uplifted? I cannot say that there is any more in that than there would have been if you could have said that the £2 was deposited in the Savings Bank or put into a little jar in the corner of the room. You cannot earmark each source of supply. At that rate it would not be enough to prove that the money had been paid to the woman. You would have to go on and prove that it was spent on some particular thing—absolutely consumed by the infant. I think that would be an absurd particularising.

Accordingly I think there is nothing here upon the findings to dislodge the finding which bears to be a finding in fact, namely, that the child was partially dependent upon his deceased father, and I accordingly think that the appeal should be dismissed.

LORD M'LAREN—I am of the same opinion. I think that if money has not been actually applied by the injured person to the maintenance of a dependant, it must be shown that the money was, at all events, at the disposal of the dependant, and was supplied for the purposes of maintenance. Now, the Sheriff-Substitute has found that this illegitimate child was dependent upon his father; and I think the mother has done enough to show that she was really relying upon the father's contribution towards the maintenance of the child, because she first obtained a decree of aliment, and then she did her best to trace the father, who had been going under an assumed name, and when she discovered his residence she used an arrestment. I do not see what more could have been done, unless she had taken out letters of horning and endeavoured to put him in prison for this alimentary debt. But that was quite unnecessary, because it was conceded that after the father had been discovered and his wages arrested he assented to those wages, to the extent of £2, being held by his employers to be uplifted by the woman. Now she might not have to spend the money at the moment. If she had credit from tradesmen it would be enough that she was able to lay her hands upon this sum whenever she wanted it to pay her accounts. Therefore, if it were necessary to consider the facts, I do not think that, when they are looked at in a reasonable sense, there is any ground for differing from the conclusion at which the Sheriff has arrived. I do not know that any definite question of law has been formulated for our decision.

LORD KINNEAR—I agree. The Sheriff sets forth in the case, and in detail, a number of facts tending to show, in the first place, that the injured man was liable for the support of his infant child, and in the second place that the mother, in whose custody the child was, was doing her best to enforce that liability for the child's maintenance. These facts, which are set forth in detail, raise the question, which we are asked to consider, whether the Sheriff was justified in drawing the further inference in fact that the child was wholly or partially dependent upon the father at the time of his death, and he drew that inference in fact and said that the child was so dependent. That appears to me to be a question of fact upon which the Sheriff's decision is final. I quite agree that if it could have been shown, from a consideration of the whole statement in the case along with the question put to us as a question in law, that his decision of the question in fact had been determined by some erroneous view of the law, we should have been able to review that opinion on the law and to set him right if he was wrong. But I cannot find any suggestion in the case—and I heard none in the argument addressed to us—that the Sheriff was in any error at all upon any point of law. The whole question appears to me to be one of fact, and I think the Sheriff-Substitute's judgment is final.

LORD PEARSON—I also concur.

The Court answered the question of law in the affirmative.

Counsel for the Appellants—Hunter, K.C. —Strain. Agents—W. & J. Burness, W.S.

Counsel for the Respondent—Watt, K.C. Wilton. Agent—D. R. Tullo, S.S.C.

Wednesday, December 16.

FIRST DIVISION.

(SINGLE BILLS.)

COCHRANE *v.* COCHRANE.

Husband and Wife — Appeal to House of Lords — Expenses in the Appeal — Application by Wife for Interim Award —Competency.

Applications for interim awards of expenses in consistorial appeals to the House of Lords must be made to the Court of Session and not to the Appeal Committee.

In an action of divorce by a husband against his wife, the Court assoilzied the defender. The husband having appealed to the House of Lords, the Court *awarded* the wife £100 towards her expenses in the appeal.

On 14th April 1906 J. Y. Cochrane, 3 Errol Terrace, Dundee, raised an action of divorce against his wife on the ground of desertion. The Lord Ordinary (DUNDAS) having granted decree of divorce, the defender reclaimed, and on 2nd November 1907 the Extra Division recalled the Lord Ordinary's interlocutor and assoilzied the defender. On 2nd November 1908 the pursuer appealed to the House of Lords, and an order was granted for service of the petition upon the respondent. On 24th November 1908 the respondent presented a note to the Lord President in which she stated, *inter alia*—"The defender is desirous of maintaining her defence against the said appeal, but she is possessed of no funds which enable her to do so. Since the first day of August 1901 she has lived separate from

her husband, and during the whole of that period she has maintained herself and her child by her own exertions, out of the proceeds of a licensed grocery business carried on by her, to which she succeeded on the death of her father. The profits of the said business amount to £116 per annum, and the defender has no other source of income. Out of that sum the defender has to maintain herself, her child, and a servant, and there is annexed hereto a statement setting forth the details of her annual expenditure. As that statement shows, the defender has no surplus available to meet the expenses of a litigation in the House of Lords. Recently her business has not been successful, and she is owing a number of accounts to wholesale dealers."

The prayer of the note was as follows:—"May it please your Lordship to move the Court to decern and ordain the pursuer to pay to the defender such sum as to the Court shall seem just to account of the expenses to be incurred by her in connection with the said appeal to the House of Lords."

Argued for defender (the wife)—It was the practice of the Court to make such awards—*Symington* v. *Symington*, June 11, 1874, 1 R. 1006, 11 S.L.R. 579; *Grant* v. *Grant*, 1904 (not reported). In *Grant* v. *Grant* the Second Division on 9th March 1904 made an award of £75, and on 20th October 1904 a further award of £500 to account of the wife's expenses as respondent in the appeal. *Esto* that after service of the appeal the Court was *functus quoad* the merits, no question as to the merits arose here, and in any case the process was still *de facto* in Court. This was not, as the respondent maintained, a case of *interim* execution in the sense of 48 Geo. III, c. 151, sec. 17, and therefore that enactment was inapplicable. The petitioner had no funds, and it would be a hardship to refuse her request seeing she had the judgment in her favour. [In reply to the Lord President, counsel for the defender stated that the sum he would suggest was £100.]

Argued for pursuer (the husband)—The appellant had consigned £200, and entered into recognisances to the extent of £500 to meet the costs of the appeal, and the petitioner should have applied to the Appeal Committee for an award. The motion was incompetent, for after the order of service the Court was *functus*, and could make no further orders in the case. It was usual for the Appeal Committee to make such awards—Macqueen's Appellate Jurisdiction, p. 531. Neither in *Symington* (*cit. supra*) nor *Grant* (*supra*) was the point discussed—the motion being granted as a matter of course. In the event of the motion being held competent, a sum of £50 would be amply sufficient.

[LORD PRESIDENT—We shall consult with the other Division of the Court before giving our decision.]

At advising—

LORD PRESIDENT—The position of this case is that the husband is pursuer and seeks to divorce his wife on the ground of desertion. He was successful before the Lord Ordinary, but on a reclaiming note the Division reversed the Lord Ordinary's interlocutor, and accordingly, as matters now stand, the wife is the successful party, and is still his wife. The husband has appealed to the House of Lords, and the wife, being without funds, makes this application for an award of money in order to enable her to defend the judgment in her favour before that House. No question arises about the expenses in the Court of Session which have been already dealt with.

The motion is resisted on the ground of competency, and counsel for the husband urge that the proper course for the wife is to go to the Appeal Committee and ask for an award from them, either directly, or by obtaining authority to uplift some of the money deposited in the House of Lords as caution for expenses.

There seems no doubt that the motion now made has been granted by this Court, though there is no exact trace of the matter having received great discussion. An award was however made by the other Division in the recent case of *Grant* v. *Grant*. I think that precedent ought to be followed. I took occasion recently to find out from the Appeal Committee whether there was any precedent for a motion such as counsel suggested, and I found there was none. That makes the matter clear, for it is evident that the wife here is entitled to assistance in order to uphold the decision in her favour, and if there is no precedent for the Appeal Committee giving it, then it must be given here.

The only other question is a technical one, viz., whether we should write on the process which *de facto* is still before us, or insist in a new process by way of separate petition. I think at this time of day we never put parties to unnecessary trouble and expense on mere technicalities.

LORD M'LAREN—I concur.

LORD KINNEAR—I am quite of the same opinion. It is obvious that the matter must be disposed of either by this Court or by the Appeal Committee, and if it is not the practice of the Appeal Committee to entertain such motions, it is necessary that we should do so.

LORD PEARSON—I agree.

The Court pronounced this interlocutor—

"Decern and ordain the pursuer to pay to the defender the sum of £100 to account of the expenses to be incurred by her in connection with the appeal to the House of Lords."

Counsel for the Wife—A. R. Brown. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Husband — Wilton. Agent—David Milne, S.S.C.