whole ground coloured green, as necessary for access, &c., was recalled, and the interlocutor pronounced by this Court rendered it quite unnecessary to inquire into that question. It was only when the House of Lords pronounced the judgment which we are now applying that the question of boundaries arose. What the House of Lords found was that the Crown was entitled to the palace, or ruins thereof, or ground whereon the same is situated, and immediately adjacent thereto, and that is to include such ground as is requisite for full and unlimited access to the ruins from two particular roads or streets. That finding necessarily implies that the Crown has right to those two roads, to the use of one of which, at any rate, Mr Hunt, on his side, objects in his second objection. In this he is clearly wrong. The only question therefore that remains is as to the east and west boundaries. I think it exceedingly probable that the ground reported by Mr Rankin did belong to the Crown, and Mr Hunt has failed by his special titles to prove the reverse. The probability is that the Crown had right to a great deal more. But although it has been found that neither Mr Hunt's barony or special title include the palace, still there are now no means of ascertaining what they did include, and what was reserved to the Crown. The Crown has neglected its right so long that it is now quite an arbitrary thing to decide where the boundary is. This sufficiently accounts for the House of Lords giving no particular ground to the Crown, but only that necessary for access. That being the case, the question is, whether the ground given by the Reporter, as means of access, is sufficient to satisfy the judgment of the House of Lords. On that matter I am humbly of opinion that the report ought to be approved of.

The other Judges concurred.

The Court therefore approved the said report, and remitted farther to Mr Rankin to see it carried into execution by the erection of march walls, &c., with the assistance of Mr Peddie, C.E.

Agent for the Crown—D. Beith, W.S.

Agents for Mr Hunt—Maitland & Lyon, W.S.

Thursday, July 20.

ANDERSON *v.* FENTON AND OTHERS. GRANT AND OTHERS *v.* FENTON AND OTHERS.

Public—Body of Subscribers—Committee—Secretary. Circumstances in which it was found that a committee, styled "The Forfar Games Committee," were the representatives of the subscribers to the public games only, and not of the general public; and in which it was *held* that the secretary of such committee was responsible to those who appointed him, no matter who their constituents were; and that on their dismissing him he had no right to raise the question, whether they continued to be that which they represented themselves, or had been superseded by another committee.

These were two appeals against the interlocutors of the Sheriff of Forfarshire, pronounced in two actions before him, arising out of the same circumstances, one of which was at the instance of Andrew Lawson Fenton and others, the "Forfar Games Committee," petitioners, against John Charles Anderson, their secretary; and the other was an action of multiplepoinding at the instance of James Grant and others, calling themselves "The Committee of Management of the Forfar Games," real raisers, against the said Andrew Lawson Fenton and Others, the "Forfar Games Committee," seeking to obtain payment of the balance of the funds in the hands of the said Forfar Games Committee, and deposited in the Bank of Scotland at Forfar.

It appeared from the condescendence and proof that the Forfar Games, which had been discontinued for some years, were resuscitated in 1865, and held at Forfar from 1865 to 1868, under the auspices of a committee known as "The Forfar Games Committee," and which was composed of gentlemen who had collected subscriptions for the purpose, and of some others whom they had called in to their assistance. In 1865, 66, and 67, this committee held public meetings in Forfar previous to the games, with a view of popularising them, but were not responsible to or controlled by the public in any manner. The committee dur- these years, of their own accord, added to their number on several occasions persons whom they thought would be useful to them. Amongst others they took in Mr Anderson, the appellant in the first action, and made him their secretary in 1868. The duties of his office were to keep books and papers belonging to the committee, conduct the correspondence, and generally see that all the directions and resolutions of the committee were given effect to. All said books and papers were accordingly given into his charge, with the exception of those in the hands of the treasurer. In the latter end of 1868 Mr Anderson began to neglect his duties as secretary of the committee, and on 9th June 1869 he ceased to carry out their instructions altogether, and refused to give obedience to them. Accordingly, on 13th July of that year, at a meeting of committee, he was denuded of his office, and Mr Andrew Lawson Fenton, one of the committee, was appointed secretary in his room, with instructions to call upon the appellant to deliver up to him all books and papers in his possession belonging to the committee. With this the appellant refused to comply, and accordingly the summary petition, mentioned above as the first of the two conjoined actions, was brought by the committee to obtain delivery of the said books and papers.

In the course of the early part of 1868 some persons having become dissatisfied with the conduct of the games by the committee, began to agitate for a change in the management. With these the appellant allied himself. These persons, the majority of whom were not subscribers, upon the footing that "The Forfar Games Committee" were responsible to the public, having formed themselves into an interim board of management, called a public meeting of the inhabitants of Forfar, and obtained themselves appointed "a Committee of management of the Forfar Games" with a view to superseding the old committee. Having so obtained themselves appointed a committee of management, they raised the second action—that of multiplepoinding in the hands of the Bank of Scotland—against the old committee, alleging a sum of £75, the balance in the hands of the old committee from the previous year's games, as the fund *in medio*.

A record was made up in both actions, and proof led, which turned very much upon the accuracy of the minutes of meeting produced by the appellant

Mr Anderson, as minutes of meeting of "The Forfar Games Committee."

In the first action the Sheriff-Substitute (ROBERTSON) pronounced the following interlocutor:—

"*Forfar*, 19*th January* 1871.—Finds in point of fact that public games had been held in Forfar prior to 1865, but that they had been discontinued for several years: Finds that in June 1865 a public meeting was called in Forfar to consider the propriety of reviving these games: Finds that the result of this public meeting was the organisation of a committee, who were to canvass the town and neighbourhood for subscriptions, and in the event of sufficient funds being raised, were to carry out the games: Finds that this committee collected a sum of money which in their opinion justified them in giving games that year: Finds that the committee, with additions to their number, from time to time collected subscriptions and carried on games for four years, until the present dispute arose in 1869: Finds that the petitioners are a majority and quorum of this acting committee: Finds that the petitioners as a committee had no constitution, written or implied, under which they were responsible to the general public: Finds that the subscribers, during the four years in which games were given by the petitioners, allowed them to carry out the games, to make their own arrangements, to appoint their office-bearers, to keep accounts, and dispose of the profits realised by the success of the games, and generally to perform all the functions of a working committee without challenge or hindrance from 1865 to 1868 inclusive: Finds that on the 30th June 1868 the petitioners met and appointed the respondent Mr John Charles Anderson to be their secretary: Finds that the respondent accepted the appointment, and that the books and papers called for in the petition were handed over to him, or came into his custody as secretary to the petitioners: Finds that after the appointment of the respondent to this office he continued for some time to keep the minute-books and perform other business for the petitioners: Finds that at a meeting of the petitioners, held on the 9th June 1869, the respondent was instructed to carry out certain recommendations contained in a report by Messrs Strachan and Fenton, which report is contained in pages 20 and 21 of No. 7 of process: Finds that by this recommendation the committee were advised to procure a correct list of all the subscribers, by intimation to them by handbill to send in their names: Finds that the respondent failed to carry out his instructions in this matter, and without any authority from the petitioners proceeded to call a meeting for the 15th June 1869, which in point of fact was a public meeting, and was intended by him to be such: Finds that at this public meeting a board of management was created by the public superseding the petitioners, and claiming to exercise the management of all funds or property belonging to the games: Finds that the respondent was appointed secretary to this board: Finds that in consequence of these unauthorised proceedings on the part of the respondent, the petitioners deposed him from his office as secretary, and demanded the delivery of the books and documents called for in the petition: Finds that the respondent refused and still refuses to deliver up said books and documents: Finds in point of law that the petitioners are not responsible to the general public, but to the subscribers, for their management and intromissions with subscriptions: Finds that the books and papers called for belong to the petitioners in their capacity as a committee, and as representing the subscribers to the games: Finds that the respondent, having been denuded of his office of secretary to the petitioners, has no present right or title to the books and papers in question: Finds further, in point of law, that the meeting of 15th June 1869, above referred to, not being a meeting of subscribers, had no right in law to transfer the management of the games from the petitioners to a board: Finds that the respondent, as secretary to this board, has no right to the custody of the property of the petitioners, or to the books and papers called for: Therefore ordains and decerns the respondent to deliver up the books and documents called for, conform to the prayer of the petition: Finds the respondent liable in expenses: Allows the petitioners to lodge an account of these, and remits it, when lodged, to the Auditor of Court for taxation and report, and decerns.

"*Note.*—This action is raised to recover certain books and papers in the hands of Mr J. C. Anderson, solicitor, Forfar. There can be no doubt that he obtained the custody of these books while he was secretary to the petitioners, who formed, and still form, an acting committee for the management of the Forfar Games. Mr Anderson is no longer their secretary, having been deposed from his office in July 1869; and as he declines to restore these books and papers to the petitioners, it becomes necessary to examine narrowly his alleged right or title to keep them back. It is proved that for four years the petitioners successfully carried on the Forfar Games. They held constant meetings, they added to their number, appointed office-bearers, and acted in every way as the sole representatives of the subscribers. The Sheriff-Substitute thinks the respondent has failed to show that the committee were either in fact or in law responsible to the general public. It is quite true that their existence originated at the public meeting held at the West End School. But the moment that subscriptions were asked for, and a sum of money was raised, they became the representatives of the subscribers, who had the power of controlling their actions or of impeaching their management. From the proof there is little doubt that this was their true position. Their chairman, who is a lawyer, all along considered that the general public had no right to control their actions; and although he has changed his mind now, and has allied himself to the respondent's party, he has only done so quite recently. For nearly four years he repudiated the right of the public to interfere with the committee, and he has had considerable difficulty in reconciling his present attitude with his former opinions. In point of fact the general public exercised no hold over the committee. There never was a public audit of their accounts, there was no annual election of office-bearers, the public could hardly be got together sometimes to hear a statement from the committee, and in 1868 there was no public meeting at all. The want of a defined constitution was felt by various members of the committee, and efforts were made and resolutions were proposed from time to time with a view to amend this, but no fixed basis or settlement was ever come to. It is quite true that the committee called public meetings from time to time, which were presided over by their own chairman. This was very natural, and it kept the games before the public eye, and infused popularity into their proceedings. But

the Sheriff-Substitute can nowhere find that this was imperative on the committee, or that the subscribers ever consented to hand over all their rights to the public at large. The committee had no guarantee from the general public that in the event of the games proving a failure in a pecuniary sense they would be reimbursed their outlay. The committee took the sole risk, and were responsible to the tradesmen whom they employed to make preparations, and the Sheriff-Substitute rather thinks that if the games had been a losing concern the public would not have been so eager to take the management. But by prudent conduct the committee have not only paid all their expenses, but have realised upwards of £70, and with this sum of money the respondent's board now wish to intromit, and they have raised a multiplepoinding to secure it. It is not easy to ascertain the meaning of the word 'public' as used by the respondent. Who is this 'public?' The working men of Forfar, the electors of the burgh, the inhabitants of the town and neighbourhood, the general public at large, any one who attended a meeting—all these definitions have been given to the term. Even the rights of the ladies have not been overlooked. It is difficult to see why the public of Forfar should have a better right to this money than the public of Kirriemuir or Brechin. The money has been made by the committee trading with the subscribers' capital. The subscribers, apart from the public, have never been called together—their views have never been ascertained as to what should be done with this money. There is this, however, to be said, that for four years the subscribers have been satisfied with the management of the committee, and have never called it in question; and until they do so, the Sheriff-Substitute thinks he is quite justified in allowing this money, as well as the minute-books and other property of the subscribers, to remain in the hands of the petitioners. If the Sheriff-Substitute is right in holding that the 'public'—and by this word he means whatever the respondent means—have no constitutional hold over the committee, and that the petitioners are only responsible to the subscribers, then the respondent's case breaks down. For he only holds the books and papers called for by virtue of his office as secretary to the new board of management appointed by a public meeting, which board, he says, supersedes the committee. The respondent has endeavoured to prove that the steps which were taken to have this new board appointed and this new constitution created were taken at the instance of the committee themselves. But he completely fails to prove this. On the contrary, it is proved that the committee never sanctioned any such step. The minute of a meeting held on the 9th June 1869, for which the respondent is responsible, and on which he relies—this minute has been proved to be inaccurate, and totally inconsistent with the facts. The Sheriff-Substitute accordingly holds that the proceedings on the 15th June 1869, when the board of management was created, and all other subsequent proceedings by this board, are incompetent and illegal in so far as the property of the committee is concerned. If this view be correct, the respondent has no right to keep up the books and papers called for. He must give them back to the petitioners, from whom he got them.

"It may be that this new board of management is admirably constituted, and probably will give games in Forfar to the entire satisfaction of every one. But they must start on their own footing, and without the assistance of the funds or property of the petitioners, or at least they must first call together the subscribers and obtain their consent.

"The great length to which the proof in this case has attained is explained by the fact that the minutes of the meetings held by the petitioners, contained in Nos. 7 and 12 of process, are very informal and incomplete. This necessitated parole evidence—(See Dickson on Evidence, sec. 118, and case of *M'Cartney*, 5 W. and S. 504)."

The Sheriff (Maitland Heriot), on appeal, dismissed the appeal, and "adhered to the interlocutor appealed against, with the following variation:—Finds that it is unnecessary to determine in this case whether or not the petitioners are responsible for their management to the subscribers to the games, and therefore recals any findings to that effect, and decerns."

In the multiplepoinding the Sheriff-Substitute ranked and preferred the original, "Forfar Games Committee" to the whole fund *in medio*, and that for the reasons set forth in his interlocutor in the former action.

The Sheriff adhered on appeal.

Against both these judgments of the Sheriff Mr Anderson and the new committee of management appealed to the First Division of the Court of Session.

The cases were argued and decided together.

Guthrie Smith and Vary Campbell for the appellants.

Fraser and Scott for the respondents.

At advising—

Lord President—The difficulty of finding any judicial grounds upon which to decide this case is the only thing which perplexes me here. For there certainly is considerable embarrassment in the want of legal title on one side and the other. I must congratulate the Sheriff-Substitute on the skilful manner in which he has steered his way through the difficulties, and arrived at what to my mind is a most satisfactory judgment.

The Forfar Games have been going on for a number of years. The only general fact of leading importance to us is that the committee who have conducted these games are the representatives of the subscribers. That leading fact runs through the whole case, and affords the key to its decision. There is no doubt that the respondents, who were, as I have said, a committee representing the subscribers, did in 1868 appoint Mr Anderson the appellant to be their secretary. His authority, therefore, and whole title emanated entirely from the respondents, as representing the subscribers. But Mr Anderson, after accepting the appointment and acting for some time, chose to ally himself with another body of men, who may or may not have been subscribers, but whom the evidence, so far as it goes, shows to have been, if not altogether, still to a very large extent, not subscribers, and therefore not parties to whom Mr Anderson was either directly or through the committee which appointed him in any way responsible. Having done this, Mr Anderson proceeded to follow out his own views, and called a public meeting of the people of Forfar for the 15th June, and at that public meeting he, along with certain other persons whose tool he had made himself, used his endeavours to get another committee appointed, not by the subscribers or any persons representing them, but merely by those present at this public meeting, with a view of superseding the respondents. No

one could prevent Mr Anderson and his friends appointing any committee or any number of committees they liked for managing games in Forfar; but that is very far from saying that they could in law supersede the committee of subscribers by any committee they chose to elect. Mr Anderson therefore, in acting as he did, proceeded in direct violation of his duty as secretary to the respondents. They were both entitled and justified in dismissing him as they did. But then Mr Anderson refuses to acquiesce in his dismissal, and insists that he is entitled to retain the books and other property confided to his charge for the use of this new committee, which has been appointed by the public, and not by the subscribers, while the committee itself claims to have transferred to it the balance of the subscribers' money lying in the old committee's hands. Such a contention and such a claim is not only quite unjustifiable, but most preposterous. I therefore think that the Sheriff's judgment must be sustained in both cases.

The other Judges concurred.

Agent for Appellants in both actions—G. K. Livingston, S.S.C.

Agent for Respondents—John Galletly, S.S.C.

Thursday, July 20.

SECOND DIVISION.

M'MILLAN *v.* M'MILLAN.

Husband and Wife—Aliment—Arrears. A husband in receipt of an annual income of £640 having deserted his wife, *found* liable to her for aliment at the rate of £140 per annum; but arrears of aliment *refused*, on the ground that the husband was liable for the debts contracted by his wife for her maintenance.

This was an action raised in October by Mrs M'Millan against her husband, who was a pawnbroker in Glasgow, for decree of £150 per annum as aliment from the term of Martinmas "next, 1870," and also for £50 as aliment from the date of the pursuer's being excluded from the defender's house till that term.

After a proof, the Lord Ordinary (JERVISWOODE) pronounced an interlocutor in the following terms:—"Finds that on or about the 12th July 1870 the defender removed or excluded the pursuer from the house in which, at the said date, they had their residence as married persons, and thereafter refused, and still refuses, to admit the pursuer to the said house, or to receive her therein: Finds that the defender has not established by proof facts relevant or sufficient to warrant or to justify such refusal; and with reference to the foresaid findings, finds as matter of law that the defender is liable in aliment to the pursuer; and farther finds it proved that the defender is in receipt and in possession of an annual income of £640 or thereby: Finds, with reference to the preceding findings, that the defender is liable in payment to the pursuer in aliment at the rate of £140 sterling per annum, payable to her at the terms, and in advance, as concluded for in the summons; and is also liable in payment to her of the sum of £46 sterling, in name of aliment, from the said 13th day of July 1870 until the term of Martinmas thereafter, together with interest at 5 per centum per annum on each of the said termly payments, as concluded for in the summons, and decerns for payment accordingly—but under deduction always of the sums of aliment already decerned for in favour of the pursuer."

The defender reclaimed.

FRASER and BLACK argued that the amount given by the Lord Ordinary was excessive. Arrears of aliment should not be given, as the husband was responsible for the debts contracted by his wife; *Donald* v. *Donald*, 22 D. 1118; *Macnaughton*, 12 D. 703.

SHAND and R. V. CAMPBELL for the respondent.

LORD JUSTICE-CLERK—It is quite clear that neither the previous rate of living of this husband and wife, while living together, nor the sum stipulated by the marriage-contract, is the test of the allowance which should be made to the wife now that her husband has turned her out. I think the sum of £140 allowed by the Lord Ordinary is reasonable; but I would qualify our interlocutor by the condition that either party may come back to us on any change of circumstances.

As to the arrears, it is a wholesome rule that a wife's allowance is not to be increased on account of debts for which her husband is liable. The husband here has no defence against payment of the accounts referred to, if the furnishings were made and justly charged.

I would therefore propose that the interlocutor of the Lord ordinary be altered as to the arrears, in respect the husband is liable for all his wife's just debts already incurred. *Quoad ultra* I would adhere.

The other Judges concurred.

Agent for Pursuer—T. F. Weir, S.S.C.

Agents for Defender—Muir & Fleming, S.S.C.

Thursday, July 20.

STEWART *v.* GELOT.

*Process—Reduction—Foreign Stamp Laws—Bill—*Res Noviter*—Competent and Omitted.* A bill drawn in a foreign country, and a letter requesting the drawee to accept it, were sought to be reduced on the ground of fraud, &c. After the verdict of a jury negativing fraud, but before decree had been pronounced, the pursuer raised another action of reduction, on the ground that the bill was not stamped according to the law of the country in which it was drawn. The pursuer averred that when he raised the former action he was ignorant of the foreign stamp laws. *Held* that this was not *res noviter*, and that the law of Scotland (the *locus solutionis*), which takes no cognisance of the fiscal laws of other countries applied, although the bill had not been accepted.

Observed that "competent and omitted" in a former action cannot be pleaded till final decree has been pronounced in it.

This was an action of reduction, brought by Dr Stewart, M.D., Paraguay, against Anthony Gelot of Paris, concluding for reduction of—"*First*, A pretended draft or bill of exchange, dated at Paraguay 8th May 1867, drawn by the said William Stewart, the pursuer, upon the said Robert Stewart, for £4000, payable thirty days after sight to the defender, and bearing to be indorsed by him to Perier Frères & Compagnie, bankers in Paris, and by the said Perier Frères & Compagnie to Robinows & Marjoribanks, merchants in Glasgow, and again by them without recourse to the de-