, after she has borne a child and is eighteen years of age, she has a youthful appearance disproportionate to her years. When the acts of connection took place she must have looked little more than a child. The evidence of her parents and sister satisfied me that she was as innocent of the sexual relations as she professed to be. The defender endeavoured to counter this part of the pursuer's case by the evidence of the girls Fraser, Smith, and Cameron. I have no doubt that Elma Fraser heard the statement as to Mrs Grant which she attributed to the pursuer, but I am satisfied that it was not the pursuer who made that statement. The pursuer denied being present on the occasion of the stallion incident. I formed the opinion that her evidence on this point was honestly given, either because (what is probable) she was not there or because the incident had no significance for her, and so did not impress itself on her memory. The other evidence given by these three girls was vague and unimportant.

"The only evidence that the defender made the fraudulent statement condescended on—that he would do her no harm—is the testimony of the pursuer, and it was contended by the defender's counsel that this was not enough. I am of opinion that the pursuer's evidence on this point being believed by me it is sufficient to warrant me in holding it proved that the statement was made by the defender. It is not necessary that each fact of a case should be proved by more than one witness — *Lees* v. *Macdonald*, 3 Wh. 468, at pp. 473 and 475; *Kinnear* v. *Brander*, 7 Ad. 456, at p. 469. The statement was obviously false, because the defender knew he was about to do the pursuer an irreparable injury, and I hold it was made by him fraudulently with the object of overcoming the resistance and meeting the protest which the pursuer instinctively made to his advances. There was thus on the defender's part fraud and deceit employed for the accomplishment of his design, and in the whole circumstances in which the acts of connection took place I reach the conclusion that the pursuer was seduced by the defender.

"The only other question is that of damages. The conduct of the defender towards this young girl and her parents has been so dastardly that I should have thought it my duty to award very substantial damages had it not been for the position taken up by her father in the witness-box and by her counsel at the conclusion of the case. It was represented that the main purpose of the action was to vindicate the character of the pursuer, to show that she was not a vicious and willing associate of the defender in the intercourse which resulted in the birth of her child. On this aspect of the case I am enabled to take a more moderate view of the matter of damages than I should otherwise have taken. I shall grant decree in favour of the pursuer for the sum of £100."

The defender reclaimed, and argued—The admission of intercourse with a girl of fifteen did not *per se* amount to seduction. There must be something of the nature of a fraud committed on the woman—Fraser, Husband and Wife, vol. i, p. 501. The words "I won't do you any harm" did not amount to fraud—Glegg on Reparation, 2nd ed., p. 137. There must be solicitation to amount to seduction by dole. [LORD DUNDAS referred to *Brown* v. *Harvey*, 1907 S.C. 588, 44 S.L.R. 400; *Cathcart* v. *Brown*, 1905, 7 F. 951, 42 S.L.R. 718; *Linning* v. *Hamilton*, 1748, M. 13,909.] Dickson on Evidence (3rd ed.), vol. i, sec. 133, was also referred to.

Argued for the pursuer — The facts proved in the present case amounted to seduction. Seduction implied unfree and non-intelligent consent. As between adults, when intelligent consent might be given, more would be required in the way of specification of arts and wiles

than in the case of a child—*Walker* v. *M'Isaac*, 1857, 19 D. 340; *Gray* v. *Miller*, 1901, 39 S.L.R. 256; *Rex* v. *Moon*, 1910, 1 K.B. 818; Bell's Prins., sec. 20, 33; Erskine's Prins. (21st ed.), p. 711. The present case was one of seduction by circumvention, and circumvention was not a matter of direct proof but of inference from facts—*Horsburgh* v. *Thomson's Trustees*, 1912 S.C. 267, 49 S.L.R. 257; *Clunie* v. *Stirling*, 1854, 17 D. 15, at p. 80; *M'Callum* v. *Graham*, 1894, 21 R. 824, 31 S.L.R. 690. The pursuer's construction of the word "seduction" was supported by the use of the word in the Criminal Law Amendment Act 1885 (48 and 49 Vict. c. 69), sec. 12, and the Children Act 1908 (8 Edw. VII, cap. 67), sec. 17. On the question as to the importance to be attached to the findings in fact of the Judge who tried the case counsel referred to *Kirkpatrick* v. *Dunlop*, November 25, 1911, not reported, and *Norton* v. *Ashburton*, 1914 A.C. 932, *per* Viscount Haldane, L.C., at p. 957. On the question as to the amount of corroboration required for the statement "I won't do you any harm" counsel referred to *Scott* v. *Jameson*, 1914 S.C. (J.) 187, 51 S.L.R. 808, 7 Ad. 529; *M'Vicar* v. *Barbour*, 1916, 1 S.L.T. 233; *Cullen* v. *Ewing*, 10 S. 497; *Ramsay* v. *Nairne*, 1833, 11 S. 1033; *Anderson* v. *M'Farlane*, 1899, 1 F. (J.) 36, 36 S.L.R. 315; *Florence* v. *Smith*, 1913 S.C. 978, 50 S.L.R. 776; *M'Kinven* v. *M'Millan*, 1892, 19 R. 369 29 S.L.R. 308. *Dawson* v. *M'Kenzie*, 1908 S.C. 648, 45 S.L.R. 473, and *M'Whirter* v. *Lynch*, 1909 S.C. 112, 46 S.L.R. 83, were also referred to.

At advising—

LORD JUSTICE-CLERK—The pecuniary results of this case are small, but there are other considerations which make it an anxious and important one for the parties.

Questions of credibility are raised, for while the defender expressly disavowed any challenge of the honesty of the pursuer's parents his counsel characterised the pursuer as an altogether untrustworthy witness and spoke of her story as "concocted." The Lord Ordinary says he accepts the evidence of all three as credible and honest. In view of what has been said in the House of Lords in *Kinloch* v. *Anderson*, 1911 S.C. (H.L.) 1, and in *The Baron of Bucklyvie* case * (and I regret that the latter case has not found its place on this point in our reports), I think we cannot do otherwise than accept the pursuer as equally honest and credible with her father and mother, and on the other hand deal with the defender as in this case neither honest or credible. At the critical date the pursuer was under sixteen, while the defender was nearly thirty. According to his own averments on record he was "on neighbourly and friendly terms with Mr Murray and his family. He regarded the pursuer as little more than a child, and it was a great shock to him to be accused of harming his neighbours' child." He says in his evidence "I regarded her as a child," and the pursuer says "he just treated me like a little girl."

The pursuer's case is (1) that she was but a child at the period in question; (2) that she was ignorant of sexual matters; (3) that the defender was her parents' friend and much her senior; (4) that she trusted

* The observations referred to in this case (*Kilpatrick* v. *Dunlop*, decided in the House of Lords on 24th November 1911) were as follows:—

"LORD CHANCELLOR (LORD LOREBURN)—I must say forcible points may be and have been made in regard to the evidence on both sides. The Lord Ordinary came to a conclusion in favour of the pursuer, and the Inner House came to a conclusion in favour of the defender. But it is quite obvious to me that to anyone who looks into the facts in this case at all it is a question of the credibility on the one side or the other. If I were asked to express an opinion on which side truth rests in this case I should answer, 'Let me see the pursuer and the defender, let me hear them give their evidence, and then I shall be more able to make up my mind wherein truth or falsehood lies in this tangled story.' I should then also ask, 'Let me see Caulfield and Steven, two of the witnesses whose evidence, if it is to be believed, is conclusive of the case.' Now what course is to be taken in the circumstances to which I have adverted? It seems to me that to your Lordships the pursuer and defender are both merely names. There are other witnesses who are also mere names, and of whom we have only a record on paper of what they said. The manner, appearance, and mode of giving evidence, all the outward and visible signs by which men habitually detect falsehood or receive an assurance of truth, are unattainable to your Lordships. I need not repeat what I have more than once said before as to the value to be attached to the opinion of the Judge who has heard the evidence. If I could I would say there ought to be a new trial in this case and a new trial before a jury. I cannot say that; I can only choose whether I am to follow the opinion of the Lord Ordinary or that of the Inner House. Remember that the Inner House were subject to the same disadvantage in the decision of this case that I so pointedly and so painfully feel myself on the present occasion. I cannot say there is any clear error on the part of the Lord Ordinary. It seems to me, to use the language of one of the learned Lords in the Court of Session, that 'the considerations are so evenly balanced that I am not surprised that the Lord Ordinary should have reached the conclusion that he did.' I think they are evenly balanced, and decidedly so, and, remembering the vantage ground from which the Lord Ordinary proceeded and the disadvantages under which the Court of Session, as well as this House, labours, I think in that fairly even balance there ought not to have been a reversal of the decision of the Lord Ordinary. I am now called upon to decide in a case in which I feel so strongly that on the one side or the other there has been abominable wickedness.

"LORD HALSBURY—I am of the same opinion. I confess I regard the discussion that has taken place as somewhat unsatisfactory. I cannot conceal from myself that a great many of the allegations on the part of the appellant are very well founded If I were to go through the whole course of the discussion I am not quite satisfied that even upon the judgment of the Lord Ordinary himself it is absolutely satisfactory that his reasoning is such as to produce complete agreement in my mind even if I take the facts as founded on. But I think the consideration that the Lord Chancellor has suggested is one that is overwhelming. I am unable to determine one thing or the other, namely, whether the appellant or respondent were worthy of credit. It is a question of credit where each gives a perfectly coherent account of what they have done and said and contradict each other. Under these circumstances it is impossible that the Court of Appeal should take upon itself to say, by simply reading printed and written evidence, which is right when you had not that decisive test of hearing the verbal evidence and seeing the witnesses which the Judge had, who had to determine the question of fact, and which story to believe."

and liked him; and (5) that when he first obtained possession of her he told her he would not harm her and that she believed him. The defender disputes the second and fifth only of these propositions, but he says that when he was first challenged with his transgression the pursuer "confessed that she had been going with other men," and in his evidence he admits that he made the charge and adds that the pursuer admitted its truth. No cross-examination was addressed to the pursuer on this point and no attempt was made to prove it by the defender. In my opinion the defender's averment on this point was absolutely groundless. The evidence of the pursuer and her father and mother in the circumstances admitted by the defender as to the facts of the 25th and 27th December is, in my opinion, amply sufficient to establish as against him the paternity of the child. As regards the question of seduction, the five points above referred to, if proved, would, in my opinion, establish a case of seduction. I am further of opinion that the fifth of these points is only incidental though undoubtedly important and can be and has been sufficiently proved by the evidence of one credible witness even though that witness is a party to the cause. But even apart from this point I am of opinion that there is sufficient evidence to establish the pursuer's averment of seduction.

Accordingly I move your Lordships to adhere to the Lord Ordinary's interlocutor.

LORD DUNDAS—The two questions which we have to determine are—(1) whether the pursuer has proved that the defender is the father of her illegitimate child? and (2) whether the defender seduced the pursuer? [*His Lordship dealt with the first question, and continued*]—

I agree with the Lord Ordinary in thinking that "the second point is more difficult of determination," but I think that upon it also he has reached the right result. One must keep steadily in mind that, as Lord President Dunedin said in *Cathcart* v. *Brown*, (1905) 7 F. 951, at p. 953, 42 S.L.R. 718, "the popular use of the word 'seduce' is not the same as the legal significance; the popular use would include a case where there is the most complete consent on the part of the woman, and no arts or deceit have been employed in inducing that consent." I agree with Lord M'Laren's statement (in the same case) that "it was settled so far back as the case of *Linning*, (1748) M. 13,909, that an action for damages for seduction will only lie where some species of fraud or deceit has been practised." His Lordship might indeed have gone even farther back for authority—see *Hislop* v. *Ker*, (1696) M. 13,908, an interesting and instructive case. It would be very difficult to lay down exhaustively what species of fraud or deceit may be sufficient to infer seduction. Obvious examples are where the defender has attained his object by promise of marriage, or under pretext of an honourable courtship. Seduction may also be effected by the aid of such dominating influence as might be exercised by a master towards his servant, or, it may be, by a doctor towards his patient, or a pastor towards a member of his flock, or the like. The circumstances of the present case are very peculiar, and do not closely resemble those of any of the reported decisions. But I have come to the conclusion that a case of seduction has been sufficiently established.

A great deal of argument was devoted to the question whether or not it is proved that the defender when he obtained possession of the pursuer's person said to her that "anything he would do would not do her any harm," or words to that effect. The only direct affirmative evidence on this point was—as indeed was almost bound to be the case—that of the pursuer. The Lord Ordinary implicitly believes her story, and if it were necessary to decide the question I should be prepared to hold that she is sufficiently corroborated (if corroboration be requisite, which I do not affirm) by the whole tenor of the proof, the defender's out-and-out denial of sexual intercourse with her, and the evidence as to what passed at the conversation in April, as given by the parties present, including the defender. But I do not regard proof of the use of such words as a crucial or indispensable part of the pursuer's case. If one leaves them out of account altogether, the evidence, in my judgment, establishes a case of seduction. The defender was a man of about thirty years of age, of position and standing, a friend for some years back of the pursuer's parents and the family, a not infrequent visitor at their house, treated with respect, regard, and trust by them all. The pursuer was a girl of between fifteen and sixteen, "young for her years," as her mother puts it, and (as the Lord Ordinary is convinced) amazingly ignorant of everything sexual. His Lordship states that even at the date of the proof she had "a youthful appearance disproportionate to her years." The defender says, "I regarded her as a child." In these circumstances he took advantage of her and obtained access to her body. I think this amounted to seduction. To use the words of the Court's decree in the old case of *Hislop* v. *Ker*, there is here, in my opinion, "such a circumstantial case" as to warrant "damages against the man who had *dolose* induced a party to trust him."

On the whole matter I am for adhering to the interlocutor reclaimed against.

LORD SALVESEN—This is an action of seduction the circumstances of which are unusual and indeed unprecedented so far as reported cases are concerned. The pursuer is the daughter of the headmaster of a board school situated in a rural district some two or three miles from Elgin. The defender is the tenant of a farm at no great distance from the house where the pursuer lived with her parents. At the date of the alleged seduction the pursuer was fifteen years and nine months old, and the defender, who was on friendly terms with her family, was a man of thirty. The case therefore is a serious one for both parties,

and it has been anxiously debated as such. Like all actions of the kind it involves perjury on the part of one or other of the parties to the case.

On 13th October 1913 the pursuer gave birth to a male child, of which she alleges the defender to be the father. Her evidence is that this child was the result of intercourse with the defender, which took place on two occasions, viz., on the 25th and 27th December 1912. The defender denies having had connection with the pursuer, and although there are no conclusions to establish the paternity of the child or for aliment, it is essential that the pursuer should, in the first place, prove that the defender is the father of her child. The Lord Ordinary states that he had no difficulty in holding that the pursuer has proved her case on this head, and on the assumption on which he proceeds — that she is an entirely credible witness—I think it impossible to reach any other result. On the two occasions when the pursuer says that connection took place the parties were undoubtedly alone together at night, and opportunity is thus established by the admission of the defender himself. On the first occasion, which took place in a bicycle-shed, there was nothing to arouse suspicion if the defender's account were to be relied upon, but it is certainly a remarkable coincidence that on the night following they walked home together alone from a ball, and were seen by various witnesses at a point beyond the house where the pursuer lived, at the edge of a wood where she says that connection had just taken place. It is easy to understand this circumstance, however, if the pursuer's account as to what took place on the evening of the 25th be accepted.

As regards the essential facts there is no contradiction of the pursuer's evidence, and she is, in my opinion, sufficiently corroborated by the evidence which her father and mother gave as to what took place when the defender was charged with being the father of the child with which they had discovered their daughter to be then pregnant. Mrs Murray says that on her asking the defender whether he could deny being in the cycle-shed with her he said—"No, I cannot deny that; I forgot myself, but I did not do her any harm." Mr Murray says that when he was called in he asked the defender what he had done to her, to which he replied—"He was very sorry for it; the child was not his, but he would pay for it"; and Mrs Murray gives evidence to the same effect. It is true that the defender denied the paternity of the child, and accused the pursuer of having been with other men, and it was argued on his behalf that Mr and Mrs Murray's evidence—the honesty of which was not impeached—was the result of a misunderstanding of what the defender had actually said, which might readily be accounted for by the natural state of excitement of the pursuer's parents. I am quite unable to accept this view. The attitude of the defender throughout the interview was not that of a man against whom a wholly unfounded charge was being made, but rather the attitude of a man who believed that while he had had connection with the pursuer, that connection could not have resulted in her pregnancy. This is a by no means unusual attitude in filiation cases, and is often at the bottom of the denial of paternity, which in subsequent legal proceedings becomes a denial of connection. Having in view the position in life of the pursuer's parents and the calmness which the defender says he was himself able to maintain, I think it is impossible to explain what passed at the interview except on the footing already indicated. I may add that on many minor points the defender is contradicted by the pursuer's witnesses, and his evidence, in my opinion, is not entitled to any weight.

It does not, however, follow from the fact that the pursuer and defender had connection on the dates libelled that she has a claim for seduction. It is still the common law of Scotland that a girl who is over twelve years of age may lawfully enter into the contract of marriage, although, oddly enough, the statute law of the country makes it a criminal offence for a man to have connection with an unmarried girl, even with her full consent, if she is under sixteen years at the time. It would have seemed more logical if the Legislature which passed the Criminal Law Amendment Act had at the same time raised the legal age of marriage to sixteen, but it has not done so, and the common law remains what it was before the Act was passed. On the other hand, the statute seems to recognise the necessity of affording protection to young females by rendering any man who has connection with them liable to severe criminal punishment. The implication seems to be that girls under sixteen are, in the ordinary case, not free and intelligent agents where the matter concerns sexual relations, and must be protected against their own weakness or ignorance. I agree with the opinion which the Lord Ordinary delivered when he originally dismissed the present action as irrelevant, that at common law seduction in the legal sense in which that term is used in Scotland is not necessarily to be inferred from the mere fact that a man has had connection with a girl under sixteen. Notwithstanding her tender age there are cases where such a girl may be a wanton, and, indeed, little better than a prostitute, and may have solicited the man, who has thought from her appearance and conduct that she was above the statutory age. I have had experience of such cases in trying men under the Criminal Law Amendment Act, where I was shocked by the moral depravity that young girls below sixteen occasionally sink to, and where the accused, who undoubtedly rendered himself liable to conviction under the Act, was far less guilty than his paramour. In such a case, although the man had to suffer a term of imprisonment for an offence under the statute, there could be no suggestion of his obligation to indemnify the girl who shared in his immorality.

While therefore the fact that a man has had connection with a girl below sixteen

does not of itself give rise to any action at her instance, it appears to me that the youth of the girl is an important element in considering whether in the particular case—to use the language of Lord Fraser—she has willingly and immorally resigned herself of her own accord or has been circumvented by the fraud of her paramour. The weight to be given to this element will be greater or less according to her precise age between the limits of twelve and sixteen; and will depend in each case upon the state of her physical development, upbringing, character, and knowledge or ignorance of sexual relations. In the case of a very young girl, for example, a girl of twelve or thirteen, who was proved to have had connection with a man of mature years, there would in my opinion be a presumption in fact (which could only be displaced by positive evidence) that she had been the victim of seduction; and the same result would follow if it were proved that a girl below sixteen was as ignorant of sexual matters as a child generally is. If a person like the defender in these circumstances obtained access to her person, more especially when he was regarded by her as a friend of the family and trusted accordingly, there would seem to be quite sufficient to found an action at her instance as for seduction.

In the present case the Lord Ordinary was satisfied on the evidence that the pursuer was as innocent of the sexual relations as she professed to be. His Lordship tells us that in the witness-box, although then eighteen years of age and a mother, she had a youthful appearance disproportionate to her years, and that when the acts of connection took place she must have looked little more than a child. The Solicitor-General for the defender strenuously urged that we must disregard the Lord Ordinary's conclusions, and that in spite of her evidence—which he believed, corroborated as it was by other evidence—we must assume that she had the ordinary knowledge of girls of her age and class in society regarding sexual matters, and that she had the ordinary instincts of her sex. These are just the assumptions that the Lord Ordinary proceeded on in his first opinion when he pronounced the interlocutor dismissing the pursuer's action as irrelevant, and which he was compelled to hold had been displaced by the evidence. The truth is that there is no ordinary or common standard of knowledge on sexual matters which can be attributed to a girl because she has reached a certain age. Much will depend on her upbringing, her intelligence, her powers of observation, and whether any specific information on the subject has been imparted to her by others. For myself I cannot say that I regard the pursuer's evidence as disclosing any "amazing ignorance." I can quite believe that such a girl might have only the vaguest notions of how children are brought into the world, having in view especially the care with which all matters relating to sex are kept from the knowledge of children in middle-class society. The attempt which was made by the evidence of two or three of her companions at school to show that she had more accurate knowledge than she professed left me entirely unconvinced, for there is nothing in the incidents or remarks that are spoken to which reflect at all adversely on her character. That she had some curiosity on the subject is nothing to the purpose, for that, I suspect, is shared by most young people after the age of puberty; but I am satisfied with the Lord Ordinary that she had no real knowledge either of what sexual intercourse is or of the results which might be apprehended if it took place.

Apart therefore from any statements which the defender made to her before the first act took place, I should have been of opinion that enough was proved to justify a verdict against the defender. In addition, however, the pursuer states that before she permitted him to have intercourse he told her that what he was going to do would do her no harm. This statement is, of course, not directly corroborated, but it seems to me to receive sufficient corroboration from other circumstances in the case, including the remarkable attitude which the defender took up in his interview with the pursuer's parents. It is not to be left out of view that before the 25th of December the defender, while he cannot be said to have paid the pursuer any attentions as that word is generally understood (he himself stated that he always treated her as a child), had ingratiated himself with her by small acts of kindness such as would appeal to a young girl, and on one occasion—although the defender denies this—it is proved that he kissed her. For myself, however, I should have attached very little importance to the statement attributed to the defender had it been made to an adult woman who knew all about sexual relations; but it has an entirely different significance when made to one who was so little more than a child in years, and is proved to have been as ignorant as a child with regard to sexual matters. On these grounds I am in entire agreement with the Lord Ordinary in the conclusion at which he has arrived; and I may add this is just the kind of case where the opinion of the Judge who saw and heard the witnesses, and whose judgment was not biassed by any preconceived notions in favour of the successful party, is entitled to the greatest possible weight.

LORD GUTHRIE—[*After dealing with the question of paternity, and finding that the defender was the father of the pursuer's child*]—The question of seduction is much more difficult. In three particulars I disagree with the views expressed by the Lord Ordinary in his opinion of 7th February 1914. First he assumes that the case does not raise any question of dependency. Quoting Lord Fraser's words (Husband and Wife, vol. i, p. 502,) he assumes that the case is one where a "female, herself a free agent, and the mistress of her own rights, has willingly and immorally resigned these of her own accord." The importance of proof to the contrary does not seem to have been clearly realised in the pursuer's plead-

ings at the proof or in the debate before the Lord Ordinary, who does not allude to the point in his final opinion; but there is enough in the evidence led for the pursuer to show that the defender's position, in relation to the pursuer and her family, was of a character to induce her, at her age, and in the circumstances of her upbringing, to believe statements by him which she would not have credited from a stranger, and to allow conduct on his part which, even without knowledge of sexual matters, she would have instinctively associated, on the part of a stranger, with evil intention.

The second point is one on which the Lord Ordinary, as a result of the evidence, and of the impression made on him by the demeanour of the pursuer and her witnesses at the proof, has frankly changed his opinion. In his first opinion he said "A girl of the pursuer's age may enter into the contract of marriage, and must therefore be presumed capable of understanding and appreciating the meaning of that contract, and of the physical consequences which result from that contract. I am therefore bound to hold that a girl of nearly sixteen is capable of giving an intelligent consent to the act of connection." This reasoning goes too far, because it would be equally applicable to the case of a girl of twelve, to which I am sure the Lord Ordinary would not have thought it could be reasonably applied. It does not follow that a law which has originated in and been taken over from eastern countries, where the conditions are different, is in accordance with the facts of life in Scotland, where the indications, physical and mental, of female puberty do not usually appear till after the twelfth year.

On the third point, the evidence, consequent on the amendment allowed by the Extra Division, has induced the Lord Ordinary to alter his view. In his first opinion he said—"I must assume that the pursuer had the ordinary knowledge of the sexual relations possessed by a well-informed girl of sixteen. I must also assume, looking to what followed the two acts of connection, that she had the physical development, and possibly the sexual desires of a grown woman." Obviously no general rule can be laid down. The extent of knowledge on sexual matters cannot be inferred from the capacity for conception. It depends on the extent of curiosity and the opportunities of obtaining true information, both of which vary indefinitely. The unfortunate practice of giving to children untrue and misleading explanations on such matters is well known; and the extent of ignorance which prevails in young people appears from the familar controversy, among moralists and educationalists, as to whether information should not be judiciously given to them by parents and teachers. I am satisfied with the conclusions which the Lord Ordinary has drawn from the pursuer's appearance, and with the result he has reached as to the credibility of her evidence, and the failure of the defender to displace it. It is not necessary to hold, as the Lord Ordinary seems to do, that her mind was an absolute blank on all matters relating to sex, although some of her answers in reply to leading questions would seem to favour this view. It is sufficient that she had not the knowledge which in the case of a woman may form a more important safeguard of chastity even than natural instinct. The pursuer was either unusually ignorant of sexual matters, which is not in the circumstances improbable, or, as the Solicitor-General maintained, she was abnormally precocious, abnormally wanton, and abnormally designing. I think the former is proved, and that there is no evidence whatever to support the latter view.

In the result, I think, with the Lord Ordinary, that, giving full effect to the principle that seduction, like any other fact, must be proved, the pursuer has proved that she was seduced by the defender in the sense that she was induced, by fraudulent conduct and fraudulent misrepresentation on his part, to allow him to have sexual intercourse with her. I look upon the relation in which the defender, a man double the pursuer's age, holding an honourable position in the district, and her family's familiar and trusted friend, stood to the pursuer, a girl of fifteen years and nine months old—who struck the Lord Ordinary as looking younger than her years, even at the time of the proof, and about whom the defender says in his evidence, "I regarded her as a child"—as bringing the case within the class of cases of ascendancy and dependency, where freedom of action is excluded, of which that of master and servant is only an illustration. But apart from this element I agree with the Lord Ordinary that the defender's alleged fraudulent misrepresentation to the pursuer has been proved, and is sufficient to amount to circumvention in the case of a girl of fifteen years and nine months, although in the case of an ordinary adult, who would know that the statement was a lie, it would not avail. I do not, however, agree with the way in which the Lord Ordinary has reached his result. He says—"I am of opinion that the pursuer's evidence on this point being believed by me, it is sufficient to warrant me in holding it proved that the statement was made by the defender"; and he quotes two cases which seem to me to have turned on elements absent in this case. I think that in this case there must be some corroboration, although where the probabilities, looking to the youth and absence of proved abnormal precocity of the pursuer, are in favour of her story the corroboration may be slight. I find sufficient corroboration in what I hold the defender's false denial of connection having taken place between him and the pursuer. The two things cannot be separated. Just as a false denial of opportunity by a defender leads to the conclusion that the opportunity was used not innocently but in the immoral way alleged by the pursuer, so the defender's false denial of connection in this case leads legitimately to the conclusion that connection was obtained, not in the ordinary way with the woman's free consent, but by some device, such as the pursuer alleges in this case.

The Court adhered.

Counsel for the Pursuer and Respondent—G. Watt, K.C.—Scott. Agents—Forbes, Dallas, & Company, W.S.

Counsel for the Defender and Reclaimer—Solicitor-General (Morison, K.C.)—Paton. Agents—Inglis, Orr, & Bruce, W.S.

HIGH COURT OF JUSTICIARY.

Saturday, March 18.

(Before the Lord Justice-General, Lord Salvesen, and Lord Hunter.)

M'CLUSKEY *v.* BOYD.

Justiciary Cases—Licensing Acts—Offence—First Offence—Trafficking in Exciseable Liquors without Certificate — Separate Acts of Sale—Licensing (Scotland) Act 1903 (3 *Edw. VII, cap.* 25), *sec.* 65.

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), sec. 65 (1), provides that a penalty not exceeding £50 for a first offence may be imposed on anyone found guilty of trafficking in exciseable liquors without a licence. *Held*, under a complaint charging a person without a licence of a number of different sales to different persons on different days, that it was not competent to fine the accused in a larger sum than £50, the whole of the sales constituting the offence of trafficking without a licence and constituting one first offence.

Justiciary Cases—Licensing Acts—Penalty—Expenses—Trafficking without Certificate—Licensing (Scotland) Act 1903 (3 *Edw. VII, cap.* 25), *sec.* 65 (1).

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), sec. 65 (1), enacts—"Every person trafficking in any exciseable liquors . . . without a certificate . . . shall, upon his being convicted thereof, forfeit and pay for the first offence a sum not exceeding £50, with the expenses of conviction."

Held in a complaint under the section that it was not imperative to find the accused liable in expenses, and that where the magistrate had failed to impose expenses the High Court might amend by finding the accused liable in the expenses of the conviction.

Justiciary Cases—Licensing Acts—Trafficking in Exciseable Liquors without a Certificate—Proof—Summary Jurisdiction (Scotland) Act 1908 (8 *Edw. VII, cap.* 65), *sec.* 19 (3) *and* (5)—*Licensing (Scotland) Act* 1903 (3 *Edw. VII, cap.* 25), *sec.* 65.

The Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65), sec. 19 (3), enacts—"Any exception, exemption . . . qualification . . . may be proved by the accused, but need not be specified or negatived in the complaint, and no proof in relation to such exception, exemption . . . qualification shall be required on behalf of the prosecution."

Held in a prosecution under the Licensing Acts for trafficking without a licence that it was not necessary for the prosecutor to allege or prove that the accused had not got a licence, it being open to the accused to prove that she had.

Justiciary Cases—Jurisdiction to Review—Amendment of Sentence—Fine—Reduction of Amount—Summary Jurisdiction (Scotland) Act 1908 (8 *Edw. VII, cap.* 65), *secs.* 72 *and* 75.

The Summary Jurisdiction (Scotland) Act 1908, enacts—Section 72—"The High Court shall have power to . . . amend the determination of the inferior Court. . . . or to reduce any fine imposed by the Inferior Court. . . ." Section 75—". . . Provided always that the High Court may amend any conviction, sentence, judgment, order of court or other proceeding, or may pronounce such other sentence, judgment, or order as they shall judge expedient."

Held in a prosecution under the Licensing Acts that the High Court could amend an incompetent sentence of a fine greater than the amount authorised by the statute by reducing the amount.

The Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 65), secs. 19 (3), 72, and 75, is quoted *supra in rubric.*

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25) enacts:—Section 65—"(1) Every person trafficking in any exciseable liquors in any place or premises without a certificate to him in that behalf granted, according to the provisions of this Act, shall upon his being convicted thereof as hereinafter mentioned, forfeit and pay for the first offence a sum not exceeding £50, with the expenses of conviction, to be ascertained upon conviction; and for the second offence the offender shall forfeit a sum not exceeding £100, with the expenses of conviction, to be ascertained upon conviction; and for the third and every subsequent offence the offender shall forfeit a sum not exceeding £100, with the expenses of conviction, to be ascertained upon conviction: Provided always that such respective penalties shall be over and above any penalty which such person so convicted may have incurred or paid, or be liable to pay, for or by reason of such trafficking under any Act relating to inland revenue or excise. (2) Any person prosecuted for such trafficking may be legally convicted thereof on his own confession, or on proof by the oath of one or more credible witness or witnesses, or other legal evidence."

Catherine Lennox or M'Cluskey, wife of John M'Cluskey, spirit merchant, residing at 62 Main Street, Ayr, *complainer*, presented a bill of suspension to the High Court of Justiciary against Leonard Cecil Boyd, Burgh Prosecutor, Ayr, *respondent*, of a conviction or sentence dated 4th February 1916, whereby on a complaint under the Summary Jurisdiction (Scotland) Act 1908 in the Police Court of the burgh of Ayr at