to raise a presumption that he has absconded from diligence; and, although all that is here said were proved, it would not overcome that presumption.

LORD BENHOLME—The question is, have we here legal evidence of absconding? That is the only question. What then are the facts? A partner of a company involved in debt leaves the country voluntarily and permanently. If such an absence is not justified by absolute necessity, we must presume absconding.

LORD NEAVES concurred.

Agent for Petitioners—R. Pasley Stevenson, S.S.C.

Agent for Respondents—William Mason, S.S.C.

Tuesday, October 27.

LANG *v.* LANG.

Husband and Wife—Separation a mensa et thoro—*Maltreatment.* Circumstances in which the Court decerned a husband to live separate from his wife, in respect of his maltreatment of her. Aliment allowed to the wife fixed at one-fourth of husband's income on an average of several years, the aliment of children, though living with the wife, not being taken into account, the husband being separately liable for their maintenance.

This was an action of separation and aliment at the instance of Elizabeth Pettigrew or Lang, wife of John Lang, tailor and clothier, Glasgow, against her husband. The conclusions of the action were as follows:—"Therefore the Lords of our Council and Session Ought and Should find it proven that the defender has been guilty of grossly abusing and maltreating the pursuer, his wife, and find that the pursuer has full liberty and freedom to live separately from the said defender, her husband: And the defender Ought and Should be Decerned and Ordained, by decree of our said Lords, to separate himself from the pursuer, *a mensa et thoro*, in all time coming; and also to make payment to the pursuer of the sum of £250 sterling yearly, of aliment to her, or such other sum as shall be found reasonable for her support, the said aliment payable at four terms in the year, Lammas, Martinmas, Candlemas, and Whitsunday, by equal portions, beginning the first term's payment thereof at the term of Lammas 1867, for the quarter immediately succeeding, and the next term's payment at Martinmas following, for the quarter immediately succeeding, and so forth quarterly thereafter, and in advance, during the joint lives of the said pursuer and defender, with interest at the rate of five pounds per centum per annum on each quarter's aliment from the term of payment until paid; together with the sum of £50 sterling, or such other sum as shall be found reasonable for the pursuer's support, as for the period from the 24th day of June 1867 to the said term of Lammas 1867, and with interest thereon at the rate of five pounds per centum per annum from the date of signeting hereof until payment."

After a proof, the Lord Ordinary (JERVISWOODE) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel, and made avizandum, and considered the record, with the proof adduced, and whole process—Finds it proved as matter of fact that the defender has been guilty of grossly abusing and maltreating the pursuer, his wife: Therefore finds that the said pursuer has full liberty and freedom to live separate from the said defender, and decerns and ordains the defender to separate himself from the pursuer, *a mensa et thoro*, in all time coming; and with reference to the conclusions of the summons for aliment, appoints the cause to be enrolled, with a view to further procedure.

"*Note.*—The Lord Ordinary, in pronouncing the present interlocutor, has adopted and followed the form which has for a long period been in use in consistorial causes of the class to which it belongs; and he has done so not only in respect of that usage, but because mere findings of prominent facts in a case of this complexion would altogether fail to convey an adequate or just impression of the real habits and conduct of the parties in their respective relations as husband and wife, and it would, therefore, still be necessary to have resort to an examination of the whole evidence in detail.

"The Lord Ordinary heard that evidence, with a minor exception, and he has since considered the case with anxiety, increased by the feeling that, comparing the proof adduced on the part of the pursuer with the statements on record, which were admitted to probation, there appears to be a certain amount of exaggeration and high colouring in the latter which tends to lower the estimate of their value.

"Still, the Lord Ordinary cannot but feel that the conduct of the defender to his wife, as proved in evidence, was on many occasions such as no person in her position could be bound to submit to. A blow might be pardoned if given in sudden heat and without premeditation. But, as the evidence strikes the Lord Ordinary, there is proof of a considerable course and amount of actual maltreatment, accompanied by conduct of that contumelious and overbearing character which, more than a sudden blow in passion, is calculated deeply to wound the feelings of the pursuer, or of any other female of ordinary sensibility.

"The Lord Ordinary assumes that, without proof of actual violence, the pursuer cannot prevail here. But in judging of the weight to be attributed to the acts proved, the Lord Ordinary is of opinion that he is entitled and bound to have regard to the whole history of the daily life of the parties, as disclosed in the evidence.

"A suggestion of some plausibility was made in course of argument on the part of the defender, as affording, in his view, an explanation of the conduct of the pursuer in now insisting in this action, to which it may be right that the Lord Ordinary should shortly advert.

"This was founded upon the fact, as spoken to by Robert Lang, the eldest son of the defender, that the pursuer, Janet, and John Lang, are now residing with him, and it is said that this action is truly the result of a design on the part of Robert to obtain means from his father to keep up a separate residence. The Lord Ordinary is not inclined to adopt this view. But his impression is rather that the fact referred to did open up to the pursuer a prospect of escape from the treatment she had received from the defender, and so may have encouraged her to seek redress. But if the facts be truly such as to support the action, the circumstance that she now lives with her son will not operate further than as a circumstance in the case which is to be taken along with the other incidents in their history, which tend to throw light on the motives and conduct of the parties."

The defender reclaimed, but the Court adhered.

The case was then brought before the Lord Ordinary with reference to the conclusions of the summons, for aliment. The parties adjusted a minute of admissions in regard to the defender's means. The Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel on the conclusions of the summons in so far as not already disposed of, with a joint minute for the parties, No. 54, productions, and whole process—Decerns against the defender for payment to the pursuer of the sum of £100 sterling yearly of aliment to her, but under deduction of any sum already decerned for in name of aliment in this process; the said aliment to be payable at four terms in the year, Lammas, Martinmas, Candlemas, and Whitsunday, by equal portions, beginning the first term's payment thereof at the term of Lammas 1867 for the quarter immediately succeeding, and so forth quarterly thereafter, and in advance, during the joint lives of the pursuer and defender, with interest as concluded for: Finds the pursuer entitled to expenses in so far as not already paid; allows an account thereof to be lodged, and remits the same to the auditor to tax and to report."

The defender reclaimed.

PATTISON and CRICHTON for him.

CLARK and BLACK in answer.

The Court altered, and fixed the sum of £85 as aliment for the wife, and reserved power to either of the parties, if any material change of circumstances occurred, to come to the Court to alter the amount. They held that the revenue of several years must be taken into account in estimating the income of the husband, and that one-fourth of the husband's income was a reasonable provision for the support of the wife. In estimating the wife's aliment, the support of the children could not be considered, although they were living with her. The father was bound to support them, and whoever maintained them would have a claim against him.

Agent for Pursuer—W. H. Muir, S.S.C.

Agent for Defender—James Young, S.S.C.

Tuesday, October 27.

STEWART *v.* MACONOCHIE AND FORSYTH.

Suspension—Poor—8 *and* 9 *Vict., c.* 83—*Assessment—Deductions*—37*th section. Held* that suspension was a competent form of action in which to try an objection by a ratepayer that too much assessment was imposed upon him, in respect he did not get the benefit of all the deductions allowed by the 37th section of the Poor Law Amendment Act.

This was a suspension of a threatened charge for poor-rates by the Parochial Board of Keith against one of the ratepayers, Mr Stewart of Auchlunkart. In this parish the assessment for the relief of the poor is imposed according to the first mode provided by the 34th section of the Poor Law Amendment Act, and has been so imposed since shortly after the passing of that Act. In terms of the 36th section of the statute, lands and heritages in the parish are classified, with the assent of the Board of Suspension, into houses and agricultural subjects. The deductions allowed by the 37th section have been during the same period in use to be estimated by allowing a slump deduction of 4 per cent. for houses, and 5 per cent. for agricultural subjects. On the 1st of May 1866, a circular having been previously sent to the members of the Board, and among them to the complainer, who is a member as an heritor, a meeting of the Board was held for the purpose *inter alia* of imposing the assessment. The complainer did not attend this meeting. The assessment was duly imposed; and on 7th January 1867 the complainer received from the collector a note of the amount of assessment imposed upon him, with an intimation that if he had anything to object to he must do so before the 5th of February. On the 4th of February, the previous day, a letter was received by the Board from the Edinburgh agents of the complainer, objecting to the amount of assessment imposed on him, and that he had not been allowed all the deductions to which he was entitled under the 37th section of the statute. The consideration of that letter was for unavoidable reasons deferred by the Board. The complainer thereafter brought the present note of suspension, in which he maintained that the mode of estimating deductions was contrary to the statute, which required the case of each individual heritor to be separately dealt with. These facts were admitted by the Board, but they averred that this mode of estimating deductions had been in force in the parish for more than twenty years without objection on the part of the complainer, and that he had homologated the acts of the respondents. The Board maintained the mode of estimating deductions to be quite in conformity with the statute, but they pleaded that the question which the complainer raised could not competently be tried in a suspension, and that he must bring a declarator.

The Lord Ordinary (JERVISWOODE) sustained this plea; and, without considering the merits of the case, pronounced the following interlocutor:—

"The Lord Ordinary having heard counsel, and made avizandum, and considered the closed record and whole process—finds, as matter of fact, that the assessment for relief of the poor in the parish of Keith, of a charge or threatened charge for payment of which, so far as laid upon the complainer, he here craves suspension, was imposed at the meeting of the Parochial Board of the parish, held on the 1st May 1866; and that the said assessment was laid on the owners and occupiers of heritable subjects in the parish according to the mode of valuation which had for several previous years been adopted and in force in the parish; and that the complainer did not state his objections against the same, so far as he was affected thereby, until the 4th of February 1867: And further finds, as matter of law, with reference to the foregoing findings, that the complainer is not entitled to insist in the present suspension, or to obtain interdict as craved: Therefore dismisses the note of suspension, and decerns: Finds the respondents entitled to their expenses, of which allows an account to be lodged, and remits the same to the auditor to tax and to report."

"*Note.*—The argument in support of the competency of the present suspension as a proper mode of procedure under which to try the question, which it is the object of the complainer to bring to judicial determination, was mainly based on the authority, as a precedent, of the case of the *Edinburgh and Glasgow Railway Company* v. *Meek*, Dec. 10, 1864 (3 Macph. p. 329), in which the competency of a suspension as a process, under which was raised a question as to the sufficiency of the deductions allowed to the company in ascertaining the value of their property, was sustained. Other cases of a like class were also referred to. But the Lord Ordinary is of opinion that the authorities are not