conditions under which he could take benefit from his father's provision. The question will accordingly be answered in the negative.

The Court answered the question of law in the negative.

Counsel for First Parties—C. H. Brown. Agents—Webster, Will, & Co., W.S.

Counsel for Second Party — Chree. Agents—Graham Miller & Brodie, W.S.

HOUSE OF LORDS.

Monday, February 20.

(Before the Lord Chancellor (Loreburn), Lord Macnaghten, Lord James of Hereford, and Lord Shaw.)

KLEIN AND OTHERS (OWNERS OF THE "TATJANA") *v.* LINDSAY AND OTHERS (CARGO OWNERS).

(*Ante* December 7, 1909, 47 S.L.R. 177, and 1910 S.C. 231.)

Ship—Affreightment and Carriage—Seaworthiness—Onus.

"The *onus* of proving unseaworthiness is upon those who allege it. This is, of course, a sound doctrine; and it is none the less sound although the vessel break down or sink shortly after putting to sea. That is the principle of law. But the enunciation of that proposition does not impair or alter certain presumptions of fact, such presumptions, for instance, as those which arise from the age, the low classing or non-classing, the non-survey of ship or machinery, the refusal to insure, the laying-up, the admitted defects, and generally the poor and worsening record of the vessel, together with finally the break-down, say, of the machinery immediately, or almost immediately, on the ship putting to sea."

Circumstances in which *held* (*rev.* judgment of the First Division) that it lay with the owner to establish the seaworthiness of his vessel, the *onus* on the cargo owners who alleged unseaworthiness being displaced by the presumptions of fact.

This case is reported *ante ut supra.*

Lindsay and others, the defenders and reclaimers, appealed to the House of Lords. For a narrative of the facts see the opinion of Lord Shaw (*infra*).

At delivering judgment—

LORD CHANCELLOR—This is a case in which both the Lord Ordinary and the Inner House, not without doubts, have held that the steamship "Tatjana" was seaworthy when she sailed from Libau on 8th April, and upon that the order appealed from wholly rests. Your Lordships hesitate long before differing from any finding of fact concurred in by both Courts, and especially so when it hinges upon the credibility or effect of evidence given orally by witnesses. In the present instance nearly all the material evidence was given on commission. Still I hesitate to differ from learned Judges whose opinion carries so great an authority. I can, and do, almost entirely agree with them upon the actual facts, but I do not think that those facts point to a conclusion of seaworthiness.

If this ship was seaworthy, what occurred to her almost immediately after she left port is quite unaccountable, and it is the shipowner's business to account for it if he can in some way which shall displace the natural inference.

The "Tatjana" sailed on the 8th of April, and within a few hours her feed pumps broke down, with the result that the boilers had to be fed with sea water by means of the donkey pump. She met with bad weather and put in at Elsinore for repairs after suffering some damage both to ship and cargo.

Manifestly this occurrence called for explanation. In ordinary circumstances a ship which starts seaworthy on her voyage is not driven to feed her boilers with sea water in three or four hours. When the explanation given by the shipowner, who had all the information in his hands, is examined, it seems to me highly unsatisfactory. The immediate cause of the breakdown was that a pipe, forming part of the valve casing of the feed pumps, cracked. Was it sound when the voyage commenced? Upon that point a good deal of conflicting evidence was given. I greatly suspect that it was not sound. The Lord President found it difficult to answer this question with certainty, and his colleagues concurred in his opinion.

But assume that the pipe was sound when the ship sailed from Libau. The fracture put the after feed pump out of action. There was also a fore feed pump. Why did it not serve to feed the boilers with fresh water from the hot well? No really satisfactory answer was given. During a great part of the controversy it was asserted by the shipowner that the fracture of the pipe necessarily put both feed pumps out of action. Then it was discovered, or thought to be discovered, that this was not so. Upon which the owners of cargo naturally argued that if the fore feed pump did not work properly it must have been itself defective, and there was evidence in support of that view. No, replied the shipowner; it would have worked well enough if the engineer had put a blind flange on both the discharge and delivery side of the broken pipe, whereas he put it only on one side, for which piece of negligence the shipowner is not liable under the contract of carriage. After reading the evidence I am not at all satisfied that the fore feed pump was in efficient order when the voyage commenced.

Let me, however, again assume that it was in good order, and that its failure to do its work was due to the negligence of the engineer. There was still a third pump, the donkey pump, which, as I understand

the evidence, might havesupplied the boilers from the hot well. Why did the donkey pump not do this? Here also there are contradictory statements. When the vessel was built there was a connection between the donkey pump and the hot well, which would have enabled water to be pumped from the well into the boilers, and so have dispensed with the need for salt water altogether. But it was said that the connecting pipe had been stolen while the vessel lay up at Libau. It seems to me very important to know whether the connecting pipe was there and in order. The Lord Ordinary says—"It is admitted that when the vessel started from Libau the original connection to the hot well was no longer there." The Lord President does not express any view, thinking it immaterial. It seems to me distinctly from the evidence that there was in fact no connection with the hot well. That might not affect the case if the two feed pumps were in good order, but it is not proved that they were so, and here is the third and last mechanism for getting fresh water into the boilers unserviceable at a crisis like the other two within a few hours of leaving port. Abundance of suggestions and excuses are offered in each case, but no solid explanation of the surely singular occurrence that three pieces of mechanism, all asserted to have been in good condition at the commencement of the voyage, all failed to do their duty three or four hours later. I am satisfied that the shipowner has not met the strong *prima facie* case of unseaworthiness that is made against him by these facts.

Let me add that other parts of the evidence confirm this view. The "Tatjana" was an old ship, and had been laid up for eighteen months at least before April. She then was bought by the pursuer for little more than breaking up value. Very little was spent upon repairs by the pursuer, and practically nothing on the engines. No proper or sufficient survey was in my opinion made before she sailed. These are antecedents which not only explain the existence of defects, but actually conduce to them and hinder their detection.

I think this appeal should be allowed.

I have to say that Lord Macnaghten and Lord James of Hereford take the same view.

LORD SHAW—The appellants were holders of bills of lading for two parcels of oats, which were part of the cargo of the s.s. "Tatjana." The bills were granted on 18th March 1905 by the respondent Klein, as master of the steamship. There was no charter-party. On the margin of the bills of lading there is an exemption from liability on the part of the shipowner. This exemption covers any "act, neglect, or deviation" of the master or mariners or other servants of the shipowner.

The action has been brought to recover payment of two sums—the first, a proportion of general average, namely, the proportion of an account for the repair of the vessel at Elsinore, to which she was taken in the circumstances after mentioned; and second, for a portion of the expenses of unshipping, drying, &c., and reshipping the grain and seed cargo while at Elsinore. These claims are resisted by the appellants, who maintain that the vessel started on her voyage in an unseaworthy condition. The voyage began on 8th April 1905, the ship being destined from Libau to Leith.

The record of the ship is briefly stated as follows:—She was built in 1872. Her original class was at Lloyds A1. In 1884 she passed her No. 1 survey. In 1892, eight years afterwards, she passed survey No. 2. This survey was her last. In 1896 she was withdrawn from survey No. 3. Thereafter she exchanged hands, and there seems little doubt that in the course of years she passed, as a seagoing vessel, from bad to worse. In 1902 she obtained a certificate of the fourth class from the Germanischer Lloyds. This certificate lasted until June 1905, and was accordingly about to expire. At the same date, 1902, she obtained a Germanischer Lloyd certificate for her machinery, the certificate prescribing, *inter alia*, that "the machinery and boilers are to be surveyed annually if practicable." They were, however, never again surveyed.

In the end of December 1901 she was purchased by Russian from Spanish owners for £3000, and performed certain voyages for them at a loss until June 1903. She was then laid up at Libau, her owners having, in the language of one witness, "sustained heavy loss, and all the capital was lost when we sold her." She appears to have remained at Libau, under an admittedly inefficient watch, till 1905, a number of articles, including "a number of copper tubes, and probably other things," having been stolen from her. At this period the vessel could not apparently be insured, the refusal of the Nadeshka Insurance Company in 1903 being proved. In April 1905 the respondent Klein purchased the vessel for £2000, her break-up value. On the 8th of that month she put to sea. Within one and a half hours of her engines putting on full speed her machinery broke down.

A fracture of the casing of the aft feed pump was observed to have occurred. The engineer reported the breakage. The engines were stopped, and after a certain time it was further reported that the repairs of the casing and the feed pump could not be effected at sea. Certain operations took place, including the putting of a blind flange on the open end of the copper pipe leading to the hot well, and the aft feed pump was put out of action. The fore feed pump, however, was left free to act. According to the evidence, it was not in a good state. Klein himself, the respondent, admits that it was "a little bit affected, a little bit of rust I think." He denies, however, that the language of Mr Overgaard's report, that it was badly affected, is correct, and significantly adds—"If it were true that it was badly affected, my vessel would never have been allowed to start." One extraordinary feature of the case, however, is this—it is now admitted that the fore feed pump was not entirely

put out of action, but only the aft feed pump; but in the suit as brought by the pursuer the allegation was that both pumps were put out of action. The shipowners, who ought to have known the facts, waited two years after the voyage was completed before issuing a summons, and then stated the facts erroneously and permitted a great body even of their own evidence to be taken by commission upon this erroneous footing. Now that the error stands admitted, it is difficult to know what the respondent's position as to the fore feed pump is. The best that can be said for it is, that whereas it was till a late stage in the case maintained that that pump was not acting at all after the casing break made itself manifest, it is now contended that it was acting perfectly well all the time. I have investigated the evidence, and no doubt is left upon my mind that this contention is unsound. I think it to be quite clear that, to begin with, this vessel left harbour with her fore feed pump in a defective condition.

The ship, however, had a reserve to meet such an emergency—a reserve in accordance with sound practice in shipbuilding and with her own plans of construction. This was the donkey-engine with properly appointed copper pipeage connecting with the hot well. Until a late stage in the case it was maintained that that pipeage was *in situ;* it is now admitted that it was not there at all, having probably been stolen during the imperfect watch already described. The vessel put to sea with this defect also. Within a few hours after leaving the port of Libau other serious defects became apparent. It is not, however, known whether they existed before she sailed. The shipowner's case is that everything that was wrong, except the lack of the pipeage mentioned, developed or occurred one and a half to two hours after the vessel started. During that period there was quiet weather.

The aft feed pump being out of action, and the vessel having started with her fore feed-pump defective, and the donkey-engine pipeage to the hot well gone, the pumping power of the donkey-engine had to be requisitioned somehow to assist in supplying water to the boilers and it was set to pump salt water into them.

The vessel was plainly unfit for the voyage, and it occurred to the captain to make for Elsinore instead of returning to Libau for repairs. She was only two or three hours from Libau. The barometer was falling, and one of the elements in determining Elsinore as the destination appears to have been that the water of the Baltic being brackish, it was believed that the risk of pumping in sea water with the donkey-engine might be run so far. Heavy weather was encountered. There was a large deck cargo. The coamings, which were of cast-iron and not of malleable iron, were smashed, and other damage was done. Elsinore, however, was reached on the morning of the 11th April, and the accounts for repairs, shifting of the cargo, &c. were there incurred. On 1st May 1905 the "Tatjana" proceeded to Leith, which port she reached on 4th May.

These facts, as above resumed, seem to be practically all that are essential for the determination of this case. I shall consider in a moment the question of *onus* which has played so powerful a part in the judgments of the Courts below; but what are the probabilities which the facts raise as to where the truth of this case lies? The learned Lord Ordinary, who does not take the serious view of some of them that I do, makes an observation at the close of his own résumé, which, if I may say so, appears to me to be of much cogency.

"*Prima facie* it would therefore not seem improbable that the engines were defective at the time when the vessel started from Libau, and that their breakdown within three hours (or one and a half hours as the second engineer says) of full speed having been got up was attributable to this initial defect. In a question of seaworthiness due to initial defect it is, of course, immaterial whether the defect was latent or was capable of being discovered on a careful examination of the engines. The warranty of seaworthiness is absolute unless qualified by contract between the parties, and there is nothing in the contract here which qualifies the obligation to provide a seaworthy ship."

It remains upon the narrative, however, to be said that the position of the appellants must have been to some extent prejudiced by the delay of two years, which occurred between the arrival of the vessel at Leith on 4th May 1905 and the signeting of the summons in this action on 16th May 1907. Speaking for myself, I do not doubt that valuable evidence as to the state of the pipeage before-mentioned has by reason of this delay been destroyed or lost. When to this is added the pursuer's own misconception as to the nature and extent of the breakdown of machinery which had occurred I express no surprise that there has been much difficulty in the Courts below on that subject.

After considering and reconsidering the evidence in this case I am of opinion that the "Tatjana" was unseaworthy when she left port. The probabilities alluded to by the Lord Ordinary are that that is the fact, but I feel also entirely satisfied that that fact has been proved.

In view, however, of the frequent references to the burden of proof, and to the manner in which, and the standpoint from which, the evidence in this case has been examined by the learned Judges of both Houses of the Court below, I think it right to state what I hold to be the well-established rules bearing on those topics in cases like the present.

In the judgments stress is repeatedly laid upon the fact that the *onus* of proving unseaworthiness is upon those who allege it. This is, of course, a sound doctrine, and it is none the less sound although the vessel break down or sink shortly after putting to sea. That is the principle of law. But the enunciation of that proposition does not impair or alter certain pre-

sumptions of fact, such presumptions, for instance, as those which arise from the age, the low classing or non-classing, the non-survey of ship or machinery, the refusal to insure, the laying up, the admitted defects, and generally the poor and worsening record of the vessel, together with finally the break-down, say, of the machinery immediately or almost immediately on the ship putting to sea. It would be a very curious, and, in my opinion, an unreasonable and dangerous thing if circumstances like these did not raise presumptions to which, especially taken cumulatively, effect were not to be given in courts of law.

The last circumstance mentioned is a very familiar example. In the language of Lord Redesdale in *Watson* v. *Clark*, decided nearly a century ago, and reported in 1 Dow, 347—"He had always understood it to be a clear and distinct rule of law that if a vessel in a short time after leaving the port where the voyage commenced was obliged to return, the presumption was that she had not been seaworthy when the voyage began, and that the *onus probandi* was in such cases thrown upon the assured."

Lord Eldon in the same case was even more emphatic—"When the inability of the ship to perform the voyage became evident in a short time from the commencement of the risk, the presumption was that it was from causes existing before her setting sail on her intended voyage, and that the ship was then 'not seaworthy,' and the *onus probandi* in such a case rested with the assured to show that the inability arose from causes subsequent to the commencement of the voyage."

In view of the manner in which the evidence in this case has been regarded in the Court below, I think it right to give the distinction between the proposition in law that those alleging unseaworthiness have the burden of proof of that, and the presumptions arising on facts, and to do so, in the language of Lord-Justice Brett in *Pickup's* case—"A good deal has been said on the argument about the 'burden of proof' and 'presumption.' The burden of proof upon a plea of unseaworthiness to an action on a policy of marine insurance lies upon the defendant, and so far as the pleadings go it never shifts; it always remains upon him. But when facts are given in evidence it is often said certain presumptions, which are really inferences of fact, arise and cause the burden of proof to shift, and so they do, as a matter of reasoning and as a matter of fact; for instance, where a ship sails from a port, and soon after she has sailed sinks to the bottom of the sea, and there is nothing in the weather to account for such a disaster, it is a reasonable presumption to be made that she was unseaworthy when she started."

The same proposition was laid down by Lord Lindley in *Ajum, Goolam, Hossen, & Company*, 1901 App. Cas. 366. In short, the whole evidence in the case must be weighed, and when those alleging unseaworthiness prove a mass of facts such as I have mentioned, and such as appear in this case bearing upon the record of a vessel which founders or breaks down shortly after setting sail, they start with a body of evidence raising a natural presumption against seaworthiness, which presumption, however, may of course be overborne by proof that the loss or damage to the vessel occurred from a cause or causes of a different character. I venture humbly to think that had due effect been given to the above-mentioned principles, certain of the difficulties which appeared to the learned Judges below would have been found less formidable, and that the review of the evidence would have resulted in a verdict for the defenders.

But apart from this I do not find myself able to agree with certain conclusions and observations on the evidence which I will now briefly notice. The Lord Ordinary, after alluding to what was called a "survey" prior to sailing, holds that it "was reasonably sufficient for the purpose for which it was made." His Lordship adds—"No defects of any kind were discovered; but I cannot affirm that the survey was of such a kind that a crack or other flaw in the valve casing of the feed pipes would be likely to be detected." The point as to the now admitted actual absence of the copper tubing from the donkey engine to the hot well is not observed in this part of the judgment. In a later portion thereof, however, "it is admitted that when the vessel started from Libau the original connection to the hot well was no longer there, and that in ships of modern build such a connection is always provided." It seems difficult to understand how a survey could be considered sufficient for its purpose without such a manifest and serious defect having been noted. I am of opinion that this "survey"—it was conducted by the defenders' servants—was imperfect, useless, and indeed, as a survey, unreal; whereas the whole history of this vessel demanded that the survey should have been entirely independent, and of the most thorough and searching character.

The learned Lord Ordinary holds that this vessel left Libau in a seaworthy condition. Two passages from his judgment will illustrate his view:—"The defenders' argument raises the question whether the steamer can be regarded as unseaworthy for a voyage of five days' duration because one of her feed pumps is out of order, there being another which was sufficient to supply all the necessary water for the boilers, in addition to the reserve supply obtainable by means of the donkey engine."

For the reasons stated, the other feed pump, referred to by the Lord Ordinary as sufficient, was in my opinion not so, and I hold that to be plainly admitted by Klein, the respondent himself. So far as supplying "all the necessary water for the boilers is concerned," it appears to me to be plain that the donkey engine was requisitioned for the sole and simple reason that the fore feed pump was insuf-

ficient to supply all the necessary water. In the next place, as to the reserve supply, which, owing to the defects in the donkey engine pipeage, could not be from fresh water or the hot well, the learned Lord Ordinary thus treats that subject—"It is admitted that when the vessel started from Libau the original connection to the hot well was no longer there, and that in ships of modern build such a connection is always provided. This, no doubt, is a wise precaution in the event of both the feed pumps becoming disabled, but I think it impossible to affirm that a vessel which has two pumps in good order, either of which is sufficient to supply her boilers with fresh water, is unseaworthy because she has not got a third means of providing a fresh water supply."

Your Lordships are in possession of my view (differing from that of the Lord Ordinary) as to the pumps. But I should reckon, even on the assumptions of fact which were made by the Lord Ordinary, that his conclusion is far from satisfactory. The donkey engine pipes connecting with the hot well made that whole apparatus what it was designed—and no doubt most properly designed—to be, namely, an emergency apparatus. Not only is it drawn as such, but it was actually constructed according to these plans. The emergency occurred and the occasion when the apparatus was needed arose, but it was found that this vessel had left on a voyage across the North Sea without it. It appears to me plain that such a vessel cannot be pronounced seaworthy.

When the case reached the Inner House great difficulty appears to have been experienced by the learned Judges of the First Division. The learned Lord President, dealing with the point as to the break in the pump casing, thinks that "it is difficult to say that the *onus* of fixing that the crack or weakness existed at the start has been discharged." This is precisely one of the difficulties which I incline to think is removed, and most reasonably and properly removed, by the considerations and authorities to which I have referred. As to the point in the Lord Ordinary's judgment just mentioned, namely, the condition of the donkey engine pump and the want of pipeage connecting with the hot well, quite a different ground is taken from that adopted in the Outer House. The Lord Ordinary's view appears to have amounted to an affirmation that although this connection, originally designed and highly useful and necessary, was awanting, the vessel was seaworthy. This view is not affirmed in the Inner House, as I am glad to recognise. On the contrary, however, a view wholly unsupported by the evidence, and upon which neither party seems to have relied in argument—a view of fact—is stated thus—"The fact is certain that the donkey had a nozzle connection, fit and proper for connection with the hot well, and even if the copper connection pipe were gone, nothing would have been simpler than to have substituted for it an ordinary piece of hose, which, as the pipe was purely for suction, and had no pressure, would have acted perfectly well. I therefore come to the conclusion that *de facto* the unseaworthiness of the ship was due solely to the fault of Lange."

Lange was the first engineer, and, whether this theory be accurate or not, it was certainly never put to him. Nor was it suggested or submitted to anybody else. Nor was it proved that there was hose available and suitable. I express no opinion upon the point, although I can conceive considerable differences among practical men as to the feasibility of the suggestion. But the first real objection to the view is that it is not a view arising out of proved facts, but a suggestion of experiment and expediency, as to the adequacy of which there is no evidence. But in the second place I should reckon it to be accompanied with much danger to life and property at sea if on the assumption of essential parts of the machinery being wanting, the ship should nevertheless be held to be constructively seaworthy because by some ingenuity of contrivance it might have been possible—if, in the emergency, it had occurred to the engineers to think of it—to put together some apparatus to take the place of the missing parts of the machinery. It might, no doubt, sometimes be the case that slight defects occurring or discovered would suggest, in the practical management of a vessel, ordinary and easily adopted remedies, but it would, according to my humble view, be necessary in such cases to submit the suggestions to the test of approval or scrutiny by evidence, and in the absence of such evidence, what has to be relied upon here is that which is at the foundation of the whole story, namely, that the vessel put to sea lacking essential portions of her machinery or equipment.

Lords Kinnear and Dundas did not deliver separate judgments, but concurred in the Lord President's judgment. For the reasons above indicated, and after much anxious consideration, I have felt compelled to come to a different conclusion.

I do not resume the strikingly bad record of the vessel or the suddenness of the breakdown when she was again put afloat. But in my humble judgment it would be difficult to figure a case in which the presumption against the seaworthiness of a ship was stronger. It would be sufficient for me to observe that I do not think this presumption has been overcome. But on the contrary I think that the inference of unseaworthiness from all the evidence led is inevitable.

Subsidiary questions were raised in this case—one of some importance—as to whether, in any view, the unshipping, drying, and reshipping of the cargo at Elsinore were charges which could fall upon the owners of the cargo, these owners not having been asked for their authority to the operation. In the view which I have taken it is unnecessary to enter upon such questions, as I hold that the "Tatjana" was not in a condition in which her owners

should have accepted a contract for carriage of cargo or permitted the vessel afloat.

LORD HALSBURY was sitting to constitute a quorum at the judgment, but had not been present at the hearing.

Their Lordships reversed, with expenses, the order appealed from.

Counsel for Respondents (Pursuers and Respondents)—Murray, K.C.—G. C. Rankin. Agents—Beveridge, Sutherland, & Smith, S.S.C., Leith—Botterell & Roche, London.

Counsel for Appellants (Defenders and Reclaimers)—Horne, K.C.—Lippe. Agents—Boyd, Jameson, & Young, W.S., Edinburgh—W. A. Crump & Son, London.

COURT OF SESSION.

Saturday, January 28.

FIRST DIVISION.

[Lord Dewar, Ordinary.

JACK *v.* BLACK.

Reparation—Wrongous Use of Diligence—Landlord and Tenant—Warrant to Carry Back for Sequestration and Sale for Rent—Warrant Obtained without Notice.

In an action of damages for wrongous use of diligence in obtaining a warrant to carry back a tenant's furniture to premises vacated by him, by minute endorsed on a Small Debt summons of sequestration for past-due rent before service, where there was no effective notice, no exceptional circumstances, and no reasons assigned—*held* that the warrant was obtained *periculo petentis*, and issue ordered for the trial of the cause.

Observations (*per* the Lord President) upon circumstances in which such a warrant might be obtained without wrongous use of diligence.

Sheriff—Landlord and Tenant—Small Debt—Finality—Warrant to Carry Back Furniture—Small Debt (Scotland) Act 1837 (7 *Will. IV and* 1 *Vict. cap.* 41), *sec.* 30.

The Small Debt Act 1837 enacts—Section 30—"No decree given by any Sheriff in any cause or prosecution decided under the authority of this Act shall be subject to reduction . . . or any other form of review or stay of execution other than provided by this Act, either on account of any omission or irregularity or informality in the citation or proceedings, or on the merits, or on any ground or reason whatever."

Warrant having been granted to carry back a tenant's furniture to premises vacated by him, on an *ex parte* statement, and prior to service of a Small Debt summons for sequestration for past-due rent, *held* that an action of damages for wrongous use of diligence was not excluded by the above section of the Small Debt Act.

James Jack, butcher, Gartmore, brought an action of damages for illegal and oppressive use of diligence against William Skene Black, Main Street, Thornhill, the pursuer having been for twenty-seven years prior to Whitsunday 1910 the defender's tenant in premises in Thornhill at a yearly rent of £12, 10s.

The following *narrative* is from the opinion of the Lord Ordinary—"On 28th May 1910 the pursuer removed his furniture and effects from Thornhill to new premises at Gartmore, a village four or five miles distant. The pursuer avers that the defender knew that he was leaving, and the removal was conducted openly and in broad daylight. At the date of his removal he had not paid the last half-year's rent (£6, 5s.) on account of a dispute as to whether he was entitled to an abatement of £2, 5s. On 30th May the pursuer avers that he met the defender and offered to pay the rent less the abatement; that the defender knew that the furniture and effects had been removed and made no objection. On 6th June 1910 the defender's law-agent wrote (*v. infra*) to the pursuer demanding payment of the rent, together with £3 in respect of alleged damage caused by the removal, and stating that if the amount was not paid by the 9th June the defender would raise an action to have the pursuer's effects carried back to Thornhill and there sequestrated. The pursuer consulted his solicitor, who replied (*v. infra*) to the defender's solicitor on 9th June offering to pay the rent subject to deduction, and intimating that if the defender did not accept this offer they (the solicitors) would accept service of the summons on behalf of the pursuer and would consign the full amount of the rent claimed. No reply was received to this letter; but on 10th June (after the defender's solicitor had received the pursuer's solicitors' letter) a summons of sequestration was taken out by the defender against the pursuer in the Dunblane Sheriff Court. This summons was not served on the pursuer or sent to his agent for acceptance of service. On the same day (10th June), without any notice to, or communication with, the pursuer or his agents, the defender made application to the Sheriff for a warrant to carry back the pursuer's furniture from Gartmore to Thornhill. The warrant was granted, and on the same date (10th June) a sheriff-officer appeared at the pursuer's premises at Gartmore, took possession of his furniture and effects to the value of £48, 10s., and removed them to the public road at the Cross of Gartmore, where they remained uncovered and exposed to the weather and public view until next morning. When the sheriff-officer arrived at Gartmore the pursuer's wife telegraphed to his solicitors, who at once telegraphed to the sheriff-officer giving their personal guarantee to consign the rent and expenses. They also communicated with the defender's agent,