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

May to September 1887, that she was one of the servants in that house, that he had seduced her while there, and that as a result thereof she had borne a child on 13th February 1888. She also averred that the defender, knowing she was pregnant, had left for India in August 1887, intimating that he would do nothing for her unless she kept the matter quiet.

On September 1887 she married her present husband, to whom she had been engaged for several months.

The defender, while denying the truth of all the pursuer's material averments, stated —"By the law of England neither of the pursuers has any right or title to sue for damages in respect of seduction of the female pursuer, and any person who has seduced the female pursuer is not liable in damages to the pursuers either jointly or separately. By the said law the defender is not liable either for inlying expenses to the pursuer or for aliment for an illegitimate child."

The defender pleaded, *inter alia*—"(2) The questions between the parties fall to be determined by the law of England; and in respect of the said law, which excludes the pursuer's claims, the defender should be assoilzied."

The Lord Ordinary (STORMONTH DARLING) on 20th March 1891 allowed the defender a proof of that statement, and to the pursuer a conjunct probation. H. H. Asquith, Esq., Q.C., and J. W. Brodie Innes, Esq., both members of the English bar, were examined for the defender, and no evidence was led for the pursuer.

Their evidence as to the law of England sufficiently appears from the note of the Lord Ordinary, who pronounced the following interlocutor:—"Finds that the acts complained of took place in England, and that it is proved that the law of England recognises no claim at the instance of the pursuers, or either of them, in respect of inlying expenses, aliment, or damages for seduction: Therefore dismisses the action, and decerns: Finds the defender entitled to expenses, &c.

"*Opinion.*—The pursuers of this action are a married couple domiciled in England, and the defender is an Indian prince temporarily resident in Scotland. The pursuers' allegations are that the defender, while residing in London during the summer of 1887, seduced the female pursuer, who was then a servant in his house, and that in consequence, on 13th February 1888, she gave birth to a child of which the defender is the father. The conclusions of the summons are for inlying expenses and aliment and a sum of £2000 in name of damages.

"The claim is made in somewhat remarkable circumstances, for the pursuer's story is that Mrs Ross yielded to the advances of the defender at a time when she was engaged to her present husband, that they married while she was pregnant, that they at first registered the child as the husband's, though they afterwards had this entry cancelled and registered it as illegitimate, and that Mrs Ross wrote letters to the defender in which she not only concealed the fact of her marriage, but represented that her affianced husband had given her up in consequence of the birth of the child. These circumstances are by no means favourable to the pursuer's claim, but they do not, except indirectly, affect the questions which I have now to decide, viz.—(1) Whether the rights of parties fall to be determined by the law of England? and (2) What that law is with regard to them?

"It will be convenient that I should take the second question first.

"It is established by the uncontradicted evidence of Mr Asquith, Q.C., and Mr Brodie-Innes that by the law of England a woman who has been seduced has no right of action against her seducer, and that the only action for seduction known to the English law is an action at the suit of the parent or employer of the person seduced, the foundation of the action being the loss of the woman's services to her parent or employer. It follows from this that the plaintiff must be able to show that the woman was in his service, actual or constructive, at the time of the seduction, and also at the time of her confinement; and this of course excludes the notion of any right of action at the instance of a husband who has married the woman after her seduction. Further, it appears that by the common law of England, the mother of a bastard child has no claim against the father for inlying expenses or aliment, and that the only statutory right to such payments is that conferred by the Acts 35 and 36 Vict. c. 65, and 36 Vict. c. 9—a right which is strictly limited to the case of a single woman. Neither the male nor the female pursuer would thus have a right of action in England against the defender (assuming the truth of all they say) in respect of inlying expenses, aliment, or seduction. That being so, one can quite understand the desire of the pursuers, apart from the circumstances of the defender's temporary residence here, to bring their action in Scotland.

But the question remains, whether the rights of parties fall to be determined by the law of England? I am of opinion that they do.

"It is, I think, a principle of the law of Scotland, in accordance with the weight of opinion among writers on international law, that no action can be maintained in the courts of this country on account of a wrongful act committed within the jurisdiction of a foreign country, unless the act is wrongful by the law of the country where it was committed as well as by the law of this country. That is the principle of Lord Shand's judgment in the case of *Goodman* v. *London and N. W. Railway Co.*, Outer House, March 6, 1877, 14 S.L.R. 449, where the widow of a domiciled Scotsman who had been killed on the line of an English railway founded jurisdiction against the company, and brought an action of damages three years after the accident. Lord Shand held that the grounds of action having arisen entirely

in England, the rights and liabilities of parties must be regulated by English law, and that as by that law the action was not now maintainable it must be dismissed. The case is indeed *a fortiori* of the present, for the statute law of England by Lord Campbell's Act (9 and 10 Vict. c. 93) did recognise a right of action at the instance of the pursuer, and only limited its exercise in point of time. In the present case there is not, and there never was, any right of action in England at the instance of the pursuers against the defender.

"Lord Shand's judgment was not reclaimed, for the case was compromised. But I am not aware of any decision in Scotland to the contrary. It was contended that the case of *M'Larty* v. *Steele*, 8 R. 435, is to an opposite effect. That was a case of slander uttered in Penang by one domiciled Scotsman against another, and the Court disallowed a counter issue putting the question, whether according to the law of Penang no reparation for oral slander was due unless special damage was proved? But the judgment, as I read it, proceeded on the footing that slander was a wrong both by the law of Penang and the law of Scotland, and that the kind of damage necessary to be proved was a matter incidental to the remedy which always falls to be determined by the *lex fori*.

"The same principle affords an explanation of the case of *Scott* v. *Seymour*, 32 L.J. 61, which was an action brought by one British subject against another for an assault committed at Naples, and in which the law of Naples was unsuccessfully pleaded as excluding the action. Mr Justice Wightman expressed the opinion that damages might be recoverable in England even although no damages were recoverable in Naples. But the other Judges rested their decision on the narrower, and, as I venture to think, the safer ground, that the plea failed to show that damages might not be recoverable as incidental to the proceedings alleged to be pending in the Neapolitan Courts. That case cannot therefore be regarded as an authority for the proposition that the law of England will sustain an action of damages for an act which is not wrongful by the law of the country in which it was committed. If it were so regarded, it would be inconsistent with the later English case of *Phillips* v. *Eyre*, 1869, L.R., 4 Q.B. 225, and L.R., 6 Q.B. 1. . . .

"I therefore hold that as the pursuer's claims relate to matters for which they would have no right of action in England they cannot maintain here."

The pursuer reclaimed, and argued—(1) *As to the seduction*—It was not settled that there could not be a right of action in a court where such right was recognised because the courts of the place where the act complained of was committed did not recognise the right. The opinion of Justice Wightman in *Scott* v. *Seymour*, 1862, 32 L.J. Exch. 61 (continuation of case, reported 5 Hurl. & Colt. (1862), 219), was to the contrary effect. The other Judges had reserved their opinions on this point—*cf.* Westlake's International Law, secs. 196 and 199. This was an act "not justifiable by the law of country where it was done," and damages could be recovered for it "consistently with the principles of English law." The law of England recognised a right of action for seduction; that was enough. Possibly it could not be brought by the same persons as in Scotland—*e.g.*, not by the woman herself—but that was a matter of form to be determined by the *lex fori*. See Lord Jeffrey's opinion in *Callendar* v. *Milligan*, June 20, 1849, 11 D. 1174; and Lord Justice-Clerk Moncreiff's *dictum* in p. 1063, in *Horn* v. *N.B. Railway Co.*, July 13, 1878, 5 R. 1055. The case of *Goodman* was in the Outer House, and the defenders afterwards compromised it for £700—*M'Larty* v. *Steele*, January 22, 1881, 8 R. 435; Savigny (Guthrie's 2nd ed.), pp. 251, 253. A man by change of domicile might become subject to a right of action not otherwise competent against him—*cf.* *Don* v. *Lippmann*, May 26, 1837, 2 S. & M'L. 682. (2) *As to the claims for inlying expenses and aliment*—The law of England recognised such claims at the instance of the woman herself. The only limitations to be considered were those recognised by the *lex fori*. It was said she had lost her right of action by marrying, but even if the law of England was to be regarded, a right to apply to the justices of the peace arose whenever she became pregnant. She had a vested right which she was unable to make good owing to the defender's leaving the country. She was entitled to make her claim now that the defender had returned, although as a fact she had been married in the meantime.

Argued for respondent—The wrong complained of had been done in England, and there no right of action for seduction at the instance of the woman was recognised. The claim for inlying expenses and aliment was under a statute passed in connection with the administration of the poor laws with the view of relieving the ratepayers. It was a limited right competent only to a single woman. To entitle the pursuer to proceed she would need to show not only that a wrong had been done, but also that she would have had a right of action in the courts of the country where that wrong had been done — "A wrongful act committed by the defendant, and actual or legal damage to the plaintiff"—Addison on Torts, p. 1. She would have had no right of action whatever against the respondent in England, and no such right emerged against him merely by his coming to Scotland. See Bar's International Law (Gillespie's ed.) pp. 272, 360, and 429; *The "Maria Moxon,"* May 3, 1876, L.R., 1 Prob. Div. 107, and cases of *Phillips* v. *Eyre*, and *Goodman*, referred to by the Lord Ordinary.

At advising—

LORD JUSTICE-CLERK—This is a somewhat peculiar case, and it is desirable that before expressing any views as to the law applicable, the facts should be specified and laid down.

The defender is an Indian prince residing in Edinburgh, who some years ago took a furnished house in London with servants, who became his servants. The pursuer was one of the female servants in that house, and she states that he succeeded in seducing her, and that in consequence she gave birth to a child. She also states that at that time she was engaged to a man who is now her husband, and whom she married when she was some five months advanced in pregnancy. The Prince having returned to Scotland she sues him here for inlying expenses, for aliment for the child, and for a large sum as damages for her seduction.

These are the facts. The two questions which have been determined by the Lord Ordinary, and which have to be determined by us, are, whether the relation of parties falls to be determined by the law of England, and if so, what the law of England is. With regard to the latter question, evidence as to what the law of England is has been given by Mr Asquith, Q.C., of the English bar; that evidence has been concurred in by Mr Brodie Innes, a member of both the English and Scottish bar, and no contrary evidence has been led. According to that law, the pursuer has no right to sue for anything but aliment, and until recently she could have made no demand upon the defender at all. The only action competent by way of reparation for seduction is one at the instance of the father or employer of the woman seduced, and is laid upon the loss of service incurred by him through her being laid aside and unable to undertake her duties. Until the Act 35 and 36 Vict. c. 65, that was the only action that could by any possibilty be brought against a person charged with having acted as the defender here is said to have done. By that Act, however, the right was given to a woman to make a claim for aliment against the father of her illegitimate child by application to the justices of the peace, but it was a right conferred only upon a single woman.

In these circumstances, and that being the state of the law of England, the question comes to be, whether this pursuer has any right of action in Scotland against the defender. She has no such right against him by the law of England, because by Act of Parliament her right to sue for aliment has been absolutely barred by the fact that she is not now a single woman but a married woman, and having no right under that Act. She has no other right of action because that is the only Act giving a woman herself the right to sue. The only remaining question is, whether the case falls to be determined by the law of England. If it does, it is clear that the pursuer has no case at all, and I am of opinion that it does fall to be determined by the law of England.

The Lord Ordinary has carefully gone over the cases to which we have been referred, and in the opinion he expresses in regard to these cases I entirely concur. In the case of *Scott* v. *Seymour*, the opinion of Mr Justice Wightman does seem to favour the argument of the pursuer, but the Court decided the case upon other grounds, and the opinion of Mr Justice Williams is adverse to that of Mr Justice Wightman. The judgment in the case of *Goodman* in this Court, although decided by only a single Judge—Lord Shand—is of weight if we agree with it. It was peculiar in this respect. It was an action brought by a woman against a railway company for injuries to her husband sustained in England and resulting in his death. In England such an action is competent only if brought into Court within three years. The pursuer brought the action in Scotland after the lapse of three years, and Lord Shand held—and I think rightly—that the case fell to be determined according to English law, and that as by that law the action was not then maintainable, it should be dismissed. I am of opinion, applying the same reasoning, that this action is not maintainable by the law of England, and that accordingly it is not maintainable here, and ought to be dismissed.

LORD YOUNG—This is an action by a woman who says she had a child to the defender, for inlying expenses and for aliment for the child, and also for damages for her seduction. The facts are exceedingly simple. The woman, who was in the defender's service in London in 1887, says that illicit intercourse took place between her and the defender, with the result that a child was born in February following, and she says she was seduced by his threats and blandishments. Now, by the law of England she had no right of action against him in respect of that illicit intercourse, even if there had been seduction in the sense in which that term is always used in England, viz., that he was the first man with whom she had had intercourse. She was a consenting party, and by the law of England she had no claim against him, because he had done her no more wrong than she had done to him. In 1890, three years after the alleged illicit intercourse, she brings this action in Scotland. Nothing had occurred between them between the birth of the child and the date of bringing the action. The birth of the child gave her no right of action, and she has no such right unless the defender's subsequent coming to Scotland gave her one. I am of opinion it did not. If the defender left England with no ground of action against him at her instance, no ground of action arose by his coming to Scotland, and that is conclusive so far as the seduction part of the action is concerned. As to the inlying expenses and aliment—while in England she had no claim for those either, for the statute whereby a woman while single can apply to a justice of the peace for a bastardy order, gives her no such right if she marries. She made no such application, and the law of England gives her no other right of action. In 1887 while pregnant she married a soldier, and that created an insuperable obstacle to any application for a bastardy order, and she cannot now here after three years get a corresponding decree. A woman

who has no claim in London acquires no claim by simply coming here.

LORD RUTHERFURD CLARK—I agree.

LORD TRAYNER—I also agree, and the ground of my judgment has been stated by the Lord Ordinary with as much clearness as I could desire. The main conclusion is for damages for a wrong done to the pursuer, and when an action of that kind is raised it must be for a wrong recognised as such and giving right to a remedy in the place where the wrong is said to have been committed.

It is certain that by the law of England, where this alleged wrong was done, the act complained of is not recognised as a wrong giving right to an action of damages, and if the pursuer has no right there she acquires no right of action against the defender by the fact of his coming to Scotland.

The other claims are for aliment and inlying expenses. By statute a woman has a right by application to a justice of the peace to make these claims, but that right is limited to single women. We cannot give a higher right of action than the English statute confers, and as the pursuer is not a single woman she cannot take advantage of that statute.

The Court adhered.

Counsel for the Pursuer and Reclaimer — Salvesen — Wilson. Agent — Thomas M'Naught, S.S.C.

Counsel for the Defender and Respondent —D.-F. Balfour, Q.C.—Dickson. Agents— Tods, Murray, & Jamieson, W.S.

HIGH COURT OF JUSTICIARY.

Tuesday, November 3.

(Before the Lord Justice-Clerk, Lord Rutherfurd Clark, and Lord Trayner.)

HALLIDAY *v.* WILSON.

Justiciary Cases—Indictment—Instance—Criminal Procedure (Scotland) Act 1887 (50 *and* 51 *Vict. cap.* 35), *sec.* 3.

The Criminal Procedure (Scotland) Act 1887, sec. 3, enacts—"The Lord Advocate and his deputes shall not demit office on the resignation of the Lord Advocate, but shall continue in office until their successors respectively receive their appointments." An indictment at the instance of a Lord Advocate who had been appointed to another office, was served after the date of the royal warrant authorising the issue of the commission of his successor and the announcement of the appointment in the *Gazette*, but before the warrant had been received by the officials charged with the duty of issuing the commission. *Held* that at the date of service the Lord Advocate's successor had not received his appointment, and that the indictment was good.

On 3rd October 1891, John Halliday, police constable, Hallside Village, Cambuslang, was served with an indictment at the instance of the Right Hon. James Patrick Bannerman Robertson, Her Majesty's Advocate, charging him with theft. The indictment was for trial before the Sheriff of Lanarkshire and a jury. At the diet for trial at Hamilton on 28th October 1891, Halliday objected to the instance in the indictment in respect that on 1st October 1891 Sir Charles Pearson had been appointed Lord Advocate, and the indictment ought therefore to have been at his instance. The objection was repelled, and after trial the panel was found guilty and sentenced to three months' imprisonment. He brought a suspension.

The Criminal Procedure Act 1887 (50 and 51 Vict. cap. 35), sec. 3, enacts—"The Lord Advocate and his deputes shall not demit office on the resignation of the Lord Advocate, but shall continue in office until their successors respectively receive their appointments, and the Lord Advocate shall enter on the duties of his office immediately on receiving his appointment."

The facts as to the appointment of the Lord Advocate were ascertained to be as follow:—In the *Edinburgh Gazette* of 2nd October 1891 the following notice appeared —"Office of the Secretary of State for Scotland, Whitehall, October 1st, 1891. The Queen has been pleased to appoint Sir Charles John Pearson, Knight, Q.C., Solicitor-General for Scotland, to be Her Majesty's Advocate for Scotland in the room of the Right Hon. James Patrick Bannerman Robertson, Q.C., appointed Lord-Justice-General and President of the Court of Session in Scotland."

On 6th October 1891 a warrant dated 1st October 1891, under the Royal Sign Manual, was received at the Crown Office for issuing a commission in favour of Sir Charles Pearson under the Great Seal, and on 13th October 1891 a commission under the Great Seal was issued.

Argued for the complainer—The date of service of the indictment was the date of the indictment, but at that date the late Lord Advocate had ceased to hold office, as the present Lord Advocate had then received his appointment. He was appointed on 1st October when Her Majesty indicated her pleasure. The warrant and commission following on it were only evidence of the appointment.

Argued for the respondent—The date at which the Lord Advocate received his appointment was the date at which he received his commission, or at the earliest the date at which the warrant authorising his commission to issue was received by the official charged with the duty of issuing it.

At advising—

LORD JUSTICE-CLERK—The warrant for issuing the present Lord Advocate's commission under the Great Seal is dated the 1st October, but parties are agreed that it