jurisdictionis fundandæ causa, residence and not domicile is what in ordinary actions determines the jurisdiction. Domicile—that is to say, domicile of succession—may be important in judging of the character of a residence or in questions of continuity. But while that is so, it would not, I apprehend, be possible to sue, say for debt, in the Scotch courts and to cite edictally a Scotsman who had resided abroad for many years, supporting the jurisdiction upon the ground merely that having been born in Scotland he had not yet lost his domicile of origin. Neither, on the other hand, is there, as we all know, any difficulty in sustaining jurisdiction against a foreign debtor irrespective of his domicile, and on the ground simply that he has resided in Scotland for the requisite period. These are all matters more or less elementary, and I only refer to them to avoid misconception. But I may just add that the two cases mentioned at the close of the argument do not appear to have much bearing one way or the other. The question in the case of *Calder* was a question of citation, not of jurisdiction; and as to the case of *Pedie* v. *Grant* all that was there decided was that the Scotch courts had not jurisdiction, *ratione origis*, merely over a defender who though born in Scotland had been long domiciled and resident in England.

LORD STORMONTH DARLING—The Lord Ordinary has sustained the plea of 'no jurisdiction' and dismissed the action. Certainly the defender states that plea in circumstances that do not entitle him to any favour, but unless jurisdiction has been constituted in one of the recognised modes it cannot be exercised.

The action is one of damages for seduction alleged to have been committed in Wales. A great part of the proof is directed to show that the defender, whose domicile of origin was undoubtedly English, has abandoned that domicile and adopted Scotland as his domicile of choice. I do not mean to say or imply that it is necessary to establish domicile such as would regulate a man's succession for the purpose of giving jurisdiction in an action for a civil debt. But since issue has been joined on that question I am content to say that I agree with the conclusion of the Lord Ordinary.

It is also urged that jurisdiction is constituted by the defender's ownership of heritable property in Scotland, *i.e.*, a house in Hamilton Place, Aberdeen, of which he was owner from May 1903 to 16th December 1904. But the answer is that the summons was not served upon him till 30th December 1904. It is attempted to get rid of this obvious difficulty by urging that the transfer on 16th December was a mere trick or device which the defender's agent was not enabled to carry out by asking for and obtaining delay in raising the action. But I agree with the Lord Ordinary that it is not proved that the request for delay was necessarily the cause of the summons not being served until after the disposition had been executed. Nor do I think that the defender's plea is affected even if it were clear that the disposition, assuming it to be an absolute and not merely a simulate one, was made with the intention and for the purpose of escaping the jurisdiction of the Scottish courts.

Again, it is said that in an action of this kind a residence of forty days is enough to give jurisdiction. That may be if the summons had been served while the defender was still in this country. But he had left Scotland fourteen days before the summons was served. As I am responsible for some observations in *Babty's* case (18 R. 843) to the effect that jurisdiction which had been acquired over a foreigner by forty days' residence in Scotland endured for forty days after he had left it, it is right that I should say that the fuller discussion which this question received in the case of *Corstorphine* (1 F. 287) has convinced me that there is no sufficient warrant for this artificial extension of time. Be it observed at the same time that both *Babty's* and *Corstorphine's* case related to the citation of foreigners, and nothing that was said or decided in either of them can affect the case of a man whose usual place of abode is in Scotland.

I am of opinion that we should adhere to the Lord Ordinary's interlocutor, with the slight variation proposed by Lord Kyllachy.

The LORD JUSTICE-CLERK and LORD KINCAIRNEY concurred.

The Court pronounced this interlocutor—

"... Refuse the reclaiming-note, and with the following finding in fact—(3) that the defender was not resident in Scotland on 30th December 1904, and had not been so residing for at least fourteen days previous to said date: Affirm the said interlocutor reclaimed against, and decern," &c.

Counsel for Pursuer and Reclaimer—G. Watt, K.C.—Gunn. Agents—Mackay & Young, W.S.

Counsel for Defender and Respondent—Solicitor-General (Salvesen, K.C.)—Mackenzie Stuart. Agents—Macpherson & Mackay, S.S.C.

Friday, July 7.

SECOND DIVISION.

[Sheriff of Ayr.

BRITISH LINEN COMPANY *v.* PURDIE.

Lease—Lease of Shop—Reasonable Use of Premises—Erection of Show Cases Outside Shop.

Certain premises were let to be used as a shop in connection with the tenant's business of draper and milliner. *Held* that the erection of show cases by the tenant, and their attachment to the outside wall, was not such a reason-

able use of the premises let as to be impliedly authorised by the lease.

This was an action raised in the Sheriff Court at Ayr by the British Linen Company Bank against Miss Janet Goudie Purdie, draper and milliner, 119 High Street, Ayr.

The defender was the pursuers' tenant under a ten years' lease of her shop at 119 High Street, Ayr, which formed part of the pursuers' bank buildings.

The defender's lease provided, *inter alia*, as follows, viz.—"That the said subjects hereby let shall be used by the said Janet Goudie Purdie as a shop in connection with the carrying on of her business of draper and milliner, and for no other purpose."

The pursuers sought to have the defender ordained to remove two show cases which she had fixed on the front wall of the shop referred to, and to restore the front of the property to the condition in which it was before her interference therewith.

The mode in which the show cases were fixed to the wall is disclosed in the interlocutor of the Sheriff-Substitute *infra*.

The pursuer pleaded — "The defender having interfered with the outside walls of the property of the pursuers as libelled, she is bound to remove said show cases, and to restore the walls to the condition in which they were prior to her interference."

The defender pleaded—"(2) The defender having, in accordance with custom of trade, a right to erect show cases on the outside walls of her shop, the petition should be dismissed, with expenses. (3) The defender being entitled to the full use and enjoyment of her premises, leased by her from the pursuers, and no infringement of the terms of the lease having been committed, she is entitled to absolvitor, with expenses."

Proof was led, the import of which, for the purposes of this report, is sufficiently disclosed in the findings in fact in the following interlocutor granting decree in terms of the prayer of the petition, pronounced by the Sheriff-Substitute (SHAIRP) on 20th December 1904, viz.—"The Sheriff-Substitute, having heard parties' procurators and considered the cause, finds in fact (1) . . . ., (2) That, without the consent of the pursuers, the defender, on or about 15th June 1904, erected the two show cases in front of said premises of the size and in the position detailed on (a plan lodged in process), and that she has so maintained them since the foresaid date without the consent of the pursuers: (3) That each of the defender's show cases is attached by screw nails to two holdfasts driven into the concrete pavement in front of the premises in question, and that at the top each show case is held in position by attachment to a metal pin about half an inch in diameter inserted inward for a distance of about two inches between the stones of the channelled ashlar front of the butts belonging to the pursuers, as shown on plan referred to: (4) That no general custom of trade has been proved to exist in Ayr under which tenants are in the habit of erecting show cases, in such positions as the defender's cases, and with similar attachments, without the consent of the proprietors of the respective subjects. Finds in law that in these circumstances the defender was not entitled originally to erect the said show cases with such attachments in the position in which they stand without the consent of the pursuers, nor is she now entitled so to maintain them without such consent. Accordingly ordains the defender within fourteen days from this date to remove the two show cases described in the prayer of the petition, and to restore the front of the property belonging to the pursuers to the condition in which it was prior to the defender's interference therewith, and . . ."

The defender appealed to the Sheriff, who adhered, on 6th April 1905.

The defender appealed to the Court of Session, and argued—The defender was only making reasonable use of the premises let, and all reasonable uses were authorised by the lease—Rankine on Leases, 2nd ed. 225; *Stirling* v. *Strang*, February 26, 1857, 19 D. 568; *Keith* v. *Reid*, June 16, 1870, 8 Macph. (H.L.) 110, 7 S.L.R. 659. Section 159 of the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), relied on by the pursuers, did not affect the present question—Burgh Police (Scotland) Act 1902, section 381, subsection 49, *M'Millan* v. *Bennet*, February 2, 1895, 22 R. (J.C.) 23, 32 S.L.R. 295.

Argued for the respondents—The erection of the show cases in question was not such a reasonable use of the premises as could be held to have been in the contemplation of parties in entering into the lease—Dickson on Evidence, 1093—*Brown* v. *M'Connell*, June 7, 1876, 3 R. 788. In the absence of consent obtained in terms of the Burgh Police (Scotland) Act 1892, section 159, the erection of show cases was *prima facie* unlawful, and the pursuers might be held liable for the wrong done; therefore, apart from injury to their property, the respondents were entitled to decree.

LORD STORMONTH DARLING—This is a regrettable litigation about a very small matter arising between landlord and tenant. The British Linen Company are proprietors of a building in the town of Ayr where they have their bank offices, and the defender is their tenant of premises let to her "as a shop in connection with the carrying on of her business of draper and milliner" under a ten years' lease. She has erected against the outer wall abutting upon her shop two show cases for the purpose of exhibiting her goods, and these cases are attached to the wall in the manner described by the Sheriff-Substitute in his judgment of 20th December 1904, as follows:—"Each of the defender's show cases is attached by screw nails to two holdfasts driven into the concrete pavement in front of the premises in question, and at the top each show case is held in position by attachment to a metal pin about half an inch in diameter inserted inward for a distance of about two inches between the stones of the channelled ashlar front of the butts belonging to the pursuers."

The bank has brought this action for the removal of these show cases, and the prayer of the petition is "to ordain the defender to remove two show cases which she has fixed on the front walls of the shop No. 119 High Street, Ayr, of which the pursuers are the proprietors and the defender is the tenant, and to restore the front of the property belonging to the pursuers to the condition in which it was prior to the defender's interference therewith." Both the Sheriff-Substitute and the Sheriff have given decree in terms of the prayer of the petition. The case which the learned Sheriffs had to consider was entirely based on custom of trade, and the plea to that effect is the second plea for the defender, which is, "The defender having, in accordance with custom of trade, a right to erect show cases on the outside walls of her shop, the petition should be dismissed with expenses." The learned Sheriffs have found that the defender has failed to prove her averment of custom of trade. The defender's counsel here, feeling that it would be difficult to maintain that plea, has given it up, and has fallen back on the argument that this was reasonable use of the premises let, and so impliedly allowed by the lease, and he has used the evidence to show that this was a reasonable use to make of the outside wall. This new argument must rest on the proposition that, when erections attached to the outer wall of the premises let are found to be useful and convenient to the tenant, and not materially injurious to the landlord, they are therefore within the lease, and impliedly authorised by it. I find myself unable to assent to that proposition. I do not say there might not be such attachments. For instance—and this is probably the instance which would occur to everyone—a signboard bearing the name of the shopkeeper, is so universally recognised as part of the equipment of a shop, that the law would hold it to be authorised by implication. But that is not the case here. The defender's witnesses do not say that the show cases were necessary for the shop, but merely that they were convenient. If that is all that can be said in their favour I do not think we can hold that there is any implication that the tenant may thus interfere with the outer structure of the building without the consent of the landland. On this ground I concur with the conclusion to which the Sheriffs came.

LORD KYLLACHY — I agree with Lord Stormonth Darling that the alleged custom has not been proved. On the question whether the affixing of these show-cases on the outside of the defender's shop was, apart from custom, so reasonable a use of the premises let to her as to be impliedly authorised by her lease, I also agree with Lord Stormonth Darling.

LORD KINCAIRNEY—I have considerable doubt as to this case, but I am not prepared to dissent from your Lordships' decision. I agree that there is no sufficient proof of custom. As to the sanction of the burgh authorities, I do not know what their position really is. The question comes to be whether what the defender did was so impliedly within the lease that she was entitled to do it. It is not said that what she did was injurious to the proprietor, and it is said that it was in accordance with the purposes for which the premises were let. What, then, are the things which a tenant of a shop may do to the shop as being within the scope of the lease? Some things undoubtedly the tenant may do without special sanction. He may, for example, put up his name on the shop. Such a use of the subject of lease would be sanctioned by universal custom, and there may be other uses of a like kind. It is said that what was done here was going a long way beyond that, and certainly no such custom in support of it has been proved.

I am not prepared to say that she can put up these show-cases. There is no authority to the effect that she can. But I am very averse to saying that she cannot.

The LORD JUSTICE-CLERK was absent.

The Court dismissed the appeal and affirmed the interlocutors appealed against.

Counsel for the Pursuers and Respondents —M'Clure, K.C.—G. C. Steuart. Agents—Mackenzie & Kermack, W.S.

Counsel for the Defender and Appellant—Deas—Spens. Agent—J. A. Kessen, S.S.C.

Saturday, July 8.

SECOND DIVISION.

THOMSON *v.* THOMSON.

Alimentary Provision—Diligence—Excess over Suitable Aliment.

A, a retired master mariner, was entitled to an alimentary provision of £200 a-year from his deceased father's trust estate. His first wife, in an action of divorce at her instance, had obtained an interim decree for £20 to account of expenses, and subsequently her agents, as agents disbursers, had obtained decree for £33, being the balance of the taxed amount of her expenses. The wife and her agents having thereafter laid on arrestments in the hands of the trustees, whereby they sought to attach the alimentary provision, A, who had married again since the divorce, and had one child by his second wife, presented a petition for recall. The Court *granted* the prayer of the petition to the extent of £150 per annum.

John Durham Thomson, retired master mariner, Inglewood, Byfleet, Surrey, presented a petition for recall of arrestments in the following circumstances:—The petitioner, who was married, was in receipt of an alimentary provision of about £200 a-year, being the income of a certain fund held for him in liferent by the testamentary trustees of Alexander Thomson, wholesale stationer, Bank Street, Dundee, the petitioner's father. In 1904 his first wife had raised an action of divorce against