LORD JUSTICE-CLERK—I have already stated that if I were to judge of this last matter simply by my own lights, I should be inclined very much to the result Lord Gifford points at; but I am not inclined to differ from a professional actuary like Mr Sprague on such a matter.

The Court pronounced this interlocutor:—

"Find, in regard to the fourth and alternative objection, that the chances of Captain M'Donald's life ought, in respect of Captain M'Donald's consent, to be ascertained in the ordinary way by such professional examination and report as the Lord Ordinary may direct: Sustain the seventh and eighth objections, and to that effect alter the Lord Ordinary's interlocutor: *Quoad ultra* adhere to said interlocutor, and with these findings remit to the Lord Ordinary to give effect to them, and to proceed with the cause; and reserve all questions of expenses."

Counsel for Petitioner (Reclaimer)—M'Laren—Pearson. Agent—A. P. Purves, W.S.

Counsel for Misses M'Donald—Kinnear—Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Saturday, January 18.*

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

CAMPBELL *v.* CAMPBELL.

Succession—Special Destination—Effect of General Conveyance subsequently Executed.

Where certain lands were specially conveyed to a series of heirs, one of whom on his succession thereto executed a general disposition altering the destinations in the original deed, *Held* (1) in accordance with the case of *Thoms*, March 30, 1868, 6 Macph. 704, that the previous destination was evacuated, and (2) that that result was not altered by the fact that there were estates other than those specially destined to which the second deed might apply.

Circumstances which were founded on both within the general disposition itself and beyond it as restraining its operation, but which were *held* insufficient to do so.

Lieutenant-General Robert Campbell of Kintarbert was at the time of his death in 1837 possessed of the landed estates of Barrinellan (otherwise called Kintarbert), and of Crossaig and others, all in Argyllshire. By his general disposition and settlement, dated 5th November 1821, and recorded 26th May 1837, he, in the event of his dying without lawful heirs of his own body (an event which happened), disponed and conveyed his whole means and estate, both heritable and moveable, real and personal, to his nephew Lachlan M'Neill and the lawful heirs-male of his body, whom failing to his nephew Dugald M'Neill and the lawful heirs-male of his body, whom failing to his nephew Lieutenant Robert MacGibbon and the lawful heirs-male of his body, whom failing to his nephew Archibald MacGibbon and the lawful heirs-male of his body, whom failing to his cousin Lieutenant Dugald Campbell, on the half-pay of the 72d Regiment, and the lawful heirs-male of his body. By a codicil he made an alteration in the destination of the original deed with regard to Lieutenant Dugald Campbell which it is unnecessary to specify.

On General Campbell's death his nephew Lachlan M'Neill, who was also the pursuer's brother, assumed the name of Campbell in terms of a direction to that effect contained in the general disposition above mentioned, and made up a title to the estates as institute under that deed. He continued to possess under these titles till his death on 2d May 1852.

By his general disposition and settlement dated 24th November 1838, and recorded 14th May 1852, Lachlan M'Neill Campbell, therein designed as Lachlan M'Neill of Drimdrissaig, assigned and disponed his whole means and estate, both heritable and moveable, real and personal, to his brother-german Dugald M'Neill, sometime a Lieutenant in the 78th Regiment, and his heirs and successors, and failing him to the pursuer Miss Isabella M'Neill Campbell, (therein named Isabella M'Neill), who was his sister-german, and her heirs and successors.

Dugald M'Neill, who had also assumed the name of Campbell, died on 4th October 1874 without issue and without having altered or evacuated the destination contained in his brother's settlement. At the time of his death he was in possession of the estates in right of which he was under a feudal title made up under General Campbell's settlement and a personal title under his brother's settlement.

The pursuer brought this action to have it judicially declared that she was the party entitled to succeed to Barrinellan and Crossaig after her brother Dugald.

The defender John Breadalbane Campbell of Drimnamuchloch was the heir-at-law of Lieutenant-General Campbell, and the eldest son of Lieutenant Dugald Campbell, the substitute named in Lieutenant-General Campbell's settlement. The other substitutes called by that settlement both predeceased Dugald M'Neill without issue.

The summons concluded for declarator that Lachlan M'Neill of Drimdrissaig, afterwards Lachlan M'Neill Campbell of Kintarbert, nephew of Robert Campbell of Kintarbert, was at the time of his death on 2d May 1852 duly infeft, as institute or disponee under the said Robert Campbell's general disposition and settlement, dated 5th November 1821, in the lands of Barrinellan, Crossaig, and others; that by the general disposition and settlement of the said Lachlan M'Neill, otherwise Lachlan M'Neill Campbell, dated 24th November 1838, and recorded in the Books of Council and Session 14th May 1852, whereby he gave, granted, assigned, and disponed to and in favour of Dugald M'Neill, Lieutenant in Her Majesty's 78th Regiment of Foot, his brother-german, his heirs and successors, whom failing to the pursuer his sister-german, and her heirs and successors, All and sundry lands and heritages, goods, gear, debts, and sums of money, and in general the whole estate and effects, heritable and moveable, real and personal, of what kind or denomination soever or wheresoever situated, then belonging or that should

* Decided 11th Dec. 1878.

pertain and belong to him at the time of his decease, the substitution of heirs contained in the said Robert Campbell's general disposition and settlement was entirely evacuated; that the succession to the lands and others before described fell thereafter to be regulated by the said general disposition and settlement of the said Lachlan M'Neill, otherwise Lachlan M'Neill Campbell, and the destination therein contained; that any title or titles to the said lands and others made up and completed in the person of the said Dugald M'Neill in any character other than as institute or disponee under the said general disposition and settlement of his brother the said Lachlan M'Neill, otherwise Lachlan M'Neill Campbell, did not affect the pursuer's right of succession to the said lands and others as an heir of provision under the said general disposition and settlement of her said brother Lachlan M'Neill, otherwise Lachlan M'Neill Campbell; that the said Dugald M'Neill having died on or about 4th October 1874 without issue, and without having altered, varied, or evacuated the said destination in his said brother's general disposition and settlement, a personal right in the said lands and others had vested in the pursuer as such heir of provision, and that she was entitled to obtain herself feudally infeft as such therein.

Then followed a conclusion for decree that the lands in question did "pertain and belong to the pursuer as heiress of provision under the said general disposition and settlement of the said Lachlan M'Neill, otherwise Lachlan M'Neill Campbell," and for decree entitling the pursuer to be infeft in the lands in question.

The pursuer averred that the estates of Barrinellan and Crossaig were included in the general conveyance, and that the prior destination of these in General Campbell's settlement was evacuated. This the defender disputed, and he further founded on certain circumstances, as restraining the operation of the general disposition, which are sufficiently set forth in the note to the Lord Ordinary's interlocutor and in the opinions of the Court.

It was admitted that at the date of his death, in addition to being proprietor of Barrinellan and Crossaig, Lachlan M'Neill Campbell was also proprietor of the estates of Drimdrissaig, which he had inherited from his father, and which was of the value of £13,000, and also of Saddell, which he had bought himself, and which was of the value of upwards of £44,000. Kintarbert was valued at upwards of £16,000, and Crossaig at upwards of £16,000.

The defender, *inter alia*, pleaded—"(3) The general disposition of Lachlan M'Neill did not convey the estates of Kintarbert and Crossaig, or evacuate the standing destinations of the same, and the defender has right thereto as heir under the disposition of General Robert Campbell, and *separatim*, under the investitures of the said estates standing at the death of the said General Robert Campbell."

The Lord Ordinary (Rutherfurd Clark) pronounced an interlocutor granting decree in terms of the conclusion of the summons. He added this note:—

"*Note.*—By disposition dated 5th November 1821, General Campbell settled the lands of Kintarbert, otherwise called Barrinellan, and the lands of Crossaig and others, on Lachlan M'Neill and a series of heirs. For the purposes of this case the defender is assumed to be heir of provision under that disposition. If he is not, the destination has come to an end.

"The question whether the defender is or is not such heir of provision depends on the construction of a codicil which was made by the General on 29th December 1832. But it is not presented for decision in this case. The pursuer assumes that the defender can claim the character of heir of provision under General Campbell's settlement, in order to try the question whether the destination therein contained still subsists. Lachlan M'Neill made up a title as disponee. He died in 1852, leaving a general disposition and settlement dated 24th November 1838, by which he conveyed his whole estates, heritable and moveable, to his brother Dugald M'Neill, whom failing to his sister the pursuer. It is this deed which the pursuer says evacuated the destination contained in General Campbell's settlement.

"Dugald M'Neill made up his titles apparently as heir of provision under General Campbell's settlement, but no argument was, or indeed in the opinion of the Lord Ordinary could be, founded on this fact; for it is quite fixed that a title made up in contravention of the existing investiture does not affect the deed by which the succession is governed—*Edgar* v. *Maxwell*, 1736, M. 3089; *Molle* v. *Riddel*, June 19, 1801, 6 Pat. Apps. 160.

"Dugald M'Neill died without issue and intestate in October 1874, and the pursuer now claims the estates as his heir of provision under Lachlan's settlement.

"In the opinion of the Lord Ordinary her claim is well founded.

"The case of *Thoms* v. *Thoms*, 6 Macph. 704, is a binding authority. He conceives it to declare that an unqualified general disposition carries all the estate over which the granter has a power of disposal. As the Lord Ordinary reads the recent case of *Gray*, 5 R. 828, the judgment of the House of Lords in *Glendonwyn*, 11 Macph. (H. of L.) 33, was not considered as affecting the authority of the case of *Thoms*.

It is true that in the cases of *Dundonell*, 8 Macph. 1049, and *Glendonwyn*, extraneous evidence of a certain kind was admitted in order to construe the deed. But the very fact that such evidence was received only shows that a general disposition has the effect which the Lord Ordinary has attributed to it where no such evidence exists or where it is not sufficient to restrain its operation.

"1. In this case there is nothing in the deed itself which was said to qualify the conveyance except that the granter described himself as Lachlan M'Neill of Drimdrissaig, while under General Campbell's settlement he was directed to assume, and did in fact assume, the name of Campbell. The Lord Ordinary cannot regard this circumstance as of any force.

"2. The only other circumstances founded on by the defender were that in addition to the estates in question Lachlan M'Neill held others of considerable value, which he derived from his father, and that it was not necessary to convey the former to Dugald, because he took them under the settlement of the General. With regard to the latter point, it is sufficient to say that the conveyance was necessary in order to create

a substitution in favour of the pursuer, and the mere fact that the granter of a general disposition has more than one estate cannot, it is thought, derogate from its power as a deed of conveyance. As therefore the defender has shown nothing either within the deed itself or beyond which can limit the universality of its language, the pursuer is, in the opinion of the Lord Ordinary, entitled to prevail.

"If presumptions are to be admitted at all, he thinks that Lachlan M'Neill was more likely to favour the pursuer than his more distant relation the defender."

The defender reclaimed.

Authorities—*Gray* v. *Gray*, May 24, 1878, 5 R. 828; *Glendonwyn* v. *Gordon*, July 20, 1870, 8 Macph. 1075; May 19, 1873 (H. of L.), 11 Macph. 33; *Thoms* v. *Thoms*, March 30, 1868, 6 Macph. 704.

At advising—

Lord Young—The question in this case is, Whether the general disposition and settlement of the late Mr Lachlan M'Neill did or did not convey his estates of Kintarbert and Crossaig?

The late General Robert Campbell of Kintarbert died in 1837. He possessed the estates in question, and by his general disposition and settlement he conveyed his whole estates, heritable and moveable, to his nephew Lachlan M'Neill and the other heirs therein mentioned. Lachlan M'Neill executed the general disposition and settlement referred to on 24th November 1838. By it he conveyed to his brother Dugald and the other substitutes therein mentioned his whole heritable and moveable estate of every kind then belonging to him or which should belong to him at the time of his decease. He died in 1852, and the question is whether the estates of Kintarbert and Crossaig were conveyed under his general disposition and settlement.

The contention is, that as these lands stood upon a special destination under a deed which it is unnecessary more particularly to specify, the conveyance of the general deed, being in the general terms to which I have referred, should be so construed as not to include those lands so standing upon the special destination. And it is suggested to us that we should probably give effect to the intention of the maker of the deed, according to the likelihood of his views, without including those lands, as he was at the date of his making the deed, and to a still larger extent at his death in 1852, the proprietor of various other lands of considerable value. He was certainly proprietor of Drimdrissaig, said to be of the value of £13,000, and he purchased the estate of Saddell, said to be of the value of £44,000, these two together being considerably greater in value than Kintarbert and Crossaig. It is said that the words of his deed will be satisfied, and probably his intention also, by giving these other lands, which stood upon a general title to heirs whatsoever, to his general disponees—still allowing the specially destined lands of Kintarbert and Crossaig to go to the heirs to whom they were specially destined by the investiture on which they stood.

The general question as to the validity of a general conveyance to carry specially destined lands was raised in the case of *Thoms*, to which we were referred by Mr Robertson, and which is referred to by the Lord Ordinary; and it was found to be attended with such difficulty that the First Division, in which the case occurred, sent it to the whole court. The result was a judgment by which it was found that, in the absence of anything to indicate or satisfactorily establish a contrary intention, the words of general conveyance should include everything which the maker had power to convey, including another estate, although standing upon a special destination. And in answer to a question which I put to the counsel for the reclaimer here, Mr Robertson, with his accustomed candour, said that unless we attached conclusive importance to the specialties which he noticed, and which I shall advert to immediately, we could not do otherwise than adhere to the interlocutor of the Lord Ordinary now reclaimed against, if we followed the decision in the case of *Thoms*. Now, although that judgment was pronounced by a majority, I venture to think that the decision was in itself right. But without stating the grounds upon which I think so, I think your Lordships will altogether concur with me when I say that it is binding upon us, and that we must follow it. It is a deliberate judgment of the whole Court, although carried by a majority, to the effect that words of general conveyance shall, in the absence of a contrary intention, carry lands although standing upon a special destination, it being in the power of the maker of the deed to dispose of these at the date of it. That judgment having been pronounced, we must follow it. Mr Robertson indicated that this case may possibly or probably be carried elsewhere, where it will certainly be quite legitimate to review the judgment in the case of *Thoms* upon the principle which the learned counsel at once conceded it would be out of the question to ask us to do here.

Now, that leaves us only the specialties to which Mr Robertson referred as indicating an intention upon the part of the maker of this general disposition not to include therein those specially destined lands. Now, consistently with the judgment in *Glendonwyn's* case, to which we were referred, and the subsequent judgment of this Court in the case of *Gray*, I presume your Lordships will hold that evidence of the kind referred to in these cases, to show the intention with which the words of general conveyance were used by the maker of a general disposition, is admissible—not strictly speaking, or in the general sense of the words to be called evidence of intention, but evidence of the facts presumably within the knowledge of the maker of the deed at the time he made it, and with reference to which, as he knew them, it is reasonable that we should construe his language. In the case of *Gray* I ventured to express my own opinion upon the matter thus—"Such evidence is (or frequently may be) necessary to enable the Court to put itself in the same position with respect to knowledge of material facts as the maker of the deed, so that his language, which that of the deed must be taken to be, shall be interpreted and have effect accordingly. The purpose being to reach his intention always with due circumspection and safety, one is apt to speak popularly of evidence to this end as evidence of intention, although it is in truth only evidence of existing facts of a character to be presumably known to the maker

of the deed, and with reference to which therefore it is reasonable to conclude that he meant the language of his deed to be considered and have effect. To the extent of interpreting a description of subjects, or identifying those to which general words are applicable, it is, I think, generally agreed that evidence of the character referred to is and must be admissible." I doubted if it was necessary to exceed that proposition in that particular case, and I only refer to what I said there in order to guard against—as I used these expressions in that case for the purpose of guarding against—the notion that the general evidence of intention was to be interpreted by the writing in such a matter.

But we can look certainly to such circumstances as Mr Robertson called our attention to, these being, in the first place, that in the general deed the maker describes himself as Lachlan M'Neill of Drimdrissaig, and not as Lachlan M'Neill Campbell of Kintarbert and Crossaig. I think that suggests nothing at all, either the one way or the other. Nor do I think the only other material circumstance which was relied on is of any materiality here, although the absence of any such facts was considered very material in the case of *Gray*—I mean that the party possessed other lands. The fact that he had other lands not specially destined, but nevertheless not one whit more subject to his disposal than these, may be of more or less materiality according to the other circumstances in the case, but here I do not regard it as of any materiality at all. I think this is not at all inconsistent with what is just as likely as not to be the truth—as the Lord Ordinary thinks, more likely—viz., that to all his estate which he could dispose of he preferred his sister upon the failure of his only brother, and his heirs to strangers. That is really what the deed does. The specially destined lands—the special destination being always within his power to alter—would upon the death of his only brother Dugald without issue pass to strangers. The suggestion is that very likely he intended that, although with respect to the rest of his estate he preferred his sister to the strangers. Now, that is a specialty which makes no impression upon my mind at all. The absence of any estate to operate upon except the particular estate in dispute in the case of *Gray* was obviously a very strong circumstance, but the converse does not occur to my mind as being of any weight here.

Upon the whole matter, therefore, I am disposed to concur with the Lord Ordinary. Undoubtedly in the case of *Glendonwyn*, Lord Colonsay (11 Macph. H. of L. 41) used language which might be held to indicate a preference for this view rather than that which was adopted by the Court in the case of *Thoms*, viz., that a general conveyance should not include specially destined lands unless the whole facts of the case satisfied the Court that the maker so intended—the doctrine in *Thoms'* case being that a general conveyance should carry the specially destined lands if within the maker's power of disposal, unless a contrary intention appeared. I think there is nothing to show the intention strongly either one way or the other here, the only fact which appeals to one's mind very strongly being that a man very naturally prefers his sister to strangers. And when he executes a general disposition which may operate upon these lands, I think, with the Lord Ordinary, that probably upon the whole he meant to prefer his sister to the whole of them, and to let her have the lands rather than let strangers take any part. But however that may be, I am of opinion that the judgment in that case of *Thoms* governs this case, there being nothing to lead us to another conclusion in those special circumstances which arose, and which Mr Robertson relied upon. Therefore I am for refusing this reclaiming note.

Lord Gifford—I am of the same opinion. The question, and the only question, in the case is, Whether the general conveyance granted by Lachlan M'Neill in 1838 conveys or does not convey to the disponee the lands specially destined of Kintarbert and Crossaig. The parties at the bar have stated that they do not ask any additional inquiry, and do not think they could have disclosed any fact in addition to those which are indicated upon the face of the deed or admitted upon record. Therefore we are left just upon these documents, and in the circumstances explained by the parties, to say whether this general deed included specially destined lands or not. Now, I think that this case so standing is foreclosed by the case of Thoms. The words of the deed are amply sufficient to carry the specially destined lands as well as other heritable estate of which the granter was possessed; and I think there is no sufficient circumstance here to deprive the generality of the words of their general effect, or to except from the conveyance certain properties which belonged to the testator, while the words admittedly carry them. The only things relied upon, apart from the one or two specialties to which Lord Young has referred, were that there were other lands not specially destined which were in the entire power and control of the testator. I use the word testator as applicable to Lachlan M'Neill, who had as much power over the lands previously destined as over the lands of Drimdrissaig, or any other estate which belonged to him. And it seems to me that the case of *Thoms* points to this, that to deprive general words of their general and natural effects some special circumstances must be made out to exist. Now, I do not think these are made out, and I concur with Lord Young that the special circumstances apparent here and before us are not sufficient to entitle us to deprive the words of the deed of their universal application, and therefore I concur in the decision which is to be pronounced. If the case of *Thoms* were out of the way, it would be a very difficult and a very general question to say upon whom lies the *onus* of proof—for it really comes to that—where some lands are specially and others generally destined, and what is the presumption that applies to a general deed not mentioning any of them, but capable of being applied to any or to all. I think we are shut up by this case of *Thoms* not to lay the *onus* either way, but to follow that decision which from remarks which seem to have been made in the House of Lords in *Glendonwyn's* case has never been altered. I therefore concur with your Lordship in the proposal that the interlocutor should be adhered to.

Lord Ormidale—I concur with both your Lordships, and very much on the same grounds. In the first place, we have here in the general deed of conveyance of Lachlan M'Neill words of the

most comprehensive description. I do not know whether they are exactly the same as in those other cases to which we have been referred, but it is impossible that they could be more comprehensive than the words we have here:—"All and sundry lands and heritages, goods, gear, debts, and sums of money, and in general the whole estate and effects, heritable and moveable, real and personal, of what kind or designation soever, or wheresoever situated, at present belonging, or that shall pertain and belong, to me at the time of my decease." Now, these lands that are more immediately in question, and which had, it is said, been previously destined to others, these present defenders, did belong to Lachlan M'Neill when he made that general deed of conveyance. They belonged to him and were possessed by him, and therefore clearly, in the first place, looking at the case in its *prima facie* aspect, they were necessarily carried by this general deed which he made in 1838. That is the first consideration that presses itself upon my mind. In the second place, it was conceded at the bar, and it could not well but be conceded, on behalf of the reclaimers here, that the case of *Thoms* not only would require to be shaken, but would require to be superseded or disregarded before we could arrive at any other result in the present case than that at which the Lord Ordinary has arrived. Now whatever may be said about the case of *Thoms* elsewhere, it is impossible that we can disregard it, for it is an authority and a precedent of a most weighty description, being a decision not of one Division of the Court or of the other, but of the whole Court. It is quite true that it was only by a majority that it was pronounced, but there it stands, and I take it that we must give effect to it here till it is altered elsewhere.

But then it was said, in the third place, that there are specialties here which did not exist in those cases; and that may be quite true, but it was not asked or desired on the part of the reclaimer that he should be allowed to lead any evidence of extrinsic circumstances—so that is out of the case. All that he relied upon was the specialties arising from the construction of the deeds themselves, and among other specialties there were, I think, only two of any materiality. I think it came to this, that, in the first place, in this general deed of conveyance Lachlan M'Neill dropped his name of Campbell which had been given to him by the destining deed which left him the particular estates in question, and that by his dropping the name of Campbell, which he did not require to use with reference to the other estates, it was the other estates and not the estates in question that he intended to be carried by this general deed. Now that, in a certain view that may be taken of it, is an indication, I was going to say of a very shadowy description, but I will rather more properly call it of a fanciful description. And accordingly Mr Robertson did not follow it up by illustration or otherwise so as to enforce it, but said he mentioned it, and left it there. I turned it in my mind to see whether there is any importance that can legitimately be attached to it, but I find that I cannot apply it to this case in any way, so as to rely upon it as a substantial or material indication of intention that possibly can be given any weight to. The only other material specialty that was relied upon was that in the case of *Gray*, and also in the case of *Thoms*, there were no other special lands that had been previously destined or carried under previous destination, whereas we have here other lands carried under a different deed. That is no doubt a material circumstance, but I am disposed to look upon it very much in the light in which Lord Young has stated it. I cannot think that there is sufficient in it to detract from the universality of the conveyance in the general deed, for notwithstanding that previous title to those particular lands which undoubtedly existed at the time, they nevertheless belonged, just as much as anything else that he had in the world, to the maker of this deed, Lachlan M'Neill. And looking to extrinsic evidence, we have none —and there is no motion made to be allowed to lead any—to show that the circumstance of these other lands being named in another deed giving a different destination makes any specialty in the case. And here we have the testator's intention disclosed to convey the lands in question to his sister rather than to allow them to go to another family, and another clan, the Campbells. I am therefore, along with your Lordships, for adhering to the interlocutor of the Lord Ordinary.

The Court adhered.

Counsel for Pursuer (Respondent)—M'Laren—Mackay. Agents—Lindsay, Howe, Tytler, & Co., W.S.

Counsel for Defender (Reclaimer)—J. P. B. Robertson. Agents — Pearson, Robertson, & Finlay, W.S.

Saturday, January 18.

SECOND DIVISION.

[Sheriff of Mid-Lothian.

BAINBRIDGE *v.* BAINBRIDGE.

Process—Reponing—Decree by Default—Stat. 39 *and* 40 *Vict. c.* 70 (*Sheriff Courts Act* 1876, *sec.* 19) *—Power of Sheriff to Prorogate Time for Lodging Defences.*

The Court will, if they see good reason, upon payment of expenses, repone a defender in an action in the Sheriff Court against whom decree has gone by default on account of defences not being lodged in time.

Observed that a *bona fide* negotiation with a view to a compromise was such a reason as would entitle a defender to be reponed.

Observed that the Sheriff Court Act of 1876, while taking away power to prorogate the time for lodging defences of consent of parties, did not deprive the Sheriff of the power of granting a prorogation which he possessed under previous Acts.

This was an appeal from the Sheriff Court of Edinburgh against an interlocutor of the Sheriff-Substitute and Sheriff giving decree by default against the appellant, who was the defender in the action, in respect that defences had not been lodged in time.

The action was one for aliment at the instance of a wife against her husband, and there were