

presentation. To give it the effect of a warranty it must be shown to the satisfaction of the jury that the parties intended it to have that effect.

"The rule is thus stated also by Chief-Justice Tindal, in delivering the judgment of the Exchequer Chamber in *Omrod v. Ruth*, 19th June 1845 (2 Ross' Leading Cases, 6 L., p. 439):—"The rule which is to be derived from all the cases, appears to us to be that where, upon the sale of goods, the purchaser is satisfied without requiring a warranty (which is a matter for his own consideration), he cannot recover upon a mere representation of the quality by the seller, unless he can show that the representation was bottomed in fraud. If, indeed, the representation was false to the knowledge of the party making it, this would, in general, be conclusive evidence of fraud; but if the representation was honestly made, and believed at the time to be true by the party making it, though not true in point of fact, we think this does not amount to fraud in law, but that the rule *caveat emptor* applies, and the representation itself does not furnish a ground of action."

"In a more recent case Chief-Justice Jervise (*Hopkins v. Tanqueray*, 26th May 1854, 23 Law Journal, C. P., p. 164), thus stated the rule:—"Whether, assuming what was said in this case to have amounted to a warranty, such warranty would, under the circumstances, have been binding between the parties, I do not propose to consider, because I am clearly of opinion that what was said before the sale amounted to a representation only, and not to a warranty. The circumstances are simply these—the defendant finds the plaintiff, on the Sunday, in the stable examining the horse's legs, and says to him, 'The animal is perfectly sound;' on which the plaintiff replies, 'If you say so I am satisfied;' and satisfied with that representation made by an honourable man he examines no further. He is satisfied with the judgment and belief of the defendant that the horse was sound, and no doubt the defendant believed him to be sound. No fraud is imputed to him; indeed it is expressly disclaimed on the part of the plaintiff. Next day the horse is sold by public auction, without a warranty. Under these circumstances, it seems to me clear that the defendant intended not to warrant, but to make a representation as to what he *bona fide* believed, and that the plaintiff so understood it. I think, therefore, that this rule must be made absolute."

The pursuer appealed.

SHAND for him.

BALFOUR in answer.

The Court in substance returned to the interlocutor of the Sheriff-Substitute, in favour of the pursuer. Their Lordships held that the proof disclosed something more than mere representation on the part of the defender. It amounted indeed to express warranty, for it appeared from the evidence that the words "I warrant" had passed at the transaction. The Sheriff-Substitute therefore was right in finding for the pursuer.

Appeal sustained, and interlocutor of Sheriff altered.

Agents for the Pursuer—H. & H. Tod, W.S.

Agent for the Defender—A. K. Mackie, S.S.C.

Friday, June 3.

FIRST DIVISION.

STEUART v. STEUART.

Husband and Wife—Separation and Aliment—Cruelty—Custody of Pupil—List of Witnesses—Examination of Parties and Medical Men. Held in a proof, (1) that sufficient ground had been shown for granting decree of separation and aliment on the ground of cruelty; (2) that there were no sufficient grounds for removing a child four years of age from the father's custody, and that it was not compulsory under the Conjugal Rights Act; (3) that in a proof litigants are not bound to interchange lists of witnesses before the proof begins; (4) that no reason had been shown why the pursuer should be judicially examined; nor (5) any grounds for delay in order to examine certain medical witnesses who were ill.

This was an action for separation and aliment at the instance of Mrs Elizabeth Steuart against her husband Andrew Steuart, Esquire of Auchlunkart. The parties were married on 11th May 1847, and for the next twenty-two years lived together. Eight children were born of the marriage, five of whom survive and reside with their mother at Portobello. The pursuer asked that the children should be left in her custody, and that aliment should be allowed to her at the rate of £500 yearly, and £50 for each child. The pursuer alleged that during nearly the whole of their married life the defender's manner to her had been most irritable and ungovernable—so much so that in 1862 a partial separation had been agreed on. She also averred, that not only when alone, but in presence of the servants and others, he had used insulting language and threats, to such an extent that latterly she had become afraid for her personal safety. The pursuer also narrated special occasions when the defender had used violence towards her, knocked her about, beaten her, pushed her out of the house, sworn at her, and thrown a drawing-room ornament at her. The defender denied or palliated these assertions. He admitted his language and conduct had not been such on all occasions as he was prepared to justify. He alleged that, from his natural temperament and heavy afflictions, he was peculiarly liable at times to excitement; and that the pursuer had irritated him by her extravagance and opposition to his reasonable wishes. He stated "he was an only child, much brought forward when young, of a warm and somewhat vehement temperament, and above the average as regards intelligence, and especially memory." That in consequence of his severe labours at Edinburgh Academy, and the Universities of Glasgow and Cambridge, where he had highly distinguished himself, and the anxiety and trouble he had had in managing the somewhat embarrassed paternal property to which he had succeeded, his health and mind had given way, and in 1852 he had required to be put in Perth Asylum for eighteen months. On his recovery, having engaged in politics, his mind had been much tried by labour and expense; and his nervous system having become impaired, and his health weakened, "and in part also from his having taken an active part in public life, involving addresses to constituents and otherwise, he unfortunately contracted an impassioned mode of language, which he admits he ought not to have carried at least into private life." He complained

that the pursuer, far from soothing him, as she ought, applied epithets to him, impugning his veracity, or implying that he was mad. He expressed great regret for the occurrences complained of, especially the occasion when he had struck her, and explained that the "slaps were given without violence, leaving no mark, and ought not to be visited by such a penalty as a permanent separation." The pursuer had left in consequence the following day, and as she was unwilling to return, he thought some extra-judicial arrangement might be made—at any rate, that the aliment claimed was excessive, when it was considered how embarrassed his affairs were, and that he ought not to be deprived of the custody of his children. A proof was allowed, which was taken on the 15th and 16th of March; and on the 18th the Lord Ordinary (Gifford) issued an interlocutor, in which he held the pursuer had established her case, decreed for separation *a mensa et thoro*, gave the aliment at £500 a year as claimed, and custody of the youngest child.

The defender reclaimed.

WATSON and CAMPBELL SMITH, for him, argued—The Lord Ordinary had done wrong in allowing the proof to proceed when no list of the pursuer's witnesses had been served upon the defender, this being a consistorial cause. 2d, The defender should have been allowed a judicial examination of the pursuer, as moved for before the diet of proof proceeded. 3d, He should have been allowed a prorogation of the proof, that he might adduce three witnesses who were absent in consequence of ill health. On the merits, the pursuer's proof had not borne out her allegations on record. There was no evidence of ill treatment such as would warrant a separation, particularly when the nervous and excitable condition of the defender is taken into account. There was no authority in law for depriving the defender of the custody of any of his children.

SOLICITOR-GENERAL and MARSHALL in answer.

At advising—

LORD DEAS—The first objection for the pursuer to this action is that no list of witnesses was given, as used to be the case in the Commissary Court. Even if the practice of the Commissary Court had been to have lists of witnesses served on the opposite party, that has been altered by the Court of Session Act, which provides that in such cases there may be trial by judges instead of juries, and since which, if not before, the practice has certainly been the same in this respect as in jury trials. Neither is this a case for the examination of the parties, there being nothing occult for which their evidence might be required. As to the third preliminary question, the demand for additional evidence to prove (1) that the defender is not insane, but (2) that he is of a very excitable temperament, I hold that this should not be granted, seeing that these facts are not disputed by the pursuer, and are already sufficiently established by the evidence.

The real issue is upon the merits, and I have to observe that the pursuer's demand in this action is one to which the law does not readily or willingly listen. There are many ways in which a husband may inflict considerable cruelty on his wife without entitling her to a decree of separation and aliment. Husbands and wives take each other for better and for worse, and there must be cruelty of an aggravated description before such a decree can be pronounced contrary to the vow so undertaken. Without determining in the abstract

what degree of cruelty was required, which is only necessary in a narrow case upon the evidence, I will look at the case as it stands upon the evidence. Some circumstances are favourable to the husband, and make it more difficult for the wife to obtain her demand. They were married in 1847, and had eight children, of whom five are alive; and the husband is not only a man of large estate, but also one of excellent ability and distinction, and highly distinguished as a scholar. But it is necessary to look to the facts that have happened. Until 1859 the history of their married life does not appear, except that the defender in 1852 was in a lunatic asylum for eighteen months; but it was not alleged that he had been insane since, nor is insane now, though undoubtedly nervous and excitable. The Court must therefore deal with him as a sane man. It was proved that he often used very opprobrious terms and bad language towards her as early as 1859, calling her by such epithets as "blackguard," "fool," "vagabond," and "liar," and having threatened violence. In 1861, in York Place, Edinburgh, he seized her rudely, and pinched her hand. In 1862, he locked her in the drawing-room at Auchlunkart, and used very violent language, and created such alarm that she went out by the window to escape, and came in again by the door. The precise degree of violence on that occasion does not appear; but it is certain that the defender used threats, and she was so alarmed that she left his house, and remained away nearly a year. That is the first important act of violence, and it is the more material because during the pursuer's absence the defender wrote letters to her, in some of which he uses language the reverse of complimentary. His following letters are in a different tone. They show he was conscious she had good cause for going away; and he entreated her to return, promising to acquiesce in a separation if she will give him one final trial and that should fail. After her return, the defender's language from 1862 to 1869 was not improved; and his conduct culminated in this, that on 6th July 1869, some words between them having taken place in the drawing-room, the pursuer came out of the room, and in descending the stair he struck her violently with his clenched fist several times on the head, that she fell, and was taken up helpless, and remained for some time speechless. This led to her bringing this action. He struck not a single blow, but several, and this is a serious thing, not only in itself, but as showing what might afterwards take place. It has been urged in argument to the Court that the blows had not been severe, as they had left no mark. But lately I tried two cases in the Criminal Court in which death followed from blows of the fist on the head, without there being any external injury. The defender's conduct as proved was to be compared with his letter to his wife's brother on 26th July, in which he admitted having given her slaps on the face, and justified his doing so. The defender's letters shewed he had acted deliberately, and that he had threatened to do it.

The first ground of excuse or justification put forward by the defender was provocation. But there has been none from beginning to end. He said the pursuer had called him a madman. But to say, "You are mad, you are mad," may not mean that she intended to say he was actually in fact insane. Then, it was argued, the defender is so nearly insane his conduct should be excused. But part of his case is that he is sane. Nor

would it be very just in an action for separation and aliment on the ground of cruelty at the instance of a wife to say, "This must just be allowed to go on, for though your husband is sane enough to judge of his actions, he is so nearly insane that this is just what you have to expect." If a man is responsible criminally he is responsible civilly. If he is insane there is another remedy altogether applicable.

I think a wife must lay her account to have to bear a good deal from her husband, but I am not prepared to say in a case like this that she must run the risk of similar violence. I think, therefore, that on this point we must adhere to the interlocutor of the Lord Ordinary.

But I do not agree with the Lord Ordinary in giving the custody of the pupil child to the mother. There is nothing in the Conjugal Rights Act that makes any difference as to the custody of a child. The Court has of course power to do so of itself where it is necessary. But I do not see any way to take away the child from its father simply because it is a pupil; for in a few years it would, on this argument, be liable to return, and from what has occurred yet, there is nothing to order a separation. I am, therefore, not for depriving the defender of the custody of this child; and it is possible that leaving it with him may have a good effect upon him.

LORD ARDMILLAN—On the preliminary questions I am of the opinion just expressed, and have nothing to add.

It never can be on doubtful views, or on light grounds, that this Court will ordain or sanction the separation of husband and wife, united as they are by the most sacred and the most abiding of human contracts. I quite appreciate the strength of the observations made by the claimer's counsel on this point. On the other hand, *saevitia*, or cruelty of conduct, is a legal ground of separation. But the Court must carefully consider the nature, and the degree, and the probable consequences, of the cruelty proved.

That two married persons live unhappily,—that the cause of unhappiness is the unkindness, the passion, the rudeness, the offensive and even violent language of the husband, or of the wife—cannot support a demand for judicial separation. Those who take each other for better or for worse must make up their minds to bear and to forbear. It is their duty to do so.

Nor will mere threats of personal violence, even though fierce and frequent, if they have never been followed by any act of violence, be always, or necessarily, sufficient to sustain the action. In such a case it is a question for judicial consideration whether the threats were serious, or indicative of malignity of purpose, or likely to be followed by dangerous consequences?

But where there have been repeated threats on the part of a passionate man against his wife, and these have been followed by actual personal violence to her,—proving that there is good ground for apprehending danger to person, and it may be even to life,—then separation is the legitimate and appropriate result. The law then interposes for protection. It is in such circumstances the right of the wife to obtain protection, and it is better for both parties that they should separate.

Looking to the proof in this case—on the details of which I do not wish to dwell—I feel compelled to say that, in my opinion, threats followed by ac-

tual violence of a serious character have been clearly instructed. If there were no excuse for the defender's conduct—if his violent language and acts are attributable to no other cause than furious passion, I should be of opinion that Mrs Steuart is entitled to the protection of the law against such danger. But the defence is that the state of the defender's health, especially his mental health, is such as to excuse or alleviate his conduct. This was urged on us at the Bar, and this is pleaded on record. If it be true, then it is manifest that personal violence towards the pursuer is the result, or consequence, of the defender's state of health,—a result which it is not in his power to prevent. Assuming the truth of the defender's averments, it is obvious that threats and acts of violence must be anticipated as the natural, probable, and indeed almost unavoidable, consequence of a meeting between the pursuer and the defender. Provocation is alleged, but it has not been instructed. Indeed, the contrary has been proved. The husband received no provocation which can excuse violence, but unfortunately he cannot control his passion. It is said that the defender's violent passion and want of self-control is the effect and consequence of mental disorder, and that the defender could not restrain his violence towards the pursuer. If so, then continued cohabitation in the married state must be necessarily dangerous to the wife. The imminence, or the extent, of the hazard I am not able to estimate. It cannot be otherwise than very considerable. Less provocation on the part of the pursuer could scarcely be given; more self-control on the part of the defender we are assured that we cannot expect. But the next blow on the head may be followed by more serious consequences; and I am not prepared to accept the responsibility of exposing this lady to the danger. Indeed, I believe that separation will be for the benefit of the defender himself, for whose position I feel much sympathy. He is well known as a gentleman of distinguished acquirements and abilities, and, in any view of the case, is greatly to be pitied. It is said that he is very excitable, and that appears to be true; but it is not denied that he is responsible. To withhold from him a cause and occasion of excitement will be for his good. Prevention is better than cure, and much better than punishment.

If the defender was fully and really insane the pursuer might obtain protection in another manner. But the defender is not alleged to be insane. That is denied. Therefore that other remedy is excluded, and the protection which the pursuer now seeks in this action of separation and aliment is the only protection which can avail her. I am of opinion that the decision of the Lord Ordinary in her favour is right.

On the second point, in regard to the custody of the youngest child, now about four years old, I have felt some difficulty. I do not think that the law of Scotland recognises in all its severity the *patria potestas* of the Roman law. I am of opinion that, on certain well understood grounds, and within certain well defined limits, this Court has power to interpose, and to regulate the custody of a pupil child.

But the interest of the child in life, health or morals, must be to some extent endangered before the Court can interfere with the father's right of custody. It appears to me, from the proof before us, that the defender did not threaten or offer violence to the children, but was kind to them; and indeed, this youngest child in particu-

lar, seems to have been an object of his affection. I feel that to refuse to the mother the custody of this young child must be a great distress to her, and I have had some hesitation on the point. But I cannot differ from what Lord Deas has said. The rule, as a general rule, is settled, and, notwithstanding his conduct to the mother, we have no reason to dread injury to the health or morals of the child. To leave his wife with the defender were to subject him to an influence exciting and tempting him to violence towards her. To leave his little child in his house is, or may well be, to introduce a soothing influence to cheer the darkness and mitigate the bitterness of his lot, and bring out the better part of his nature.

LORD KINLOCH—I am of opinion that the preliminary points started by the defender are untenable. (1) I think the practice of the Court under the recent statutes has abolished the necessity of serving a list of witnesses on the other party. (2) I think the case not one for a judicial examination of the parties; and that the proposal is simply an attempt to supplement the evidence by examining the parties as witnesses, contrary to the subsisting law. (3) I think the defender did not lay sufficient grounds for prolonging the case in order to examine additional witnesses.

On the merits of the case, I am of opinion that the interlocutor of the Lord Ordinary is well founded, and ought to be affirmed—so far as it pronounces decree of separation in favour of the pursuer. It is clearly proved by the evidence that for several years the defender has conducted himself towards the pursuer in a contumelious and abusive manner, applying to her opprobrious and offensive expressions, and on several repeated occasions threatening her with personal violence, under various forms—to slap her, to kick her, to knock her down. It is proved that at last, on 26th July 1869, he actually struck her several blows on the head, with the effect, if not of rendering her wholly unconscious, of certainly producing for the time a by no means trifling bodily injury. These blows were given by him in anger, and with the intention of correcting her (as he called it) for what he considered wrong in her conduct. He owned and justified the proceeding on this ground in a letter written by him to her brother on the very day of the occurrence.

I consider this to amount to cruelty in the legal sense, entitling the pursuer to a judicial separation from her husband. The case comes within the category of personal violence actually suffered, and for the future reasonably apprehended, which I consider to be a clear ground for such a separation. The pursuer is not bound to live with a husband from whom a repetition of the personal assault of the 26th July 1869 is a matter of not unreasonable anticipation.

It has often been decided that contumelious and abusive conduct, if confined to mere words, and not involving personal violence, actual, or reasonably apprehended, will not suffice to warrant a separation. This proceeds on the principle that what merely wounds the feelings is not a sound reason for dissolving a union of which the maintenance is justly held so important. But even here a case may occur in which the conduct of the husband, though involving no direct personal violence, has so injured the health of the maltreated wife, as rightly to fall within the same category; and properly to be considered as inferring personal

injury, although differently sustained. A case of this kind seems recently to have occurred in the English Courts; and, so far as I can gather, to have been decided, and I think rightly, to this effect.

The present case is attended with so much the less difficulty that it presents actual personal violence, first threatened, and afterwards inflicted. It is unnecessary to inquire how we should have dealt with the case had there been merely threats, never followed up to execution. Much would, in such a case, depend on the character to be ascribed to the expressions used, as either serious menaces or idle words. It is impossible to say that a woman is bound in all cases to wait till either she loses her life or sustains actual personal injury. In the present case the threats were fulfilled. A serious personal injury was actually sustained. No one can say that, if the parties continue to live together, the like may not again occur. I am clearly of opinion that the pursuer is not bound to subject herself to this risk. I conceive the risk by no means a trivial one. I do not think risk to life by any means an exaggerated form of expressing it. But it is not necessary to rate it so high. Personal violence, in any form, the pursuer is not bound to submit to from her husband. And the reasonable apprehension of such is a sufficient ground of separation. It is fortunate that the defender's notions as to marital rights of chastisement receive no countenance whatever from the law of the country.

The defender sought to justify his conduct on the ground of provocation. I consider him to have wholly failed in establishing any provocation which, even in a moral point of view, would so much as alleviate the wrong. The parties may have differed on some points of domestic economy; but I see nothing in the conduct of the pursuer to have justified even derogatory language. It is extravagant and ludicrous to say that anything that occurred, or even that could conceivably have occurred, was a justification to the pursuer for striking a woman, and that woman a lady and his wife.

His main ground of justification lay in the peculiarity of his temper, which he said was of the most excitable character, but little removed from insanity, though, he admitted, not coming up to it. I think he rightly describes his temper. There are circumstances in his previous history going far to account for it. Admittedly he is not, and was not at the time of the outrage, insane, so as to exempt him from responsibility. This being so, the peculiarity in his temper, so far from forming a defence in the present case, seems to me to afford an additional reason for the separation, just because it presents an additional element of risk. We are not sitting here to judge of the defender's conduct in a merely ethical point of view, or to gauge the measure of his moral responsibility relatively to other men. The thing which we have here to consider is the risk run by the pursuer of personal violence from the defender's hands. Any peculiarity in the temper or habits of the defender which tends to increase the risk strengthens the demand for separation. If the personal violence committed by a husband on his wife was committed under intoxication, it would be no defence to say that his habits of intoxication were inveterate and uncontrollable. It would be exactly the reverse of a defence. So I think is this plea of the defender.

I cannot therefore have any doubt that the Lord Ordinary has rightly pronounced a decree of separ-

ation. Nor is there, as I think, any room for contending that more than a due amount of yearly alimony has been awarded to the pursuer.

The question whether the pursuer is entitled to have the custody of the youngest child, a girl of four years old, is attended, I think, with more difficulty. Unquestionably it is the general rule, in the case of lawful children, that the father has their custody and place of residence entirely under his control; and it is matter of decision that he does not forfeit this privilege by his wife being judicially separated from him on account of his cruelty. When the Conjugal Rights Act empowers the Court, in the decree of separation, "to make such provision as to it shall seem just with respect to the custody, maintenance, and education of any pupil children of the marriage,"—it is difficult to hold it as intending to confer on the Court an unlimited discretion to act in this matter according to what they think expedient, or to do more than empower them to exercise their ordinary jurisdiction in the form of a special branch of the decree of separation, in place of in a separate process. The statute clearly intended the jurisdiction to be exercised with reference to the special state of things disclosed in the process of separation. But I think the Court must apply to these circumstances the ordinary principles governing their jurisdiction in these matters. The custody of a child can only be denied to a father where there is reasonable ground for apprehending danger to the morals or personal safety of the child. I do not think that on either point this can be justly predicated in the present case. There is no reason to believe that the defender either has in times past, or will for the future, behave unkindly to his children. His conduct towards his wife has been wholly exceptional and personal. I am of opinion, therefore, that the custody of this child cannot be taken from the father, and that on this point the interlocutor of the Lord Ordinary should be altered.

LORD PRESIDENT concurred.

Agents for Pursuer—Mackenzie, Innes & Logan, W.S.

Agents for Defender—Maitland & Lyon, W.S.

Friday, June 3.

CAMPBELL v. THE DUKE OF ATHOLE.

(*Ante* vol. vii, p. 186.)

Stamped Vouchers—Payments to Workmen—Act of Parliament—Bridge—Pontages. The Duke of Athole, by the Dunkeld Bridge Act, was authorised to build a bridge over the Tay at Dunkeld, and to levy tolls thereon until a sum of £18,000, or the amount actually expended below that sum, with interest at 5 per cent., had been repaid to him, and also until the expense of procuring the said Act had been repaid. *Held*, in a proof of the sum which had been actually expended in 1808 in building the bridge, that it was not necessary for the Duke to instruct by stamped discharges all the payments above £2 made by him; and secondly, that the expense of procuring the Act must be a first charge against the revenues of the bridge.

This was an action of declarator at the instance of certain parties, resident in Dunkeld, to have it

judicially found that the sum authorised by the Dunkeld Bridge Act to be paid to the Duke of Athole by means of tolls and pontages levied from the passengers across Dunkeld Bridge had been extinguished, and that the bridge ought to be opened to the public in terms of said Act. On 18th March 1869 a remit was made to an accountant to examine the bridge accounts, and report. The Court, on December 17, 1869 (reported, *ante* vol. vii, p. 186), decided that, by the Bridge Act, the Duke was entitled to levy tolls until a sum of £18,000, or the sum actually expended if below that sum, had been repaid to him therefrom, with interest at the rate of 5 per cent.

The accountant reported that the expense incurred by the Duke of Athole himself in building the bridge, prior to 1808, was £26,951, 7s. 4d., but that the defenders objected to £14,454, 14s. 9d. of that total amount upon various grounds. In particular, on the ground that the vouchers of the payments were unstamped. A great part of this amount consisted of wages paid to workmen engaged in building the bridge. The report further proceeded:—

"The accountant humbly reports that, in his opinion the accounts and documents in process are sufficient to show that the predecessor of the defender expended a sum exceeding £18,000 on the building of and connected with the bridge, and making roads of access thereto, after giving credit for £6918, 19s. 9d. received from the Commissioners of Highland Roads and Bridges; but it is respectfully left for the Court to decide whether (as contended for by the pursuers) the defender is bound to instruct by stamp discharges all payments above £2, in terms of the stamp laws, before such payments can be credited to him; and further, that all the other payments, as classified before page 11, objected to by the pursuers, should be struck off from the defender's credit, or if, on the other hand (as contended for by the defender), that he is not bound or required by the Statute to instruct the expenditure by stamped receipts or discharges, it being held that it is sufficient to show that the expenditure so incurred was paid to the parties to whom it was due, and that the accounts and documents in process are sufficient for that purpose. If the Court shall be of opinion that legal vouching of the expenditure is necessary, the accountant will then proceed to examine the detailed objections for the pursuers, and the Court may instruct him if these apply to workmen's wages or carriage of materials, which form a large portion of the payments objected to.

"The Court may also now dispose of the reserved question with regard to the expense of carrying through the Act of Parliament, whether it is to be held as included in the £18,000, or charged against capital over and above that sum, or form the first item of deduction from the income. This expense was not £400, as estimated by Mr Telford, page 21, but only £266, 18s. 8d., the particulars of which are given on page 15, being an instance of rare economy in obtaining an Act of Parliament. The evidence of payment appears to the accountant to be sufficient.

"The Act of Parliament is very inexplicit with regard to the expense. Clause 8th provides that the pontage to be collected shall become the exclusive property of the Duke and his heirs, 'until all the expenses of building the said bridge, making the said roads, and of procuring this Act, shall be paid, together with lawful interest for the same.'