agent amounts at least to an agreement to hold the petition as duly served at their dwelling-houses in Edinburgh—for this much the pursuers could have done in spite of the defenders.

"It is instructive to notice that when he comes to deal with jurisdiction *ratione contractus* (Inst. i. 2. 20), Erskine points out the necessity of personal service within the territory (or its equivalent in certain cases)."

The defenders appealed, and argued—The defenders were not resident nor did they occupy premises within the sheriffdom for the purposes of trade, and the ground of action was nothing more nor less than delict. In such a case it was necessary, if the defender did not reside within the territory of the judge before whom the action was brought, that it should be served upon him within that territory—*Kermick* v. *Watson*, July 7, 1871, 9 Macph. 984 (*per* Lord President, 985); *Bird* v. *Brown*, Aug. 30, 1887, 25 S.L.R. 1. The action not having been served within his territory the Sheriff had no jurisdiction.

The pursuers argued—The Sheriff must have power to restrain by interdict injury to property within his territory. The lack of authority on the point was to be attributed to the fact that the Sheriff's power to interfere in such a case had never before been questioned.

At advising—

LORD PRESIDENT—The defenders in this petition are the proprietors in trust of certain lands in the county of Fife. Under an agreement with the local authority of Culross a supply of water has been conducted by pipes into certain parts of those lands. Since the laying of those original pipes the defenders have opened a connecting pipe conducting some of the water thus supplied to another part of their lands called Comrie. The local authority dispute the right of the defenders to do this, alleging that the lands thus introduced to the benefit of the water supply do not fall within the agreement. The present proceeding is a petition to the Sheriff of Fife, praying for interdict against the defenders taking any of the water for the supply of Comrie, and for an order on the defenders to disconnect the pipe which they have laid for this purpose.

The first defence is that the Sheriff has no jurisdiction over the defenders, all of whom reside in Edinburgh. It happens that the defenders accepted service, but this places the question in no other position than if they had been served in Edinburgh. They maintain that they not having been served within the sheriffdom of Fife there is no jurisdiction.

In my opinion this plea has been rightly repelled. The subject of the application is the possession of pipes and water laid in lands in Fife. So far as the present question is concerned, it is substantially the same as if the dispute regarded the tapping a natural watercourse within that jurisdiction. To restore against unlawful changes in such subjects is a judicial duty which can effectively and conveniently be done by the local court of the territory alone, as is most clearly seen perhaps in the case of the judge being asked to appoint the work of restoration to be done at the sight of the court. I consider that the proprietor of lands in any county is answerable to the judge-ordinary in any competent action relating to the possession of those lands, or of things locally situated within those lands, whether he be served within the sheriffdom or not.

LORD ADAM—I concur with your Lordship. The pursuers are proprietors of certain water-pipes which run through the defenders' lands in the county of Fife. The defenders have, according to the petitioners, tapped these pipes and abstracted the water belonging to them, and the leading conclusion of the petition is for interdict against the defenders continuing so to abstract the water. Accordingly this appears to me to be an application to the judge-ordinary of the bounds for protection of property situated within his territory. It appears to me that the Sheriff, as judge-ordinary of the bounds, has *ratione rei sitæ* jurisdiction over persons who are proprietors of subjects situated within his territory although they may reside beyond his jurisdiction. There is no doubt that the pipes which are the subject-matter of this action lie within the bounds of the Sheriff's jurisdiction, and the question raised is a merely possessory one, whether the pursuers are to be protected in the possession of these pipes. I think therefore that it is not doubtful that the Sheriff has jurisdiction.

LORD M'LAREN—I concur in the opinion of your Lordship in the chair.

LORD KINNEAR was absent.

The Court dismissed the appeal.

Counsel for the Pursuers—Jameson—C. Johnston. Agents—Wallace & Begg, W.S.

Counsel for the Defenders—W. Campbell. Agents—Tait & Crichton, W.S.

Tuesday, November 10.

FIRST DIVISION.

THE CALEDONIAN INSURANCE COMPANY, PETITIONERS.

(*Ante*, vol. xxviii., p. 899.)

Process—Appeal to the House of Lords—Leave to Appeal—Interlocutory Judgment.

Circumstances in which the Court *refused* a petition for leave to appeal to the House of Lords against an interlocutory judgment.

This was an action at the instance of Andrew Gilmour against the Caledonian Insurance Company for recovery of loss occasioned by fire to certain premises

belonging to the pursuer which were insured with the defenders.

The defenders pleaded, *inter alia*—"(1) The present action is excluded by the clause of reference in the policy. (2) In any view, the action ought to be sisted pending the decision of the pursuer's claim by arbitration in terms of the policy."

On 23rd June 1891 the Lord Ordinary (STORMONTH DARLING) repelled these two pleas, and the defenders having reclaimed, the First Division adhered on 18th July 1891, and thereafter Friday 13th November was fixed as the diet of proof.

The defenders now presented a petition for leave to appeal to the House of Lords against these interlocutors.

The petitioners argued in support of the application—The clause of reference on which they founded in the pleas which had been repelled was in a form in general use by insurance companies, and it was of the utmost importance that the question raised as to its effect should be finally settled by a judgment of the House of Lords. This was the only question of importance raised in the case, and it was obvious that neither party would have an interest to make a second appeal at a later stage. The present was not a mere question of procedure, as in some cases where leave had been refused—*Scottish Rights-of-Way and Recreation Society* v. *Macpherson*, November 16, 1886, 14 R. 74; *Stewart* v. *Kennedy*, February 26, 1888, 16 R. 521. The proper time therefore for presenting an appeal was the present.

The respondent argued—The question of the construction of the clause of reference could be argued in the House of Lords when the case was concluded. If leave to appeal were granted, it might lead to there being two appeals to the House of Lords, while if leave were refused, the necessity for an appeal might pass away. The proof was fixed for Friday, and had already been prepared for. It might be a convenience to the petitioners to go to the House of Lords now, but it would be a great hardship to the respondent, who had no interest in the question of the construction of the clause of reference except as it affected his case, to expose him to the chance of there being two appeals. There was therefore no reason for departing from the ordinary rule—*Stewart* v. *Kennedy*, February 26, 1888 (opinions of the Lord President and Lord Adam), 16 R. pp. 522-3.

At advising—

LORD PRESIDENT—If we were to have regard solely to the interest of the insurance company, and to its convenience in the conduct of its business, there is probably no doubt that we ought to grant the prayer of this petition, as they would thus be enabled to have a question of great general importance finally settled. But we are bound to keep in view also the interests af the insured, who is quite unconcerned in general questions of law, and wants to get his claim settled as soon as may be. Now, it is to be observed that the petitioners have not evidenced any anxiety to save expense to the opposite party by bringing this application timeously, and before preparations for the proof had to be made. Indeed, this petition is presented to us on the eve of the proof, and does not therefore come before us favourably when our duty is to determine upon a balance of convenience. But further, I think we should be slow to interfere with the progress of the action where we see that one result of the proof now impending may be that the defenders are found liable in so moderate a sum that on reflection they may consider that they have no adequate interest on this occasion to appeal to the House of Lords. I think we shall best exercise our jurisdiction to-day by refusing this petition for leave.

LORD ADAM concurred.

LORD M'LAREN—If leave to appeal had been asked at an earlier stage, I am inclined to think that this would have been a strong case for granting an application of this kind, but the leading consideration must be the progress of the case, and I agree that it would be inexpedient on the eve of the proof to interfere with what till now both parties appear to have considered the proper mode of conducting the case.

LORD KINNEAR—Mr Ure has stated that in certain circumstances his clients might eventually have no interest to appeal this case to the House of Lords. If that is so, it appears to me that the pursuer has a very strong argument for maintaining that he ought to be allowed an opportunity of having the whole case considered before he is compelled to go to the House of Lords. If this question had been raised sooner I agree we should have had a different matter for our consideration, but as the case now stands I think with your Lordships that it would not be expedient to grant the leave craved.

The Court refused the petition.

Counsel for Petitioners—Ure. Agents—T. & R. B. Ranken, W.S.

Counsel for Respondent — Salvesen. Agent—T. M'Naught, S.S.C.

Tuesday, November 10.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

DEN (INSPECTOR OF POOR FOR PARISH OF MELDRUM) *v.* LUMSDEN.

Poor—Aliment—Action of Relief—Form of Decree.

In an action by an inspector of poor against the father of two illegitimate children, the paternity being admitted, the Court granted decree for a sum already expended on the children's maintenance, but *refused* to grant decree for payment of aliment at a spe-