he cannot make the payment of these dues the condition of the public use of a public harbour.

Lord Justice-Clerk (after referring to an observation by Lord Neaves in the case of *Hagart* v. *Fyfe*, 9 Macpherson, p. 128, which raised a similar question)—It is not necessary in this case to decide the question absolutely; but it would appear to me that no man by putting down a construction or building upon the sea-shore can prevent that being used as the sea-shore would have been had it never been put there. But the question in this case is really a question of interdict; and after what has been said by your Lordships it is quite unnecessary for me to go further into the case. I would notice, however, that the defenders are actually sought to be interdicted from the use of the shore adjacent to the quay, as well as the quay itself, as a landing-place in connection with the fishery in the Bay of Luce; so that fishermen are actually proposed to be prohibited from setting foot upon the adjacent shore if they happen to be out and returning from fishing oysters. That, in my opinion, is entirely and absolutely out of the question, and I am satisfied that both the declarator and conclusions for interdict are wholly and entirely untenable.

The Court recalled the Lord Ordinary's interlocutor and dismissed the action.

Counsel for Reclaimers—Johnstone—W. C. Smith. Agents—Hope, Mann, & Kirk, W.S.

Counsel for Respondent—Asher—Keir. Agents—Dundas & Wilson, C.S.

Friday, December 3.

FIRST DIVISION.

THE MARQUIS OF BUTE *v.* STUART AND OTHERS (THE MARCHIONESS OF BUTE'S TRUSTEES), AND OTHERS.

Trust — Foreign — "Heirloom" — Destination of Moveables on a Series of Heirs—Intention.

Lady B., a domiciled Scotchwoman, by her trust-disposition and settlement, executed in Scotch form, directed, *inter alia*, that certain jewels, &c., should "be held as heirlooms" and settled upon "her only son the Marquis of B.," and after him on the heirs "entitled to succeed to the B. estates in the county of Glamorgan;" and in the event of his dying without issue they should be sold and the proceeds applied in a certain manner. She also directed that certain plate should be "made an heirloom, and settled and secured upon the same series of heirs as are appointed to succeed to the said Marquis of B.'s Glamorganshire estates." In an action by Lord B. against Lady B.'s trustees, to have himself declared absolute owner of the plate and jewels, &c., *held* that the settlement of these articles as "heirlooms" on a certain series of heirs, being competent by English law, the intention of the testatrix ought to be carried out by a deed to that effect, to be executed in English form, and action *dismissed* accordingly.

Sophia Marchioness of Bute died on 28th December 1859 leaving a trust-disposition and settlement dated in 1859, and duly recorded, by which she conveyed to the trustees therein appointed her whole estate, heritable and moveable. The said disposition contained the following purposes:—"*Fourthly*, I direct and appoint that the jewels, watches, seals, pocket and other personal trinkets and ornaments, bequeathed to me by the late John Marquess of Bute, my husband, shall be held as heirlooms and settled upon my dear and only child John Patrick, now Marquess of Bute, and after him on the heirs entitled to succeed to the Bute estates in the county of Glamorgan; and in the event of my dying before my son attains the age of twenty-one, I recommend and trust that the Court of Chancery will appoint as his guardians the foresaid Colonel Charles Stuart, Sir Francis Hastings Gilbert, Baronet, and Lady Elizabeth Moore, whose near relationship entitles them to the office, and in all of whom I have the most perfect confidence; and if any member of the Bute family shall interfere with or endeavour to prevent such appointment, or refuse to apply for and recommend it, then and in that case, or in the event of my son dying without issue, I direct the said jewels, trinkets, and others to be sold at his death by public auction, and the proceeds applied in the erection of almshouses in memory of my mother and my sister Flora, said almshouses to be erected in or near Edinburgh, their birthplace, and to be called the 'Flora Almshouses,' to be used and occupied by the widows and daughters of officers of the British or Indian army in necessitous circumstances, under such conditions or regulations as my trustees may from time to time appoint." "*Sixthly*, I direct and appoint the plate purchased by me from the executors of the deceased Lord Dudley Stuart to be made an heirloom, and settled and secured upon the same series of heirs as are appointed to succeed to the Marquess of Bute's Glamorganshire estates; and in respect a portion thereof is much worn, I authorise any heir in possession to melt down and restore what may at the time be unfit for use." The residue of the estate was directed to be applied to the purposes of the almshouses before mentioned, "or in such other manner as my said trustees and their foresaids shall consider most for the honour and benefit of my family."

In 1873 the trustees, acting under the said trust-disposition, handed over the said jewels and plate to Lady Bute's son, the present Marquis, for his use, and took from him a receipt and obligation dated 12th July 1873. In that document the Marquis of Bute, after referring to the said trust-disposition, and acknowledging to have received the said jewels and plate, "but always on the terms and conditions of the said trust-disposition and settlement," proceeded:—"Therefore I bind and oblige myself, and my heirs, executors, and successors, at any time (if and when called upon) to concur with the trustees and their successors in settling, by a formal deed or deeds, in such form as may be permitted by the rules of law and equity, the said jewels, watches, seals, pocket and other personal trinkets and ornaments, and the said plate above referred to, upon myself, and after me on the heirs entitled to succeed to the Bute estates in the county of Glamorgan, all in the terms of the said trust-disposition and settlement; and in the event of my

death without issue, I direct my executors or executor, and bind and oblige my heirs, executors, and successors whomsoever, to hand over the said jewels, watches, seals, pocket and other personal trinkets and ornaments, to the said trustees and their successors in office, in terms of the said trust-disposition and settlement; and in the event of my death leaving issue, I direct my executors or executor, and bind and oblige my heirs, executors, and successors whomsoever, to hand over the said jewels, watches, seals, pocket and other personal trinkets and ornaments, and the said plate, to the heir entitled to succeed to the Bute estates in Glamorganshire, as above provided." The present Marquis attained majority in 1868, and had issue Lady Margaret Crichton Stuart, born in 1875.

This action was brought by him against the trustees acting under Lady Bute's said trust-disposition, and also against the said Lady Margaret Crichton Stuart, Colonel J. F. D. Crichton Stuart, and Patrick J. Crichton Stuart, the three nearest heirs entitled after the pursuer to succeed to the Bute estates in the county of Glamorgan, to have it declared that under the said trust-disposition the pursuer had full right to the absolute property and possession of the jewels, &c., with regard to which Lady Bute gave directions in the fourth head of her said deed; and that the direction therein contained, that in the event of the pursuer dying without issue the trustees should at his death sell the said jewels, &c., had become inoperative, and that after the said jewels, &c., were in possession of the pursuer, the said trustees would not have at any time, and in particular at his death, any duty or right to sell or dispose of the said jewels, &c., and that pursuer had full right to dispose of the same in any way, onerously and gratuitously, *inter vivos* or by testament, at his pleasure; and further, to have it declared that the pursuer had right to the full and absolute property and possession of the plate dealt with in head *sixthly* of the said trust-disposition, and to dispose thereof in any way at his pleasure.

The Lord Ordinary (CURRIEHILL) dismissed the action and decerned. His Lordship added the following note:—"The late Marchioness of Bute, by her trust-disposition and settlement, dated 2d June 1859, conveyed her whole estate, heritable and moveable, to trustees. The present action has been raised by her son, the present Marquess, against these trustees and certain other persons who are the next heirs entitled after the pursuer to succeed to the Bute estates in the county of Glamorgan, in order to ascertain the true meaning and effect of the directions in that settlement regarding certain jewels, trinkets, plate, and the like, which belonged to the Marchioness. These directions are contained in the fourth and sixth portions of the settlement. [*His Lordship here quoted these portions*].

"The trustees in pursuance of these directions have delivered all these articles to the pursuer *per* inventory, and have received from him an acknowledgment binding him to concur with them in settling and securing the articles in terms of the settlement, and directing his executors to redeliver them to the trustees at his death. The pursuer, however, now maintains, that as his mother was a domiciled Scotchwoman, and as her settlement, which is in the Scottish form, was prepared by her agents in Edinburgh, and executed by her in that city, the deed must be construed according to the law of Scotland; that by the law of Scotland an entail of moveables, which is what is truly intended by the directions above recited, cannot receive effect; that he is therefore entitled to retain the whole of the articles as his absolute and exclusive property, and to alienate them at pleasure, onerously or gratuitously; and that he is not bound to redeliver them to the trustees, or to submit to their being settled or secured as directed by the settlement.

"It may be conceded, and after the recent decision in the case of *Kinnear*, 2 Ret. 765, and 4 Ret. 705, it would be difficult to dispute, that by the law of Scotland moveables cannot be effectually entailed; but the defenders, who are the trustees of the late Marchioness, and the four persons next entitled to succeed to the Glamorganshire estates—viz., the pursuer's only child Lady Margaret Stuart, and Colonel J. F. Crichton Stuart, and his two sons—maintain (1), as regards the jewels and trinkets, that the direction, even if the settlement be construed as a Scotch deed, confers upon the pursuer no higher right than a life-interest; and (2) that as regards not only the jewels and trinkets, but also the plate, the settlement must be construed with reference to the law of England, which allows moveables to be made heirlooms and entailed in connection with landed estates.

"Now, even assuming that the settlement must be construed as a purely Scotch deed, and with reference to the rules of the law of Scotland which forbid entails of moveables, I should be inclined to hold that, according to the sound construction of the fourth purpose, the direction given to the trustees to hold the jewels, &c., as heirlooms, and settle and secure them on the pursuer and the heirs of the Glamorganshire estates, is qualified by the direction to sell them in the event of the pursuer dying without issue, and to apply the price in the erection of almshouses. This, I think, clearly implies that the pursuer was intended to have merely a life-interest in these articles, and that the heirs of the Glamorganshire estates were to take no interest at all in the event of the pursuer dying without issue.

"I am inclined, however, to think that in giving the directions contained in the fourth and sixth purposes of the settlement the truster intended her trustees to deal with the jewels, trinkets, and plate according to the rules of English jurisprudence, and that the settlement must be construed on that footing. It is therefore necessary to ascertain how the Courts of England would deal with this settlement; and at the debate the parties concurred in stating (1) that by the law of England moveables may be competently made 'heirlooms,' and may be effectually entailed in connection with land; (2) that the directions in question are expressed in the proper terms to secure that result with reference to the Glamorganshire estates of the Bute family, which are held under a strict entail; and (3) that the interest of the pursuer in these estates, and in the jewels and plate if made heirlooms, is merely a life-interest.

"This being so, it appears to me that the trustees have already given to the pursuer all that he is entitled to ask. They have handed to him the articles *per* inventory, taking from him at the same time an obligation to concur with them in

settling and securing the heirlooms in terms of the directions, and directing his executors on his death to restore them to the trustees. What is to become of the articles after the pursuer's death is a question on which I do not venture to offer an opinion. In the meantime the pursuer cannot succeed in his present claim, and the action will be dismissed—a course which I think preferable to pronouncing decree of absolvitor in favour of the defender."

The pursuer reclaimed. During the debate in the Inner House a joint minute of admissions was put in for the parties, in which their counsel concurred in admitting—"(1) That under the will of the late Lord Bute, the present Lord Bute, the pursuer, is tenant for life of the Bute estates in the county of Glamorgan, with remainder to his first and every other son successively in tail, with remainder to his first and every other daughter successively in tail, with other remainders over. (2) That by the law of England personal property may be devised and limited as an heirloom to a person for life, with remainder to other persons in tail. (3) That by the law of England personal property so devised or limited as an heirloom will be enjoyed by the tenant for life, and will be inalienable by him; and at his death will pass to and become the absolute property of the first person seised in tail, unless by an express declaration in the settlement vesting has been postponed until his attainment of twenty-one, or his death under that age, leaving issue inheritable under the entail."

Argued for the pursuer—Lady Bute was a domiciled Scotchwoman; and her deed was a Scotch one in point of form and to all effects. The destination in favour of the heirs succeeding to the English estates could not change the domicile of the truster. The deed was therefore to be construed by Scotch law. By that law an entail of moveables was impossible. The pursuer was therefore entitled to retain the jewels and plate in absolute property, and to dispose of them at will. If the jewels were once settled as "heirlooms" in the legal sense, there could be no force in the direction to the trustees to sell them at pursuer's death, for they could have no power over them any more. But the word "heirloom" was not necessarily a word of skill. There was no need to import English conveyancing into the case at all.

The defenders replied—The pursuer's interest in these moveables was clearly a life-interest only. The terms of the deed showed this. This case was quite outside the cases as to entail of moveables in Scotland. The intention here was that the trustees should execute a deed in English form, by which these articles should "run with" the Glamorganshire estates, which could quite well be done by English law. If the directions of the testatrix as to the destination of these moveables was to be held to be impossible, they would fall into residue, and so pass to the trustees for the purposes of the almshouses, and not, in any view, to the pursuer.

Authorities — *Mitchell & Baxter* v. *Davies*, Dec. 3, 1875, 3 R. 208; *Ferguson* v. *Marjoribanks*, April 1, 1853, 15 D. 637; *Corbet and Others* v. *Waddell and Others*, Nov. 13, 1879, 7 R. 200; *Thomson's Trustees* v. *Alexander*, Dec. 18, 1851, 14 D. 217; *Rainsford* v. *Maxwell*, Feb. 6, 1852, 14 D. 450; Williams on Executors, pp. 726, 731; *Kinnear* v. *Kinnear's Trustees*, June 5, 1875, 2 R. 765, and June 20, 1877, 4 R. 705; *Shelley* v. *Shelley*, 1868, 6 L.R. (Equity) 540; *Gibson's Trustees* v. *Ross*, July 12, 1877, 4 R. 1038; *Carleton* v. *Thomson*, July 30, 1867, 5 Macph. (H. of L.) 151.

At advising—

Lord President—This is a question as to the property of certain jewels and plate which were settled by the will of the late Marchioness of Bute. They are claimed by the pursuer, who is her son, the present Marquis, as his absolute property. On the other hand, Lady Bute's trustees maintain that the jewels and plate fall to be settled according to the directions contained in her will. The first question is as to the intention of the testatrix, and when we have ascertained that, the only other is how to carry it into effect, or whether it should not be carried into effect at all, which is the contention of the pursuer. The property in question is disposed of by the fourth and sixth purposes of Lady Bute's will, which are in the following terms:—"*Fourthly*, I direct and appoint that the jewels, watches, seals, pocket and other personal trinkets and ornaments, bequeathed to me by the late John Marquess of Bute, my husband, shall be held as heirlooms and settled upon my dear and only child John Patrick, now Marquess of Bute, and after him on the heirs entitled to succeed to the Bute estates in the county of Glamorgan; and in the event of my dying before my son attains the age of twenty-one, I recommend and trust that the Court of Chancery will appoint as his guardians the foresaid Colonel Charles Stuart, Sir Francis Hastings Gilbert, Baronet, and Lady Elizabeth Moore, whose near relationship entitles them to the office, and in all of whom I have the most perfect confidence; and if any member of the Bute family shall interfere with or endeavour to prevent such appointment, or refuse to apply for and recommend it, then and in that case, or in the event of my son dying without issue, I direct the said jewels, trinkets, and others to be sold at his death by public auction, and the proceeds applied in the erection of almshouses in memory of my mother and my sister Flora, said almshouses to be erected in or near Edinburgh, their birthplace, and to be called the 'Flora Almshouses,' to be used and occupied by the widows and daughters of officers of the British or Indian army in necessitous circumstances, under such conditions and regulations as my trustees may from time to time appoint." "*Sixthly*, I direct and appoint the plate purchased by me from the executors of the deceased Lord Dudley Stuart to be made an heirloom, and settled and secured upon the same series of heirs as are appointed to succeed to the Marquess of Bute's Glamorganshire estates; and in respect a portion thereof is much worn, I authorise any heir in possession to melt down and restore what may at the time be unfit for use."

Now, the provision as to the jewels in the fourth clause is not quite the same as the provision about the plate in the sixth clause. They are the same so far, that in both the testatrix expresses a desire to settle them as heirlooms on her son and the other heirs entitled to succeed to the Gla-

morganshire estates; but in the fourth clause there is in certain events an ulterior direction to the trustees to sell the jewels and apply the proceeds in a certain way, and one of these events is that of her son dying without issue.

As far as the question of intention is concerned, I have no doubt whatever. The Glamorganshire estates were settled, as we now have it admitted, by the will of the late Marquis of Bute, in such a way that the pursuer is tenant of them for life, with remainder to his first and every other son successively in tail, with remainder to his first and every other daughter successively in tail, with other remainder over, and the immediate heir after the pursuer is his daughter, and only child, who is a party to this case. That being so, if the testatrix's intention is to be carried out, and can be carried out, I have no doubt the jewels and plate must be settled so that the pursuer shall have the use of them for life, and after his death they shall pass to his daughter if she survives and is at the time of his death the heiress entitled to succeed to the Glamorganshire estates. The event of his dying without issue need not, I think, be considered, for it could be easily provided for by settlement. But the pursuer contends, that even though that had been the intention, it cannot be put in effect, because by Scotch law it is impossible to entail moveable goods, and therefore there is no form of deed by which it would be possible to bring about the effect contemplated and desired by the testatrix. I think that contention is quite ill-founded. It seems to me to be no matter whether it is or is not possible, according to Scotch law, to settle moveables so as to pass from one heir to another in succession, vesting no absolute property in any one of them; for the purpose here is that they shall go to the heir entitled to succeed to the Glamorganshire estates under an English entail, and it must therefore receive effect by that law. The intention is that these moveables should go along with the estates so settled. I think there is nothing incompetent or improper, far less illegal, in the proposal that a deed should be made—an English deed, if necessary—carrying these moveables along with the estates as heirlooms, if that can be done.

Now, we have it admitted that "by the law of England personal property may be devised and limited as an heirloom to a person for life with remainder to other persons in tail;" and also "that by the law of England personal property so devised or limited as an heirloom will be enjoyed by the tenant for life, and will be inalienable by him, and at his death will pass to and become the absolute property of the first person seised in tail, unless by an express declaration in the settlement vesting has been postponed until his attainment of twenty-one, or his death under that age leaving issue inheritable under the entail." The lady left these articles along with her property in trust, and gave her trustees certain directions as to how they were to be disposed of. If she had made an entail herself, it is possible that might have been ineffectual. But she has conveyed the goods to trustees, and expressed a desire as to their disposal; and if the trustees can in any way carry that into effect they are bound to do so. The trustees, acting under the will, and not apparently entertaining any doubt as to their right to carry these purposes into effect, made an arrangement with the present Marquis of Bute, in the form of a receipt, or deed as it may be called. They handed over to him the jewels and plate, and took a receipt from him, in which he acknowledged to have received the jewels and plate, and then proceeded as follows—[*reads as printed above*]. The trustees here fell on a plan for securing the object in view which seems to me a most reasonable one, and they had apparently the full concurrence of the present pursuer in doing so. He has changed his mind now, and seeks to obtain the moveables in absolute property; but that would be a contradiction of the direct wishes of the testatrix, which were given effect to by the arrangement which was embodied in the deed or receipt I have described, by which the object in view was effectually carried out. In the event of certain exceedingly improbable occurrences, such as the bankruptcy of the pursuer, some questions might arise with creditors, but I think that was not in the view of the trustees or the pursuer in coming to that arrangement. It was thought quite enough to take a personal obligation from him, and I think there was nothing illegal in such an obligation, and that it was probably quite sufficient in the circumstances to secure the object of the testatrix; but if anything further were necessary, I think the trustees would be quite justified in calling on the pursuer, in terms of the obligation, to concur in any deed which would be effectual by the law of England to tie up the moveables in the manner desired.

I am of opinion that the Lord Ordinary's interlocutor ought to be adhered to.

Lord Deas—I do not see any reasonable doubt that though these clauses as to the jewels and plate are in a Scotch deed, the jewels and plate may not be conveyed as heirlooms by English law, if that law recognises that as a thing that can be done. Nor is there anything to lead me to suppose that it cannot be done by English law.

But the question here is a much more limited one. The Marquis of Bute claims a right of absolute property in these articles, and it is as clear as day that from no reasonable point of view has he any such right; for the obligation under which he got delivery of them is expressed on the footing that he is only to have the liferent use of them. That to my mind is an end of the whole case.

Lord Mure—I think there is very little difficulty in this case. The whole phraseology of the deed goes to show that a mere liferent right in these moveables was intended to be created in the Marquis. It is objected that you cannot make these things "heirlooms" by Scotch law; but I know of no law to prevent a Scotch person directing things to be made heirlooms with reference to an English estate to which the party in whose favour the heirlooms are to be made over has right according to the law of England. The Lord Ordinary has put forward this view in the latter part of his note, and I quite concur with his Lordship's remarks. These articles will therefore fall to be dealt with according to the rules of English jurisprudence.

Lord Shand—I agree with your Lordships. It

seems to me that the Marquis of Bute acted on a sound view of his legal position when he signed the obligation in 1873, and has taken an erroneous view of it in bringing the present action. The substance of the provisions of the trust-disposition seems to me to be that a liferent right only is conferred upon him. We have nothing to do with the question how far such articles can or can not be entailed by the law of Scotland. The trustees are here directed to entail the jewels and other things on the heirs entitled to succeed to an English estate, and it is therefore a question of English conveyancing how that is to be done. I think there is no difficulty in the case, and that the Lord Ordinary's judgment is right.

The Court adhered.

Counsel for Pursuer (Reclaimer)—J. P. B. Robertson—Murray. Agents—J. & F. Anderson, W.S.

Counsel for Defenders, Lady Bute's Trustees (Respondents)—Muirhead — Darling. Agents—Bruce & Kerr, W.S.

Counsel for Defender, Lady M. C. Stuart (Respondent) — Low. Agents — Tods, Murray, & Jamieson, W.S.

Saturday, December 4.

SECOND DIVISION.

[Sheriff of Forfarshire.

COOK *v.* RATTRAY.

Parent and Child—Bastard—Filiation—Proof—Oath.

The pursuer in an action of filiation deponed on oath that the defender was the father of a child which she had borne after a period of 305 days' gestation. *Held* on the evidence that she had proved her case.

This was an action of filiation and aliment brought up on appeal from the Sheriff Court of Forfarshire. The pursuer, who was formerly a domestic servant at Gask, and afterwards resided at Craichie, in the parish of Dunnichen, Forfarshire, averred in her summons that she was delivered of an illegitimate female child on the 19th August 1879, of which the defender was the father. In her condescendence she stated that the defender had sexual intercourse with her in the kitchen of the farm-house of Gask, and also in the byre of the farm-steading thereof, in the months of September, October, and November 1878, and that in consequence of the said intercourse she gave birth to the said illegitimate child on 19th August 1879. She further stated that the defender had admitted the paternity of the child at a meeting of the kirk-session of the parish of Dunnichen which they had both attended.

The defender denied the pursuer's allegations.

The Sheriff-Substitute (ROBERTSON) found in fact that the pursuer had failed to prove that the defender was the father of her illegitimate child; and found in law that he was not liable for the inlying expenses and aliment sued for; and therefore assoilzied the defender from the conclusions of the summons.

The Sheriff-Principal (MAITLAND HERIOT) recalled the Sheriff-Substitute's interlocutor, and appended the following note, in which the import of the proof held in the case will sufficiently appear:—

"*Note.*—This, no doubt, is a narrow case, but on the whole it seems to the Sheriff that the balance is against the defender. David Rattray (the defender) and Edmund Kettles went to visit Mary Cook (the pursuer) and her fellow-servant Elizabeth Millar. These men arrived late at night. The two women say they arrived about eleven and remained till about twelve. Kettles says it was 'fully' ten when they arrived, and that they left 'before twelve,' while Rattray says they arrived 'about ten' and left 'about eleven.' However this may be, it was a late hour before they left, keeping in view that they had two or three miles to go and be up early to their work next morning. When the men arrived the young women were in bed. The men knocked for them, and they rose to entertain their visitors. The four, however, did not sit together and talk. They separated into two parties. Kettles and Millar went together into the kitchen, and Rattray and Cook retired into the byre. It was then quite dark, and yet they remained an hour together in the dark—*solus cum sola.* What were they doing all this time? It must be held that connection then took place. The Sheriff is at a loss to discover what other reason the defender had for his visit, and as to that part of the case there seems to be little or no difficulty.

"Any peculiarity there is in the case is as to the length of time that is said to have elapsed between the conception and the birth. There is no doubt some difference as to the exact date of the above visit. Kettles would place it so early as 'six weeks and two days' before Martinmas. Cook names it as 'five weeks' before Martinmas, Millar as 'four or five weeks' before Martinmas, and Rattray as 'shortly before the term of Martinmas.' There is no precise agreement between any of the parties as to this date. The Sheriff is inclined to think that Kettles is stretching a point in favour of his friend. If it were five weeks before Martinmas, it would be 305 days after conception; if four weeks 298 days; and if only shortly after Martinmas, it might be 287 days. Had it been even quite fixed that 305 days was the right period of gestation, the Sheriff is doubtful if he would have been entitled to go further than the Court of Session did in the case of *Boyd*, June 17, 1843, 5 D. 1213. But as it is not fixed that an interval of 305 days must have intervened, and which interval may have as few as 287 to 290 days, the Sheriff is of opinion that in the circumstances the pursuer is entitled to prevail."

The defender appealed, and argued—It was doubtful on the evidence when the act of intercourse exactly took place. The pursuer herself fixed it at a period which protracted the period of gestation beyond its legal limit. The true date, however, was that given by Kettles, the defender's companion, on the occasion of the alleged visit, viz., "six weeks and two days" before the term of Martinmas of 1878—a date which protracted the period of gestation to the impossible period of 313 days.

Argued for respondent—The pursuer had deponed on oath to the fact that her intercourse with the defender took place "five weeks" before