Scotland, that a debt due to a company was not attached or in any way affected by an arrestment against an individual partner. (Ersk., 3. 3. 24. Bell's Com., vol. 2. 612.) There was therefore no ground for the action of multiplepoinding. By the law of Scotland such an arrestment did not affect the company debt, and there was therefore no double distress, nor any ground for making the fund the subject of a multiplepoinding.

A. R. CLARK and MACLEAN, for Hawthorns and Company maintained (1) that it was not clear that by Scotch law an arrestment against an individual partner did not attach company funds; (2) that it was a delicate question, into which they were not bound to enter, how far the law of England, as to the rights of partners and the *status* of a company, fell to be applied to the present case —this was a question for the claimants *inter se;* (3) that they were entitled to resist payment and raise the multiplepoinding if there were competing claims to the same fund, although one of these might appear to be much better founded than the others, and although only one claimant had done diligence; and (4) that they were not obliged as arrestees to litigate with any of the claimants, and were entitled to be kept free in paying from any risk of a second demand. Here, if they had paid to Wheatcroft and Turner, they were liable to be sued again by M'Farlane & Son. The effect of the arrestment was a question between M'Farlane & Son and Wheatcroft and Turner. In support of this argument they referred to Shand's Practice, vol. ii. 582–3, and cases there cited, Erskine, 4. 3. 23; Watson *v.* Crooks and Douglas, M. 9133; Lang *v.* Railton, 11th Feb. 1824, 2 S. 693; Sandilands *v.* Mercer, 30th May 1833, 11 S. 665.

The Lord Ordinary (Barcaple), by interlocutor dated 5th July 1866 (which has been acquiesced in), dismissed the action of multiplepoinding, and found the pursuers liable in expenses—referring to the note appended to a judgment of the same date, pronounced by his Lordship in the action of constitution, in which his Lordship decerned against the defenders in that action for the amount of the debt, with expenses. The note is in the following terms :—

"The debt sued for is admitted, and the defenders state their readiness to pay it, except for the arrestment used in their hands at the instance of a creditor of one of the partners of the pursuers' firm. The defence is rested upon an averment in regard to the law of England, that 'by the law of England an unincorporated partnership is not a distinct person, and cannot sue in the partnership name. Further, by the said law a firm or partnership cannot possess funds or other property, but what is called the property of the firm is the property of the partners composing it in the proportion of their respective shares in the copartnery concern.'

"Assuming this to be a correct statement of the law of England, it does not appear to the Lord Ordinary that it would support the defence which is rested upon it. The circumstance that a partnership is not a distinct person, and cannot sue in the partnership name, can only affect proceedings taken in England. Actions are every day brought in Scotland at the instance of English partnerships in the partnership name. The present action is so brought without any objection being taken to it on that ground. Neither does it appear to be material that it is averred that the partnership cannot possess funds or property, and that what is called the property of the firm is the property of the partners in the proportion of their respective shares. It is not said that the partnership cannot recover and discharge a debt, whatever may be the rights of the partners in the money when recovered.

"This action by the partnership for payment of a partnership debt, being unquestionably good, the Lord Ordinary does not think that the remedy can be interfered with by a creditor of one of the partners, on the ground that when recovered it will be, in the proportion of his share, the property of their debtor. It is not said that it will not be liable, in the first place, to the debts of the partnership. Nor is it said that even in England it ought not, in the first place, to be recovered and brought into the assets of the company.

"The Lord Ordinary thinks that if the pursuers had been a Scotch firm, the illegal and incompetent arrestment at the instance of a creditor of a partner would not have constituted double distress. In the view which he takes of the present case, it is not materially different, and he is of opinion that the defenders were not entitled to state the defence, or to bring the relative multiplepoinding."

Agents for Wheatcroft & Turner—J. S. Mack, S.S.C.

Agents for Hawthorns & Company—White-Millar & Robson, S.S.C.

Thursday, Nov. 15.

SECOND DIVISION.

MUNN *v.* SHAW.

Parent and Child—Filiation—Aliment. Circumstances in which held that the pursuer of an action of filiation and aliment had failed to establish her case.

This was an advocation from the Sheriff Court of Renfrewshire of an action of filiation and aliment, at the instance of *Poor* Mary Munn, residing in Greenock, against William Shaw, jun., cabinetmaker there. The Sheriff-Substitute (Tennent) assoilzied the defender, holding the pursuer to have failed in establishing her case, there being little evidence in support of it, except her own deposition; while, on the other hand, she had ascribed the paternity to another person. The Sheriff (Fraser) adhered to this judgment, and pronounced the following interlocutor and note, from which the main facts and arguments relied upon sufficiently appear :—

"*Edinburgh, 7th June* 1865.—The Sheriff having considered the reclaiming petition for the pursuer, No. 17 of process, closed record, proof, and whole process, refuses the prayer of the said reclaiming petition, dismisses the appeal for the pursuer, and adheres to the interlocutor of the Sheriff-Substitute appealed against, and decerns.

(Signed) PATRICK FRASER.

"*Note.*—When a master repeatedly kisses his female servant under twenty years of age, and she becomes pregnant, the reasonable inference is that he is the father. The defender—a licentiate of the U. P. Church—did several times kiss the pursuer, his servant, according to his own confession, and it is proved that he had abundant opportunities of having carnal connection with her.

"Had the matter stood there, the Sheriff would have had no doubt whatever that the defender must be found liable in the aliment of the pursuer's child. But, fortunately for him, he admits the fact that he kissed her several times; and secondly, there is the fact which cannot be got over, that she charged another man with being the father of

the child. There have been cases in which paternity has been found established against a man, although the woman has charged another with being the father. But in these cases there was corroborative evidence of the pursuer's statement against the defender. In this case there is nothing whatever proved except the fact that the defender several times kissed the pursuer, although it must be conceded that the defender does not say that he kissed her while he was elevated after dinner, or under any unusual excitement. He kisses her in his normal condition ; and if the pursuer had not accused Phillips of being the father of her child, this would have been conclusive against any ordinary man, and certainly against a U. P. licentiate. The pursuer says that the accusation against Phillips was in joke. The Court cannot accept this explanation. Charges like these are very serious, and must be seriously considered. There is no evidence but the pursuer's own, that the defender asked her to attribute the paternity to another than himself. If the pursuer is right in her assertion that the defender is the father, she has failed to obtain a legal recognition of that right through her own folly. Whatever may be one's suspicions as to the paternity of the child in question, it is enough here to say, that there is not that sufficient legal evidence upon which the defender can be made liable.

"The Sheriff-Substitute has found expenses due to the defender according to the usual rule, and as the Sheriff has adhered to the interlocutor, he has not interfered with this finding. At the same time he may state that he hopes that this decree will not be enforced against the unfortunate girl. If the Sheriff-Substitute had not found expenses due, the Sheriff certainly would have considered this a case for finding none, and no expenses have been found due since the appeal."

The pursuer advocated.

MACKINTOSH (with him A. MONCRIEFF) was heard in support of the note of advocation.

GIFFORD and R. V. CAMPBELL, for the respondent, were not called upon.

At advising,

The LORD JUSTICE-CLERK—We might go on hearing more ingenious comments upon this evidence, but my opinion is that the pursuer has failed to make out her case.

The other Judges concurred without further remark.

Agent for Advocator—R. C. Bell, W.S.

Agent for Respondent—A. Kirk Mackie, S.S.C.

Thursday, Nov. 15.

FIRST DIVISION.

LINDSAY *v.* THOMSON.

Property— River — Tidal Stream — Obstruction— Proof—Issue. In an action by one proprietor on the bank of a tidal stream against a proprietor on the opposite bank for removal of an obstruction thereon, issue adjusted—and observed that at the trial the pursuer would require to prove not only that the defender had acted wrongfully, but that he himself had suffered substantial injury.

This action at the instance of Sir Coutts Lindsay of Balcarres, Baronet, against Robert Thomson, Esq., concluded that the embankment erected by the defender in the course of the summer or autumn of 1864, in the Motray Burn, within the line of high-water mark of ordinary spring tides, or along the south side of the said burn, for a distance of about 1000 feet opposite to the pursuer's lands and farm of Milton, forming part of his estate of Leuchars, has been so erected or constructed wrongfully and illegally, and to the injury of the pursuer's said lands and farm of Milton ; and that the defender ought to be ordained forthwith to remove the said embankment and works connected therewith, or otherwise the pursuer ought to be authorised to remove the same at the expense of the defender.

The pursuer averred—

(Cond. 3.) On the south side of the Motray River or Burn, and considerably within high-water mark of ordinary spring tides, the defender, in or about the summer or autumn of 1864, wrongfully and illegally, and without the knowledge or consent of the pursuer, who does not reside at or in the neighbourhood of the property in question, constructed an embankment *ex adverso* of the pursuer's said lands of Milton, or part thereof, about 1000 feet in length, and of an average height of 7 feet or thereby, and made and executed other works and operations in connection therewith ; which embankment and works have reduced the superficial area of that part of the channel of the said Motray River or Burn, along which the said embankment is situated, by about 2 acres 1 rood and 9 poles. The embankment has also reduced the average sectional area of that part of the channel of the burn which is situated opposite the pursuer's said lands, and where the said embankment is situated, from 738 superficial feet or thereby to 471 superficial feet or thereby, being a diminution of more than one-fourth of the sectional area. The said embankment has been constructed in a circuitous form, and the part of the channel of the said Motray River or Burn before referred to, has been thereby lengthened by about one-fifth.

(Cond. 4.) The effect of the defender's said operations is to raise to a considerable extent the surface of the water in the channel of the said Motray River or Burn opposite the pursuer's said lands, and the velocity of the stream has been thereby increased. Its velocity has been nearly doubled at high water of high spring-tides, and in extraordinary spring-tides, accompanied by heavy land freshets, its velocity will be thereby nearly tripled. The drainage from the pursuer's lands is thereby greatly obstructed, and the banks of his lands are at all times much more liable than formerly to be worn away and damaged by the increased height, weight, and rapidity of the current in the said channel, and are in the course of being so damaged and worn away accordingly.

(Cond. 5.) The pursuer's lands have already suffered considerable damage by the drainage thereof being obstructed, and the banks considerably undermined and partly washed away, from the causes above set forth ; and if the embankment should not be removed, further and much more serious damage will inevitably be the result. The pursuer has often desired and required the defender to remove the said embankment, and to compensate him for the damage which has already been caused to his lands ; but he refuses or delays to do so. The pursuer reserves all claims against the defender for the damage which his lands have already suffered through the illegal operations of the defender before referred to.

The pursuer proposed the following issue :—

"It being admitted that the pursuer is proprietor of the lands and estate of Leuchars, in the parish of Leuchars and county of Fife ; that the