

ledge on the part of the respondent or his forewoman, or other accredited representative, that work was being carried on in his workshop at the time libelled? Or, alternatively, Whether it is enough, in respect of sections 83, 91, and 94 of the Factory and Workshop Act of 1878, to prove that the respondent is occupier of the workshop libelled, and that the women, or at least one of them, was found working in said workshop at said time, without any proof of knowledge or connivance on his part, direct or indirect?"

The Factory and Workshop Act 1878 (41 Vict. cap. 16), section 83, provides—"A child, young person, or woman, who . . . during any part of the times allowed for meals and absence from work is, in contravention of the provisions of this Act, employed in the factory or workshop, or allowed to remain in any room, shall be deemed to be employed contrary to the provisions of this Act." Section 91 (3)—"Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negated in the information, and if so specified or negated no proof in relation to the matters so specified or negated shall be required on the part of the informant." Section 94—"A child, young person, or woman who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft, or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft, or in cleaning or oiling any part of the machinery, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or handicraft, or connected with the article made, or otherwise the subject of the manufacturing process or handicraft therein, shall, save as in otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act."

Argued for the appellant—It was enough for the appellant to prove that the respondent was proprietor of the workshop, and that the women were found working in it. The *onus* was thereby thrown on the respondent to show that he had exercised due diligence to prevent such employment. He had not discharged that *onus*.

The respondent was not called upon.

At advising—

LORD JUSTICE-CLERK—This is a statute which it is desirable should be carried out strictly. Every employer, foreman, or forewoman should understand that the penalties enacted by it are to be strictly enforced when women and girls are employed contrary to its provisions. And the view which I take of this case, and which I understand your Lordships concur in, is not to be held as suggesting that we think its provisions should be relaxed in the slightest degree.

The facts of this case are peculiar. The girl Selina Shilling knew that she had not to work after ten o'clock, and while it is proved that she did stay after that hour,

she did so entirely at her own desire. She was under no obligation to remain. It is also proved that the respondent and the forewoman did not know that she had remained so late, and that the forewoman who saw her in the premises a short time before the hour of closing told her not to stay late. The facts as to the girl Watson are exactly similar.

In these circumstances the Sheriff-Substitute has found that there was no breach of the statute, and on the facts found I think he was entitled to come to that conclusion. He does not seem to have considered that there was any device on the part of the respondent and the forewoman to evade the provisions of the statute, or that they were in any way to blame for the girls being on the premises beyond statutory hours, and I see nothing in the facts found proved to suggest that his judgment was wrong in law.

LORD LEE and LORD KYLLACHY concurred.

The Court sustained the judgment of the Sheriff-Substitute.

Counsel for the Appellant—Wallace.
Agent—James Auldjo Jamieson, W.S.

Counsel for the Respondent—Kennedy.
Agent—W. H. Mill, S.S.C.

HOUSE OF LORDS.

Monday, March 3.

(Before Lords Herschell, Watson, Macnaghten, and Morris.)

INGLIS JUNIOR v. INGLIS OR BREEN
AND ANOTHER.

(*Ante*, May 31, 1887, vol. xxiv. p. 52; 14 R. 740.)

Succession—Will—Election between Testamentary Provisions and Legitim—Essential Error.

John Inglis junior appealed.

The case was opened, but their Lordships having expressed opinions unfavourable thereto, the appeal was withdrawn.

Counsel for the Appellant—Lord Advocate—Rigby, Q.C. Agents—Grahames, Currey, and Spens, for Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents—Asher, Q.C.—C. J. Guthrie. Agent—Andrew Beveridge, for H. B. & F. J. Dewar, W.S.

Friday, April 25.

(Before Lords Herschell, Watson, and Morris.)

BEGG v. BEGG.

(*Ante*, February 25, 1887, vol. xxiv. p. 367; 14 R. 497.)

(*Ante*, February 27, 1889, vol. xxvi. pp. 81 and 402; 16 R. 550.)

Husband and Wife—Divorce—Adultery—Evidence—Subornation of Perjury—Wife's Costs Refused.

Mrs Begg appealed against two decisions of the Second Division impugning (1) a judgment of divorce on the ground of her adultery as being contrary to evidence; and (2) a judgment in her action for reduction of the decree of divorce as having been obtained by subornation of perjury.

Counsel for the respondent were not called upon.

The House affirmed the decisions of the Second Division and dismissed both appeals.

The appellant applied for costs in the divorce appeal. Application refused, following the rule stated by the Lord Justice-Clerk (Moncreiff) in *Kirk v. Kirk*, 13 S.L.R. 65; 3 R. 129.

Counsel for the Appellant—Sir Charles Russell, Q.C.—R. Johnstone—G. W. Burnet. Agents—Fardells, Dashwood, & Canning, for Robert Stewart, S.S.C.

Counsel for the Respondent—D. F. Balfour, Q.C.—Finlay, Q.C. Agents—William Robertson & Company, for Stuart & Stuart, W.S.

Thursday, August 7.

(Before the Lord Chancellor Halsbury, and Lords Watson, Herschell, Macnaghten, and Morris.)

BLAIR v. THE NORTH BRITISH AND MERCANTILE INSURANCE COMPANY AND ANOTHER.

(*Ante*, July 10, 1889, vol. xxvi. pp. 213 and 659; 16 R. 947.)

Bankruptcy—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), secs. 9, 15, and 22—Sequestration—Oath of Verity—Terms of Oath.

In a process of sequestration the debt of the petitioning creditors was constituted by two Sheriff Court decrees to which they had obtained an assignation. The oath set out in general terms that the debt in question was due, and the decrees and assignation were produced to the Justice of Peace. *Held* (*aff.* judgment of the First Division) that a petition by the bankrupt for the recal of the sequestration on the ground that the oath did not set forth in terms that the sum in the decrees

had not been paid either to the assignees or to the cedent, fell to be *refused*.

Their Lordships were unanimously of opinion that measures should be taken to prevent cases for which there was no foundation being brought *in forma pauperis* on appeal to the House of Lords.

This case is reported *ante*, July 10th 1889, vol. xxvi. pp. 213 and 659; 16 R. 947.

The pursuer appealed to the House of Lords.

Counsel for the respondents were not called upon.

At delivering judgment—

LORD CHANCELLOR—My Lords, I confess that I am certainly struck with the scandal which such a case as this may be considered to throw upon the administration of justice. Here is a case which was positively unarguable in the first Court, it has then gone to the Court of Session, and having by the united authority of the whole of that Court been declared to be unarguable, it now comes before your Lordships in such a way as to show that whatever may be the ingenuity and ability of the learned counsel who have argued it on behalf of the appellant, there is really no arguable point in the whole of this litigation. In an effort to get out of that which was the real subject of the appeal the learned counsel have, not unnaturally, desired to raise some other points than those actually contained in the appeal, which suggests the remark that with their ability and learning they must have known that no part of this case is really arguable. Under those circumstances the respondents here have had to meet a case which now in the final Court of Appeal has come before your Lordships *in forma pauperis*.

My Lords, I cannot forbear saying that the frequency with which these causes *in forma pauperis* are presented at your Lordships' bar, when there is really no substantial point to be argued, renders it certainly a fit matter for consideration, whether some new rule on that subject ought not to be made by statute. I doubt very much whether your Lordships have the power to interpose any further barrier than that which already exists upon the flow of *forma pauperis* cases to this tribunal.

My Lords, every point which has been raised has been sufficiently met in the course of the argument by the interlocutory observations of your Lordships, and I certainly do not myself propose to pay this case the compliment of attempting to restate in other words what has been abundantly and clearly laid down by all the learned Judges in the Courts below.

I therefore move that the appeal be dismissed.

LORD WATSON—My Lords, I can only express my concurrence in the proposed judgment, which I hope will put an end to this miserable litigation. I need not say that I deplore with your Lordship that state of matters which permits a case of