12 Victoria, chap. 42, relative to the indorsement of warrants against persons for crimes or offences against the laws of Scotland. But the ground on which I proceed mainly is that it was, in my opinion, an abuse of the warrant granted by Sheriff Lees to bring back the respondent forcibly from England to Scotland, and that the petitioner is not entitled to avail himself of the fact that by such a proceeding he has brought the respondent within the jurisdiction of this Court. There is a conflict of authority between different Sheriffs-Substitute on the point, and I have the highest respect for the opinion of Sheriff Glassford Bell, who took a different view in 1855 from that which I have expressed. But the opinion since acted on by Sheriff Dove Wilson, and substantially adhered to in his work on Sheriff Court practice, commends itself more to my approval. The pursuer's agent asked that I should grant a warrant for the detention of the defender, but I declined to do so, as inconsistent with the view I take of the case."

The pursuer appealed to the First Division of the Court of Session, and argued that the practice in Glasgow had been to follow the decision pronounced by Sheriff Bell in *Wylie & Lochhead* v. *Kovy*, January 15, 1855, note in 1 Sellar's Forms for Sheriffs, &c., p. 172, although it was quite true that an opposite view had been expressed by Sheriff Dove Wilson in *Cook* v. *Sauliere*, October 11, 1873; Guthrie's Sheriff Court Cases, 257. The Sheriff-Substitute could not address himself to the question whether the procedure was competent. He had nothing to do with the *modus* of apprehension. He had merely to deal with the case before him, where, as here, the warrant was *ex facie* regular. A Scotch judge could not assume that an English judge's warrant, *ex facie* regular, was incompetent—Stair, iv. 47, 23. The procedure under border warrants had been sustained on proof of a practice; and here a practice existed, and the pursuer was ready to prove it. Besides the tendency of the law, *e.g.*, the English Bankruptcy Acts was in this direction.

Counsel for the defender were not called on.

At advising—

LORD PRESIDENT—The case is so clear that it is not necessary to call for an answer. The argument has been very well stated, and in disposing of it I proceed entirely upon the ground relied on by the Sheriff, namely, that here there has been an abuse of the warrant. The respondent was not, in my opinion, legally within the jurisdiction of the Court which issued the warrant, and his apprehension in England was altogether beyond the warrant. That the English Magistrate authorised the officers to execute the warrant does not affect the question. The respondent was not *in meditatione fugæ* when apprehended, and Sheriff Lees' warrant had no efficacy for apprehending him in England.

LORD MURE concurred.

LORD SHAND—As pointed out by Lord Rutherfurd Clark in *Kidd* v. *Hyde*, May 19, 1882, 9 R. 803, the Debtors Act 1880 (43 and 44 Vict. cap. 34) has largely affected these warrants. But even assuming that some good purpose is still served by such warrants, if the application had stated that the person sought to be apprehended was out of this country the Sheriff would have refused to give any deliverance upon it, or would have refused it altogether. Such a warrant is presented on the footing that the person is in and about to leave the country; but it falls the moment the person gets out of the country. The argument, that the Magistrate in England by granting authority to execute the warrant makes the warrant competent, if sound, would amount to this, that a person might be brought back to this country, even after arriving at his destination at the other side of the globe, if a magistrate could be got to endorse the warrant. Such a proposition is extravagant. In short, the warrant is good so long as he is about to leave the country; it is bad so soon as he has left it.

LORD ADAM concurred.

The Court adhered.

Counsel for Pursuer (Appellant)—A. S. D. Thomson. Agent—Wm. Officer, S.S.C.

Counsel for Defender (Respondent)—Guthrie—M'Clure. Agents—Fodd, Simpson, & Marwick, W.S.

Wednesday, June 15.

SECOND DIVISION.

[Sheriff of Lanarkshire.

MARTIN *v.* WARD AND OTHERS.

Reparation — Contributory Negligence — Parent and Child.

In an action of damages by the father of two boys, aged five and three years respectively, who were knocked down by a van, when crossing a public thoroughfare near their home, the defenders pleaded that the pursuer was guilty of contributory negligence in allowing the children to cross the street alone. *Held* that there had been no contributory negligence to the effect of relieving those responsible for the accident from liability.

Reparation—Liability—Employment of Van.

In an action of damages for injuries done by a van which knocked down two children, there were called as defenders the owners of the van, and a spirit merchant and his son. The ground of action against the spirit merchant was that his son, who was his shopman at a weekly wage, had borrowed the van for the purpose of moving goods belonging to his father, and that the accident had happened while the van was so employed. The father saw the van loaded and despatched, his son being in it, but one of the owners of the van being then the driver. On the way it became apparent that the driver was the worse of drink, and the spirit merchant's son accordingly took the reins, and was driving when the accident happened. The Court *held* that the owners of the van, and the driver at the time of the accident, were alone liable, and *assoilzied* the other defender.

This was an action in the Sheriff Court of Lanark-

shire at Glasgow at the instance of Robert Martin, residing at No. 6 Sharp's Lane, Main Street, Anderston, Glasgow, against George Ward, wine and spirit merchant; George Ward junior, his son; and Newton & Blair, plumbers and gasfitters, jointly and severally, or severally, to recover damages for injuries sustained by the pursuer's two sons, aged five and three years respectively, who were knocked down on 24th March 1886, at about four o'clock in the afternoon, when crossing Main Street, Anderston, Glasgow, by a van belonging to Newton & Blair, which was at the time of the accident being employed for Ward senior's business, and was being driven by Ward junior.

The defenders pleaded that there was no fault, and also that there was contributory negligence on the part of the pursuer in allowing his infant children to go alone into a public thoroughfare.

The Sheriff-Substitute (SPENS) on 20th July 1886, after a proof, pronounced this interlocutor:—"Finds under reference to note that *culpa* is not proved against the driver George Ward: Finds, *separatim*, that even had *culpa* been proved, there was such contributory carelessness on the part of the pursuer or of his wife in allowing such young children to be at such a period of the day in such a busy thoroughfare without some person to look after them, to bar any claim of damage otherwise competent." He therefore assoilzied the defenders, but found no expenses due.

"*Note.*—[*After holding that fault had not been proved*]—But apart from this, while I sympathise with people in the pursuer's rank of life as to the extreme difficulty of affording superintendence to their children while playing in streets in the vicinity of crowded thoroughfares, and while, moreover, it would appear from the evidence that pursuer's wife was lying ill at the time, I still cannot regard it except as a failure of duty to permit such little things, one under five years of age and the other little over three, without anyone to look after them, to wander into a busy carriage thoroughfare in the heart of Glasgow. There seems to have been no reason—at all events no reason was given—for the children attempting to cross the street at all. Lord Young in a recent case laid down—*M'Gregor* v. *Ross & Marshall*, March 2, 1883, 10 R. 725—that children of such tender years could not be guilty of contributory carelessness, and that any plea of contributory negligence with reference to the actings of such young children must be that of the parents. This is not consistent with what was laid down in the earlier case of *Campbell* v. *Ord & Madison*, November 5, 1873, 1 R. 149, viz., that the question whether such young children were or were not guilty of contributory carelessness was a jury question. Whichever of these views falls to be taken is of no consequence so far as I can see to the present case, if the conclusion be arrived at, that in permitting such young children to be where they were was contributory carelessness on the part of the parents, because in that light, at all events, the father is not entitled to recover damages for the injury received by the children."

The Sheriff (BERRY) on 26th April 1887 adhered.

"*Note.*—. . . The action is in the name of the father as for his own interest, and not as tutor for his children, but it was intimated at the bar on both sides that it was desired to raise no difficulty on that ground, and that the pursuer might be allowed to raise the question of liability to him as representing his children if I thought that they, or he as representing them, would be entitled to damages. Taking the case as in the father's interest, I think the Sheriff-Substitute's observation in his note would be justified, that being guilty of negligence in allowing children of such tender years to go out to play on the crowded thoroughfare in Glasgow, the father would have been barred from recovering on the ground of contributory negligence. On the other hand, if the case is dealt with in the children's interest, I question if a plea of contributory fault founded on such carelesness on the part of the father would have barred them from recovering, in the event of its being shown that by reasonable care, notwithstanding such carelessness on the part of the parents, the accident might have been avoided by the driver of the van. The principle of *Radley* v. *London and North-Western Railway Company*, L.R., 1 App. Cas. 754, and similar cases might have applied; but as I think that fault is not shown on the part of the driver, I agree that the defenders must be assoilzied. I have given the defenders the expenses of the appeal, but have not seen my way to interfere with what the Sheriff-Substitute has done in regard to the expenses of the case before him."

The pursuer appealed to the Court of Session, and cited the following cases on the question of contributory negligence—*Greer* v. *Stirlingshire Road Trustees*, July 7, 1882, 9 R. 1069; *M'Gregor* v. *Ross & Marshall*, March 2, 1883, 10 R. 725.

The defenders upon this point cited *Ramsay* v. *Thomson & Sons*, Nov. 17, 1881, 9 R. 140; *Morran* v. *Waddell*, Oct. 24, 1883, 11 R. 44; *Fraser* v. *Edinburgh Street Tramways Company*, Dec. 9, 1882, 10 R. 264; *Grant* v. *Caledonian Railway Company*, Dec. 10, 1870, 9 Macph. 256.

Towards the close of the argument a further question was raised as to the liability of Ward senior. The plea on record was—"(3) In respect the said George Ward did in no way employ the said horse and van, he is entitled to be assoilzied with costs." The facts were these—Ward senior wished to have some bottles taken from his premises at Partick to Parkhead. He told his son, the defender Ward junior, who acted as his shopman at a weekly wage, to get the bottles moved, suggesting at the same time that he should get a barrow. Ward junior, however, got the loan of a van from Newton & Blair, and returned with it to his father's premises at Partick. At that time Newton was driving. Ward junior then put the bottles into the van, his father seeing him do so. A friend of Newton's, named Priestly, came up at the time, and he and Newton then had some drink. The party shortly afterwards started for Parkhead, Newton driving, and Ward junior, Priestly, and a boy being in the van. On the way it became apparent that Newton was the worse of drink, and unable to drive with safety. Ward junior therefore took the reins, and was driving at the time of the accident.

The pursuer argued that Ward senior saw his goods put into the van by his son, who was his paid servant; that Ward junior was in charge of the van, and was driving when the

accident happened, and that it was through his negligence that the occurrence took place.

The defender argued that Ward senior was not personally in fault; that the van was in charge of Newton. Ward junior only took the reins because Newton was drunk. He was only his father's shopman, and could not bind him except for anything that occurred in that part of the business. Ward senior never anticipated that the van would be under his son's charge.

At advising—

LORD JUSTICE-CLERK—[*After holding that there was fault on the part of Newton and of Ward junior*]—I do not think that this is a case where there was contributory negligence at all. The children were entitled to be on the streets, and it is impossible to lay it down as a rule that every young child out upon the public streets must always have some person with him to look after him. Every driver knows that it is part of his duty—often the most agitating and difficult part of it—to avoid running over children in the streets, and experience shows that with ordinary care that can be done. I know of no case in which a child has been run over in a public thoroughfare in which the defence has been successfully stated that the child had no business to be there and to get in the way of the vehicle. We have had occasion more than once lately to find that it is the duty of a driver to avoid doing injury to persons walking on the roadway. The cases quoted to us of a child allowed to stray on a canal bank or near a railway crossing are different, for these are examples of places whither the child ought not to have been allowed to go. I am therefore of opinion there is here no place for a plea of contributory negligence. I am for altering the judgment, and finding the defenders liable.

LORD CRAIGHILL concurred.

LORD RUTHERFURD CLARK—I concur, but on the question of the liability of Ward senior I would make these observations. This point is the most obscure and delicate in the case, viz., whether George Ward senior is liable for the consequences of the accident. The van was not his. It belonged to Newton & Blair. But it is said on the part of the pursuer that he is responsible for the accident, because the van was at the time being employed in his business—in other words, that he was the hirer and user of the van when the accident occurred.

It is certain that Ward senior had occasion to remove articles from his shop at Partick to his shop at Parkhead. These articles were bottles, and owing to their number some vehicle was required. Ward thought a barrow would be sufficient, but he entrusted the removal to his son, and he found that the son had got a van from Newton & Blair. He saw the goods put upon the van and sent away, but the van was then in charge of Newton, the owner of the van. It did not occur to Ward senior that his son had anything to do with the driving of the van; on the contrary, he considered that his son had employed Newton & Blair to remove the bottles by means of their van from the one shop to the other. If Ward senior had hired a van and the services of a vanman to remove bottles, and if in the course of doing so the vanman had run down a person on the street and injured him, I do not think that Ward senior would be responsible. He would not be in any way to blame for the accident. I think that was his true position here. He allowed his son to take the use of the van when under the charge of the owner of the van. In other words, he allowed his son to employ Newton & Blair to remove the bottles in their van. He never understood or agreed that his son was to drive. It is of no moment whether Newton & Blair undertook to perform the work gratuitously or for hire. In either case they undertook to perform it, and Ward senior agreed to nothing else. No doubt Ward junior came in the end to be the driver, and was the driver at the time of the accident, but the reason was that the person who ought to have been driving had become drunk. In consequence Ward junior seems to have thought it best to take the reins, and perhaps he was right enough to do so. But I do not think that that makes Ward senior liable for the driving of the van. The son is the father's servant, but only to serve in the shop. He was not his father's servant when driving the van, for he had no authority from his father to drive it. He was then acting for Newton in consequence of Newton's incapacity. I think therefore that we ought to assoilzie Ward senior. But I feel bound again to say that it is very unfortunate that this point was not stated till the very close of the debate, and that I come to this result not without misgiving.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties in the appeal, Find in fact (1) that on the occasion referred to in the record Robert and William Martin, children of the pursuer, aged respectively five and three years, when crossing Main Street, Anderston, Glasgow, were knocked down and run over by a horse and van, whereby the elder of the two was severely hurt, three of his ribs having been broken and his chest crushed, while the younger was injured in his right arm; (2) that the horse and van were the property of the defenders Newton & Blair, and had been lent by them to the defender George Ward junior for the purpose of carrying certain articles belonging to his father, the defender George Ward senior, from his shop in Partick to Parkhead; (3) that in leaving the said shop the van was driven by the defender George Newton, but afterwards and when the accident happened by the defender George Ward junior; (4) that it was then proceeding rapidly, and the children were injured as aforesaid by the fault and negligence of the defenders George Newton and George Ward junior in failing to pull up the van on coming in sight of them; (5) that it is not proved that the said defenders were prevented from seeing the children by the intervention of a tramway-car: Find in law that the defenders George Ward junior and Newton & Blair are liable in damages for the injuries sustained by his children as aforesaid: Therefore sustain the appeal: Recal the interlocutors of the Sheriff and Sheriff-Substitute appealed against: Assess the damages due to the pursuer at £150 sterling: Ordain the defenders the said George Ward

junior and Newton & Blair to make payment of that sum to the pursuer: Find them liable to the pursuer in the expenses incurred by him in the Inferior Court and in this Court: Remit to the Auditor to tax the same and to report: Assoilzie the defender George Ward senior from the conclusions of the action, and decern."

Counsel for Pursuer and Appellant—Shaw—P. Smith. Agent—A. B. Cartwright Wood, W.S.

Counsel for Defenders and Respondents—A. J. Young—Orr. Agents—Winchester & Nicolson, S.S.C.

Wednesday, June 15.

FIRST DIVISION.

[Sheriff-Substitute at Dundee.

THE BRITISH LEGAL LIFE ASSURANCE AND LOAN COMPANY (LIMITED) *v.* THE PEARL LIFE ASSURANCE COMPANY (LIMITED).

Interdict—Slander—Liability of Company for Agent—Negligence.

An action was raised against an assurance company, and one of its agents, at the instance of a rival company, to have the defenders interdicted from circulating a hand-bill containing slanderous statements upon the pursuers. The bill in question was extensively published by officials of the company, including the agent called as defender, and it was admitted that interdict should be granted against him. As regarded the company, it was proved that the preparation and uttering of the bill in question before the action was raised was not the act of the company, or carried out with their knowledge or assent; but that since the action was raised, and after the fact of the circulation of the hand-bill had been brought to the knowledge of the company's directors, the bill continued to be published. The Court found that the continued publication was caused by the negligence of the directors, and *granted* interdict.

The British Legal Life Assurance and Loan Company (Limited), carrying on business in Glasgow and Dundee, raised an action of interdict in the Sheriff Court of Forfarshire at Dundee in December 1885 against the Pearl Assurance Company (Limited), London, which carried on business in Dundee, and also against John Dewars, residing there, the agent of the said company for that district.

The petitioner prayed the Court to interdict the defenders from printing, publishing, or circulating, or causing to be printed, published, or circulated, in Dundee and neighbourhood certain handbills and circulars containing matter calculated to injuriously affect the pursuers' business. Ultimately, in consequence of amendments, interdict was only asked against a bill entitled "Scandalous Revelations."

The pursuers averred that for twelve months prior to the raising of action the defenders had circulated among their (the pursuers') policy-holders, as well as among the general public of Dundee, hand-bills and circulars containing false and slanderous statements about them, and especially that they had published and circulated a bill termed "Scandalous Revelations." They alleged that the circulation of this print had induced a large number of policy-holders to transfer their policies from the pursuers' to the defenders' office, and that they (the pursuers) had thus suffered great loss to their business in Dundee and the neighbourhood.

The defenders did not attempt to justify the statements in the hand-bill, but averred that in issuing hand-bills and circulars they merely acted as the pursuers had been doing, and that they (the pursuers) had printed and circulated libellous and injurious statements concerning them with a view to injuring their business and misleading the public. They also averred as follows—"Explained that the defenders' company do all in their power to prevent their superintendents, agents, collectors, and others from illegally interfering in any way with the business of other companies. Before his appointment, every superintendent, agent, and collector of the defenders' company is required to sign the rules and instructions laid down by the company for his conduct, and he likewise receives a full copy of these printed in his collection-book, which he is also required to sign, and must always carry about with him. These rules and instructions are referred to for their terms, and a printed copy is lodged herewith and founded on. One of these instructions which requires to be signed, and which forms an essential part of his appointment, is the following:—'No. 2. Some unprincipled collectors make a practice of abusing and libelling the character of all other assurance companies but the one by which they are engaged. It is our wish that our collectors will avoid any approach to this disreputable conduct, as it only tends to destroy the confidence of the public in all offices alike, and prevents collectors from taking proposals where they would find no difficulty had not the above destructive course been pursued. Any interference on the part of a collector of any other company or society with the business of this company should be at once reported, with full particulars, to the manager, that the directors of the company whose collector has committed himself may be communicated with.'

The pursuers pleaded, *inter alia*—"(1) The proceedings of the defenders complained of being illegal and unwarrantable, and highly injurious to the pursuers' business, and the pursuers having good reason to believe that the defenders will continue to commit the said illegal acts, they are entitled to the interdict craved."

The defenders pleaded, *inter alia*—"(2) The proceedings alleged against the defenders' company being *ultra vires* of the officials of the said company, the said action is incompetent against the defenders as a limited company incorporated under the Companies Acts. (6) The pursuers having themselves acted towards the defenders in a manner similar to that now complained of by them, they have thereby deprived themselves of the remedies sought for in this action, even if these were to any extent competent; or other-