of the judgment appealed against is wanting.

LORD ADAM — The first interlocutor brought under appeal is the interlocutor of the Sheriff-Substitute of 13th July 1891, whereby "he finds that the defenders' expenses . . . amount to the sum of £48, 1s. 3d. sterling, and decerns against the pursuer in favour of the defenders for the same." That interlocutor was appealed to the Sheriff, who on 23d September adhered, finding the pursuer liable in a small sum of additional expenses.

It is to be observed that these interlocutors disposed only of the question of expenses, and it is on that ground that Mr Baillie objects to the competency of the appeal, and he refers to the case of *Tennents* v. *Romanes*. That case seems to me to have no bearing on the present. It was a case in which an interlocutor was pronounced disposing of the merits of the cause, and also dealing with the question of expenses. No appeal was taken against that interlocutor, and it was extracted, and then an interlocutor was pronounced decerning for the taxed amount of the expenses. The Lord President then said—"To bring up to this Court a decree for expenses, to the effect of letting the appellant get into a review of the interlocutors upon the merits, would be by a mere evasion to set at naught the provisions of the statute"—that is to say, when the interlocutor disposing of the merits and expenses of the cause had become final, it would have been an evasion of the statute to re-open the case by an appeal against the decree for expenses. I agree with that statement of the Lord President, but the case is not the same here. The present appeal is taken on the ground that the interlocutors appealed against were incompetently pronounced, and there is authority for the view that when a decree for expenses has been incompetently pronounced it may be appealed against.

On the merits, that is to say, the question whether the interlocutors appealed against were incompetently pronounced, I agree in thinking that they were. I have no doubt that the interlocutor of this Court dated 17th March last disposed of the whole cause. After findings in fact and law it proceeds—"Assoilzie the defender respondent from the conclusions of the libel, and decern: Find the appellant liable to the respondent in expenses in this Court." That appears to me to be the only valid finding of expenses in this case. The case of *Sinclair* v. *Mossend Iron Co.*, where a general finding of expenses in this Court was held to carry expenses in the Court below, appears to me to have no bearing on the present, because where there is a special finding of expenses in favour of a party, that necessarily excludes a general finding in his favour. If that is so—as there was no remit to the Sheriff to deal with the question of expenses—I do not see what authority he had to take up the case at all. When the case was brought before him he ought to have found that he could not deal competently with it. I agree therefore that the whole proceedings in the Sheriff Court since the interlocutor of this Court of 17th March last were incompetent.

LORD M'LAREN—By its interlocutor of 17th March 1891 the Court of Session dealt with the first appeal, and, as I think, exhausted the conclusions of the action, and in doing so we pronounced a finding of expenses in this Court in favour of the defender, but nothing was said of the expenses in the Sheriff Court. It appears to me to follow that it is not competent, after that interlocutor of the Court of Session, for the Sheriff to entertain a motion on the subject of expenses, the conclusions of the action being exhausted.

On the question of authority I agree with your Lordship in the chair that there is complete parity of reasoning between this case and the case of *Drummond* v. *Bryden*. Why we did not give the defender expenses in the Sheriff Court I do not know. If the Sheriff had power to review Court of Session judgments, possibly cause might have been shown for altering our decision. The only tribunal, however, now open to the defender is the House of Lords, and I am not sure that even that remedy is available, because I believe it is a rule of that Court not to entertain appeals merely on the subject of costs.

LORD KINNEAR was absent.

The Court pronounced this interlocutor—

"Find that the interlocutors pronounced in the Sheriff Court subsequent to 17th March 1891 were incompetently pronounced, in respect that the interlocutor of this Court of 17th March exhausted the cause, and the Sheriff had no further power to deal with the expenses of process: Find that this appeal is competent: Recal the interlocutors appealed against, and decern: Find the appellant entitled to the expenses in this Court and in the Sheriff Court subsequent to 17th March 1891," &c.

Counsel for the Pursuer—Rhind—Hay. Agent—William Officer, S.S.C.

Counsel for the Defenders — Baillie. Agents—Watt & Anderson, S.S.C.

Wednesday, October 28.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

GRAY *v.* WEIR.

Reparation—Wrongous Use of Diligence—Sequestration in Security of Rent—Warrant to Carry Back Furniture Removed by Tenant

A party who had taken a house for six months at a rent of £5, removed part of his furniture before the termination of his tenancy to a farm five

miles distant, of which he had taken a lease. The landlord had been informed that the tenant intended to remove before the term, though not of the precise date of his removal, and the removal was carried out in an open manner. A few days after the tenant had removed, the landlord raised a summons of sequestration against him, setting forth that he had removed his effects "without finding security for the rent, and without intimation to the pursuer." The landlord also lodged a minute craving warrant in respect the tenant "had removed the subjects of hypothec," to carry the same back to his house. No notice of these proceedings was given to the tenant, a letter from the landlord having failed to reach him owing to the person to whom it was entrusted having forgotten to post it. The Sheriff granted warrant as craved, and a sheriff-officer proceeded to the tenant's new abode and was in the act of bringing the furniture back to the landlord's house when the proceedings were stopped by the tenant paying the rent and expenses.

In an action at the instance of the tenant, the Court *held* that the warrant had been executed without cause, and therefore that its execution was illegal, and that the landlord was liable in damages.

In the beginning of November 1889 Andrew Gray took from James Weir three apartments in a house No. 26 Watson Street, Aberdeen, for the half-year from Martinmas 1889 to Whitsunday 1890, at a rent of £5 for said half-year. The apartments taken by Gray were on the opposite side of a passage from apartments occupied by Weir and his mother. During the currency of the tenancy Gray concluded a bargain for taking the farm of Banchory Hillock, situated five miles from Aberdeen, with entry before Whitsunday, and his intention to remove there before the term was made known to Weir in conversation both by himself and his wife, though the precise day on which he was to remove was not mentioned. On Tuesday 22nd April Gray went with his family to Banchory Hillock and took possession of the farm, and removed there part of his furniture. The removal was carried out openly, and was noticed by Weir's mother, who informed Weir of it a few hours after. On the evening of the same day Weir wrote to Gray intimating that unless he paid his rent by noon on Friday 25th April he would take proceedings for having the furniture brought back. The letter conveying this intimation was handed by Weir to a friend to be posted, but the latter having forgotten to post it, it did not reach Gray till the following Monday.

On Friday 25th April Weir took out a summons of sequestration against Gray, in which it was set forth that the latter had removed his effects from said house in Watson Street "without finding security for the rent, and without intimation to the pursuer." A minute was also lodged by Weir to this effect—"In respect the defender has removed the subjects of hypothec to Banchory Hillock, Banchory Devenick, warrant is craved to carry same back" to Watson Street, to be there inventoried and sequestrated. Upon that minute the Sheriff granted warrant as craved. On the following day Weir instructed a sheriff-officer to put the warrant into execution, and the officer accordingly went to Banchory Hillock and seized the furniture in the presence of Gray's wife. Gray himself was absent, being in Aberdeen seeing after the removal of the rest of his effects, but as soon as he heard of the proceedings against him he went to see Weir, and they walked together towards Banchory till they met the officer with the furniture, and the proceedings were stopped by Gray paying his rent and the expenses of the diligence.

Gray thereafter raised an action of damages against Weir in the Sheriff Court at Aberdeen, on the ground that the proceedings taken against him had been unnecessary and wrongfully oppressive.

On 30th April 1891 the Sheriff-Substitute (BROWN), after a proof, pronounced this interlocutor—"Finds in fact (1) that the pursuer was tenant of the defender in a house in Watson Street, Aberdeen, from about the beginning of November 1889 till Whitsunday 1890 at a rent of £5; (2) that on or about February 1890 the pursuer took the farm of Banchory Hillock, in Kincardineshire, as from the following Whitsunday; (3) that the defender knew, through conversations with the pursuer and his wife, that the pursuer intended to remove to Banchory Hillock after the displenish sale on that farm was carried through, and prior to the term of Whitsunday, but that the defender did not know, and had no means of knowing, the particular day on which the pursuer was to remove; (4) that on Tuesday 22nd April the pursuer removed his effects from Aberdeen to Banchory Hillock without intimating to the defender, who resided in the same tenement, his intention to do so, and without finding security for the rent due at Whitsunday, or without making any arrangement with the defender as to the payment thereof; (5) that it is not otherwise proved that the pursuer effected his removal except in an open manner; (6) that the defender did not know until after dinner on Tuesday that the pursuer had flitted, but that on the same afternoon he sent a message to him through his daughter that he wanted to see him, and thereafter on the same day he wrote the letter No 9 of process; (7) that the said letter was handed by the defender to a messenger to be posted, but that he forgot to do so until Saturday 26th April, and that the same was not received by the pursuer until the following Monday; (8) that on Friday, 25th April, the defender being in the honest belief that his letter to the pursuer had been duly posted and received by him, instructed his agent to take proceedings with a view to making his right of hypothec effectual; (9) that accordingly on said 25th April the defender's agent procured in the Small

Debt Court of Aberdeen, Kincardine, and Banff at Stonehaven a summons of sequestration against the pursuer, in which it was set forth that 'the pursuer had removed his effects from said house in Watson Street without finding security for the rent, and without intimation to the pursuer,' and following on said summons that the defender's agent procured a warrant to carry back the pursuer's effects from Banchory Hillock to Watson Street, Aberdeen, in order that they might be there sequestrated; (10) that on the following day the defender's agent instructed William Sellar, sheriff-officer, Aberdeen, to execute the summons and carry out the said warrant; (11) that when the said warrant was in process of being carried out the proceedings were stopped by the pursuer paying his rent and expenses; (12) that the objections to the validity of the summons taken out in the Sheriff Court of Kincardineshire is not insisted on: Finds in law (*a*) that the defender having applied to the Court for a summons of sequestration and for a warrant to carry back the pursuer's effects in order to be sequestrated on grounds which were relevant, and on a representation which was true in point of fact, and not having waived his legal rights, he is not liable to the pursuer in damages; and (*b*) that the said warrant was lawfully executed by the said William Sellar in terms of the Act 33 and 34 Vict. c. 86: Therefore assoilzies the defender from the conclusions of the action," &c.

The pursuer having appealed, the Sheriff (GUTHRIE SMITH) on 9th June 1891 pronounced this interlocutor—"Affirms the findings in fact of said interlocutor down to and exclusive of the twelfth finding; *quoad ultra* recals the interlocutor: Finds in law that the said proceedings having been carried out without notice and without cause, they were illegal, and the defender is liable in damages: Assesses the damages at the sum of £6, 5s., &c.

"*Note.*—Although in Scotland a landlord is armed with very summary powers against his tenants, and may sometimes require to resort to harsh measures for his protection, his right to do so is always subject to the qualification that it shall be exercised with a due regard to the interests of his tenants. This especially applies to a sequestration *currente termino*, which is a very different proceeding from sequestration in execution. As the one object of the former is to secure the landlord against a possible loss, it can always be met by an offer of security, and if the tenant is to have the benefit of this, it necessarily follows that in the general case he is entitled to notice before he is exposed to the inconvenience and annoyance, the loss of credit, the shame and reproach of having his goods seized by officers of the law at the instance of a creditor. It may be different when the manner in which the tenant acts plainly reveals a fraudulent purpose. But in this case there is no evidence of that kind. The goods in question were not carried away secretly or under cloud of night. The parties were neighbours. The fact that the pursuer was to remove before the term to Banchory Hillock, the farm which he had taken, was quite well known, and was in fact discussed, and when it was suggested by the tenant who was leaving Banchory Hillock that the lorry which was to take his things in should bring the pursuer's things out, I think it was a very natural arrangement for him to agree to. Moreover, the defender cannot plead that the rent was a large sum, and that the pursuer was going beyond the jurisdiction. The rent was only £5—a sum which the pursuer was amply able to meet—for it appears from the productions in process that he paid ready money for all the live stock when he entered to his new premises, and settled on the very day with the outgoing tenant for all the inventories. From these facts two conclusions may be drawn—(1) The pursuer was entitled to assume, in the absence of any intimation to the contrary, that his landlord would not be so unreasonable as to oppose the removal of his furniture before the term; and (2) when the defender came to know that the furniture had been removed, there was no need for his sending officers of the law to follow and bring it back without first writing to him on the subject. The defender himself took this view of his duty by writing the letter of 22nd April, intimating that unless payment of the rent was made before 12 o'clock on Friday steps would be taken to have the furniture replaced; and when the threatened steps were taken on Saturday the 26th it was because no answer had been received to the letter. The reason was that through the mistake of the man who undertook to see it posted, it was not posted till the Saturday, and did not reach the pursuer till the Monday, when all the mischief of which he had complained had been accomplished. I fear a landlord who stands on his strict rights must be prepared to have the law strictly applied to him in the matter of responsibility for the unfortunate miscarriage of his letter. He is certainly answerable for the fault of the messenger to whom it was entrusted, and the only effect of the letter is to prove that meaning to act fairly he acted unfairly, a consideration which may affect the damages but does not acquit him of responsibility. I have therefore limited the damages to the sum which the pursuer paid to him to recover possession of his property, and being the wrongdoer he must pay the costs of the action."

The defender appealed, and argued—The pursuer here had removed the subjects of the defender's hypothec without having paid or found security for his rent, and without having given the defender notice of the date of his removal. The proceedings taken were therefore within the defender's legal right, and he was justified in using them, and was not liable in damages—Dove Wilson's Sheriff Court Practice (4th ed.) 488; Ersk. Inst. ii., 6, 58-60; Rankine on Leases, 344; *Donald* v. *Leitch*, March 17, 1886, 13 R. 790.

The pursuer argued—The defender had

been made aware that the pursuer was going to remove before the term, and the removal was carried out in a perfectly open manner. The defender was in these circumstances bound to have given the pursuer notice before taking these extreme proceedings against him — *Johnston* v. *Young*, October 27, 1890, 18 R. (Jus. Cas.) 6. The defender could have got his rent by asking for it, and the execution of the warrant was unnecessary and wrongful. Damages were therefore due.

At advising—

LORD PRESIDENT—At the date of the occurrence on which the action is founded the pursuer was the tenant of a small house belonging to the defender in the town of Aberdeen. The tenancy was for half-a-year, expiring at the ensuing Whitsunday, and at that Whitsunday the amount due as rent would have been £5. The pursuer during the currency of the term concluded a bargain for taking a farm in the immediate neighbourhood with entry before Whitsunday. Accordingly some weeks before that term he took possession of the farm, and proceeded to remove his furniture there from the house in Aberdeen. It appears that the removal of the furniture was begun on Tuesday 22nd April, but was not completed in one day, part of the furniture being removed on Tuesday, and the remainder on the following Saturday. While the defender was getting settled in his new farm he was interrupted by the arrival of a sheriff officer, who in his absence, but in the presence of his wife, produced a warrant and proceeded to carry back the furniture to Aberdeen. It appears that while on his way thither the officer met the pursuer, and that the rent was then and there paid.

This action is brought on account of the wrong that is said to have been done the pursuer by the removal of his furniture in these circumstances.

The warrant for removal obtained from the Sheriff followed on and was incidental to an application for sequestration of the pursuer's effects made to the Sheriff on 25th April. It was set out in the summons of sequestration "that the defender (*i.e.* the present pursuer) has removed his effects from said house without finding security for the rent and without intimation to the pursuer." In order to obtain a warrant to carry back the furniture it was necessary that a special statement should be made, and accordingly this minute was lodged by the present defender — "In respect the defender has removed the subjects of hypothec to Banchory Hillock, Banchory Devenick, warrant is craved to carry same back," &c., and upon that the Sheriff wrote "Grant warrant as craved."

In order to consider rightly the question which has arisen in this action, it is necessary to note that the warrant obtained by the defender falls within the class of warrants which are not obtained as matter of course and are not the ordinary right of the creditor. He requires to support his application for such a warrant by a special statement of facts. The duty of the judge to whom such an application is given is illustrated by the case of *Johnston* v. *Young*, and I mention that case merely as one throwing light on the proceedings which are necessary in order to obtain such a warrant.

That being the nature of the warrant and the conditions under which it is granted, it belongs to the class of cases in which the creditor acts at his own peril, and anyone seeking redress on account of such a warrant having been used against him, need not allege malice and want of probable cause, but merely that the diligence was used wrongfully That then is the issue which has been tried by the Sheriff, and we have to decide whether the Sheriff-Principal is right in holding that the defender is liable. The ground of his judgment is tersely expressed in these terms:—"Finds in law that the said proceedings having been carried on without notice and without cause they were illegal, and the defender is liable in damages." I prefer to split that finding into two, finding in fact that the proceedings were without notice, and that they were without cause. It is quite certain that they were without notice, but I desire, following the example of Lord Rutherfurd Clark in *Johnston* v. *Young*, to guard myself against laying down that in all cases it is necessary that notice should be given. One can picture cases of clandestine removings in which to give notice would be to defeat the legitimate purpose of the application, and therefore Lord Rutherfurd Clark says that the question whether notice is required is one of circumstances, and that it can only be dispensed with safely in exceptional cases.

The absence of notice to the tenant accordingly is a salient feature in the case, though it is not conclusive against the defender, but the main question is whether the proceedings were "without cause." I am clearly of opinion that they were.

In this case the pursuer and defender lived close together, occupying houses, part of the same building, on the opposite sides of a passage. They were acquainted and on sufficiently friendly terms. The defender was aware that the pursuer was going to leave before the term, that having been made matter of conversation between them. It had indeed been suggested in conversation, and the suggestion had been encouraged by the defender, that the outgoing tenant of Banchory Hillock might take the premises vacated by the pursuer and remain as tenant in his place after the term. It is therefore demonstrated that the defender possessed the knowledge that the pursuer was going to move before the term. It is quite true that he did not know the precise day on which the removal was to take place, but no importance is attached to the precise day. The sufficient fact is that the removal which had been spoken of and looked forward to was a removal during tenancy.

These are the circumstances of the removal. There was nothing in it of a clandestine character. It was deliberately

carried out. On Tuesday 22nd April one lorry conveyed part of the furniture to Banchory Hillock, and of this the defender's household were cognisant and were spectators. The remainder of the furniture followed on the next Saturday. Where was it removed to? It was only removed to a distance of five miles. The circumstances of the pursuer rendered him perfectly able, and he was apparently perfectly willing to pay the rent, and it is obvious that if the defender had adopted the common-sense plan of asking him for the money or for security he would have got it.

The case does not seem to me to be one of peculiar delicacy at all. The defender's proceedings were, in my opinion, adopted altogether without cause, and accordingly a legal wrong was done to the pursuer. I think indeed that the defender may congratulate himself on the moderate amount of damage fixed by the Sheriff, because a more unfortunate introduction to his new farm than he gave the pursuer can hardly be imagined. As, however, the question of the amount of the damages has not been canvassed, I propose that we should affirm the findings in fact of the Sheriff-Substitute down to and including the 11th, but should add an additional finding to the effect that the warrant was executed without cause, and therefore propose substantially that we should adhere to the judgment of the Sheriff.

LORD ADAM—This seems to me to be an unfortunate case, both because the sum in dispute is small, only £5 of damages having been awarded by the Sheriff, and also because I think that if the letter from the defender to the pursuer had been delivered instead of being kept in the messenger's pocket, the rent would have been paid, and so there would have been no summons of sequestration, no carrying away of the pursuer's furniture, and no subsequent action.

In dealing with the case my opinion is entirely in accord with that of your Lordship. I do not doubt that the defender as landlord had the right in the first place to sequestrate the pursuer's furniture, and in the second place, if it was removed, to have it brought back, unless good cause were shown why his right should not be enforced. No objection can be taken to his actings in respect of his having applied for a warrant to have the goods brought back, but then when a landlord applies for such a warrant without notice to the tenant he is bound to state the special circumstances in which it is craved, and I think no such circumstances were set forth in this case, and if he had set forth a true account of the circumstances in which the tenant had removed his furniture a warrant would not have been granted. I concur in thinking that it cannot be said that in all cases it is neccessary for a landlord to give his tenant notice that he intends to apply for a warrant to have his goods brought back. Where a tenant made a midnight flitting or carried off his goods in some other clandestine manner, the Sheriff would, I think, be bound to grant a warrant though no notice of the application had been made to the tenant, and there may be other cases where notice might not be necessary. But if special circumstances are not set forth such a warrant ought not to be granted without notice to the tenant having been made. I quite agree with what was said in the case of *Johnston* v. *Young* as to the duty of the person applying for a warrant, and the duty of the judge granting it.

In the present case no statement was made of special circumstances. It is quite true, as was pointed out by Mr Guthrie, that on the face of the application for sequestration it was set out that the tenant had removed his effects without giving intimation to the landlord or finding security for the rent. Even if these facts had been set out in the minute I should not have thought them sufficient to justify the granting of the warrant without notice to the tenant. There was nothing in these facts to show that there had been any attempt to defeat the landlord's hypothec. If after receiving notice the tenant had not been prepared to pay the rent, the Sheriff-Substitute would have been entitled to grant the warrant, but no opportunity was given to the tenant to pay his rent—his effects were just seized. I do not think that if the circumstances had been disclosed to the Sheriff he would have granted the warrant for their seizure, and therefore I agree that their seizure was wrongful and that the pursuer is entitled to have redress.

LORD M'LAREN—The question which we have to consider is not quite the same as that which was considered in the case of *Johnston* v. *Young*, because in that case the Court of Justiciary had to consider whether the Sheriff was entitled to grant a warrant for the removal of effects on the statements made before him. We are considering whether the statement made before the Sheriff was one which the defender can justify, but the observations of the Judges, and especially those in which the Court all agreed, are of great value in elucidating the present case.

I think the first matter for inquiry to be, what is the ordinary right of a real creditor using the diligence of sequestration? His right in the ordinary case is to have the goods of his debtor inventoried and sequestrated, and thereby he converts the general security given him by the law into a special security applicable to the goods named in the inventory. Until sequestration is applied for, the tenant is entitled to remove particular effects and replace them by others of equal value. There is no objection to his changing one article for another, provided he does not impair the value of the landlord's security.

The landlord's other remedy is rather distinct from his ordinary right, and arises only when there is danger of his right of hypothec being defeated. It is not doubtful that a landlord may apply for interdict against a contemplated removal of his goods by the tenant, and may also obtain

a warrant to bring them back if they have been removed.

In all cases where an application to a judge or magistrate is necessary for the purpose of asserting the right of a creditor, the law holds the creditor responsible for the statements on which a warrant is obtained. In that case the parties accept the findings in fact in the Sheriff-Substitute's interlocutor as sufficient for the decision of the case; and I should like to call attention to the 3rd, 5th, and 7th findings. The 3rd finding is to the effect that the defender knew that the pursuer intended to remove before the term, but did not know the particular day on which the removing was to take place. The 5th finding bears that the pursuer effected his removal in an open manner; and the 7th is to the effect that a letter from the defender to the pursuer, intimating that he purposed to apply for a warrant to remove the pursuer's furniture in default of payment, did not reach the pursuer till after the warrant had been put in force. Now, if these facts had been disclosed to the Sheriff-Substitute when he was asked for the warrant, would it have been granted? I think I may answer that question by saying that it would have been impossible to grant it consistently with the decision in the case of *Johnston* v. *Young*, because that case is to the effect that the remedy of bringing back a tenant's furniture is only to be granted on proper cause shown, and when it is necessary to secure the creditor's rights. Proper cause was not shown in this case, the only statement made being that the tenant had removed his effects without finding security for rent, and without intimation to the landlord. The Sheriff held, and was probably entitled to hold, that the removal had been clandestine, and that the tenant had refused to find security for the rent, the fact being that the landlord never asked the tenant to do so.

It appears to me that the proceedings complained of would never have taken place if the letter from the defender, which unfortunately miscarried, had ever reached the pursuer. While that letter shows that the defender entered on these proceedings in good faith, and would probably be conclusive in his favour if it was necessary for the pursuer to aver that he was actuated by malice, yet the state of the law applicable to cases of this kind appears not to relieve the landlord from responsibility for the fact that no intimation of the intended proceedings was made to the tenant.

I agree with your Lordship that this is a clear case of the improper use of diligence entitling the debtor to damages, and I also agree that the Sheriff has fixed on a very small sum of damages, so that I find it difficult to understand what was the defender's motive in bringing the case here.

LORD KINNEAR was absent.

The Court recalled the interlocutor of the Sheriff of 9th June 1891: Found in fact in terms of the first eleven findings in fact contained in the interlocutor of the Sheriff-Substitute of 30th April 1891; *quoad ultra* recalled said interlocutor: Found in fact that the warrant for removal was executed without cause: Found in law that the execution of said warrant was illegal, and that the defender was liable in damages: Assessed the damages, in accordance with the judgment of the Sheriff, at £6, 5s., and decerned.

Counsel for Pursuer—P. J. Blair. Agents—Hagart & Burn Murdoch, W.S.

Counsel for Defender—Guthrie—Crabb Watt. Agents—Wishart & Macnaughton, W.S.

Thursday, October 29.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

ROSS *v.* SINHJEE.

Foreign — Reparation — Wrong Done in England—Right of Action—Seduction—Aliment.

A married woman, with concurrence of her husband, brought an action against a man resident in Scotland, in which she averred that before her marriage, and while a servant in a house in London rented by the defender, she had been seduced by him and had, as the result thereof, borne a child after her marriage. She claimed damages for the seduction, aliment for the child, and inlying expenses. The defender, while denying the truth of the pursuer's averments, stated that by the law of England the pursuer's claims were excluded, and pleaded that the questions between the parties fell to be determined by that law. The defender was allowed a proof of that statement, at which two English barristers were examined for him, and no evidence was led for the pursuer.

Thereafter it was *held* that as by the law of England a woman had no right of action for damages on the ground of seduction, and only a limited statutory claim for aliment and inlying expenses conditional upon her being a single woman, the action fell to be *dismissed*.

In September 1890 Mrs Elizabeth Sarah Williams or Ross, wife of and residing with George Ross at 109 Stamford Street, London, with consent and concurrence of her husband, brought an action against His Highness Sir Bhagvat Sinhjee, the Thakor Sahib of Gondal, in the province of Gujarat and Presidency of Bombay, India, K.C.S.I., LL.D., sometime residing at 71 Chester Square, then at 3 Belgrave Crescent, Edinburgh, concluding for damages on the ground of seduction, for aliment for an illegitimate child, and for inlying expenses.

The pursuer averred that the defender had rented the said house in London from