EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2025] CSIH 32
P825/25

Lady Wise
Lord Clark
Lady Carmichael

OPINION OF THE COURT

delivered by LADY WISE

in the Petition of

HL

Petitioner and Respondent

For Orders under the Child Abduction and Custody Act 1985

against

LL

Respondent and Reclaimer

Petitioner and Respondent: J Laing; Family Law Matters
Respondent and Reclaimer: Cartwright; Lindsays LLP

19 December 2025

Introduction and background

[1] This reclaiming motion (appeal) concerns a father (HL) who seeks the return of his son, T, aged 3 years and 9 months, to Switzerland. The child's mother, LL, opposes that return. She contends that the Lord Ordinary (first instance judge), who decided that the child was to be returned, erred in finding that the 1980 Hague Convention on the Civil Aspects of International Child Abduction was engaged in the circumstances relied on by the father. The mother argues also that, even if article 3 was engaged, the Lord Ordinary was

wrong to reject her defence under article 13(b) of the 1980 Hague Convention as there was a grave risk that returning T to Switzerland would expose him to physical or psychological harm or otherwise place him in an intolerable situation.

[2] T was born in Switzerland in March 2022 and resided there with both parents until April 2024 when the parties separated (though they remain married). Thereafter T lived with his mother LL. Court proceedings relating to T's care and upbringing were initiated in Switzerland during 2024, long prior to the events with which this petition is concerned. In terms of orders made by that court, T continued to live with LL and HL exercised contact (visitation) with him, initially on a supervised basis but from June 2025 for an additional 6 hours of unsupervised contact on alternate Thursdays. HL then gave written consent to LL to take T from Switzerland to France for a long weekend – 26-29 June 2025 inclusive. T was not returned to Switzerland by 30 June 2025 and he remained in France until 5 July 2025 when he was brought from France to Scotland by his maternal grandfather.

[3] While in France at the end of June 2025 LL suffered a serious adverse mental health episode. Her father flew out to assist. LL provided him with her written consent to remove T from France and bring him to Scotland while she recuperated. She left France and returned to Switzerland where she remained in hospital until about 15 July 2025, when she came to Scotland to join T. She has recently been in better health. She flew to Switzerland in September 2025 for a hearing in the proceedings in Sion.

[4] HL raised these proceedings for return of T to Switzerland on 15 August 2025. On 30 October 2025 the Lord Ordinary issued an Opinion (judgment) explaining his decision that T was to be returned to Switzerland and on 11 November an order was made giving effect to the court's decision and fixing a date of 5 December 2025 as the date by which the child would be returned. The mother appeals against that decision.

[5] Both HL and LL have backgrounds of significant alcohol dependence. HL has been hospitalised about twice per year since 2020, although he states that he has been sober now for about a year. LL has been diagnosed with liver damage caused by excess alcohol consumption and was hospitalised in January 2025. She has recently suffered from mental health difficulties. The Swiss court is aware of the parties' alcohol dependence insofar as relevant to the proceedings concerning T. On 10 June 2025 that court ordered both parties to undergo random blood tests to rule out any alcohol consumption.

The Lord Ordinary's decision

[6] The judge noted the mother's concessions that at all times up to and including 5 July 2025 T was habitually resident in Switzerland. Two main issues for contention arose; first, whether T had been wrongfully retained in Scotland and second-, if he was so wrongfully retained whether LL had then made out her article 13(b) defence. On wrongful retention the Lord Ordinary recorded that in addition to the acceptance of habitual residence in Switzerland "at the material time" (para [10]), it was also not disputed that HL had custody rights within the meaning of article 3 and that he was exercising those rights at the time of T's removal or retention or would have been exercising them but for that removal or retention. The judge was critical of the way in which the petitioner had framed his written case on wrongful retention. He considered (at para [19]) that HL had:

> "… possibly somewhat unwisely, pinned his case on the child having been retained in Scotland on 5 July 2025, although … he also has an averment that the child has been wrongfully retained in Scotland, which could be read either as an averment that the ongoing retention is wrongful (which is inconsistent with the law as laid down in *Re H*) [*In Re H (Abduction: Custody Rights*)[1991] 2 AC 476] or as an averment that the child has been retained in Scotland on an unspecified date." [citation added]

On the undisputed facts, T was brought to Scotland by his maternal grandfather on 5 July without HL's knowledge or consent. The issue then became whether that act was wrongful in the sense of having breached the father's rights of custody.

[7] The Lord Ordinary considered expert evidence from a Ms Berger, an experienced Swiss lawyer who was qualified to give opinion evidence on this issue. He accepted Ms Berger's opinion that, even in the case of emergency, a change to the child's residence required either the agreement of the petitioner or a court order and that the petitioner's consent was, in her words, "absolutely required both for the child's temporary removal from Switzerland and for his continued retention in Scotland".

[8] Having considered HL's pleadings and the relevant authorities, the Lord Ordinary concluded (at para [21]) that it made no difference in the circumstances of the present case whether T was wrongfully removed or retained on 29 June 2025 (when the French holiday was due to end) or 5 July (when he was brought to Scotland) or on "some later, and frankly unidentifiable, date when the respondent formed the intention to remain in Scotland permanently with T." In the judge's view all three of those possibilities would have the same legal consequence. He concluded that T was wrongfully retained in Scotland regardless of whether the date was 5 July or on a subsequent date that could not be stated with certainty. He considered that there was no prejudice to the respondent in adopting such a course (para [21]).

[9] In relation to the article 13(b) defence the Lord Ordinary, having cited the relevant authorities, evaluated the information in the affidavits and other documents. As he was unable confidently to discount the possibility that the allegations gave rise to an article 13(b) risk he followed the well-established test set out in *In Re E (Children)* 2012 1 AC 144 and applied by this court in *AD* v *SD* [2023] CSIH 17; 2023 SLT 439. He considered whether, on

the assumption the averments were true, there would be a grave risk that T would be exposed to physical or psychological harm or otherwise placed in an intolerable situation if he was returned to Switzerland. The respondent had made general allegations of physical abuse specifying one particular occasion, but there were no allegations of that type of abuse since the parties separated. What was beyond dispute was that the petitioner had sent controlling, threatening and abusive communications, including some after the parties separated and during a period after the protective orders issued by the Swiss court had been recalled. The Lord Ordinary considered that there was only a small risk of future physical abuse but a greater risk of mental and psychological abuse in the form of threatening communications and financial control. This at least had the potential to harm T indirectly through its effect on the respondent. That had to be balanced against the petitioner's compliance with court orders and protective measures issued by the Swiss court when they were in place. To the extent that there was a future risk of abuse the Lord Ordinary considered that there were adequate measures in place in Switzerland to mitigate that risk. These had been spoken to by the Swiss legal expert and are recorded in full at paras [39] and [40] of the Opinion.

[10] The judge considered that the risks to the respondent's mental health were more difficult to assess. She had been very ill, requiring hospitalisation in France then Switzerland. She had, on her own evidence, improved significantly but not completely following her return from Scotland. The evidence fell some way short of showing that there would be a grave risk to T caused by a further deterioration in LL's mental health should she return to Switzerland with him. It cast doubt on how much weight ought to be attached to LL's claim that her mental health, allegedly inadequate language skills or other prospects

were too poor for her to return to Switzerland. Her cirrhosis of the liver appeared to be under control and she was observing medical advice not to consume alcohol.

[11] On protective measures, the significance of the existing court proceedings in Switzerland could not be overstated. There was a ready-made package of provisions that had been designed to meet T's welfare needs there. A specific order to that effect had been pronounced by the judge in Sion on 18 September 2025. There was no suggestion that T would be returning to the petitioner's care. The Swiss court had already ordered that LL would have sole *de facto* custody (residence) of T and the court of habitual residence would be best placed to decide on all matters relating to T's welfare, including any application for relocation advanced by LL.

Analysis and decision

(i) The wrongful retention issue

[12] The 1980 Hague Convention on the Civil Aspects of International Child Abduction is incorporated into domestic law as Schedule I to the Child Abduction and Custody Act 1985. article 3 of the Convention sets out the relevant test for analysing whether the Convention is engaged. It provides that:

> "The removal or the retention of a child is to be considered wrongful where -
>
> > (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
> >
> > (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention…".

While this case does not fall neatly into the category of either removal or retention, the substantive issue is whether T's presence in Scotland was wrongful in terms of the Convention or whether, conversely, article 3 was not engaged. In essence, counsel for the mother argued that the father's right of custody was limited to that set out in article 301a, paragraph 2 of the Swiss Civil Code. It provides that:

> "1. Parental responsibility includes the right to decide on the child's place of residence.
>
> 2. If parents exercise joint parental responsibility and if one parent wishes to change the child's place of residence, this requires the consent of the other parent or a decision of the court or the child protection authority if:
>
> a. the new place of residence is outside Switzerland; or
> b. the change of place of residence has serious consequences for the ability of the other parent to exercise parental responsibility and have contact.
>
> 3. If one parent has sole parental responsibility and if he or she wishes to change the child's place of residence, he must inform the other parent of this in good time…"

LL accepts that HL has joint parental responsibility for the purposes of that article (Swiss Civil Code, article 296, paragraph 2). Her contention is that on the evidence in this case, she had not sought to change the child's place of residence. She had accepted that he was habitually resident in Switzerland and that his residence in Scotland was temporary until she formed the intention, apparently around early October, that she would wish to reside in Scotland with him permanently.

[13] On the reclaimer's analysis, LL did not require to seek HL's consent to the 3-day holiday in France at the end of June and so it was irrelevant that she had secured that consent. The only right afforded to the father under the Swiss Civil Code was in relation to a change of residence. This was supported by evidence from the Swiss lawyer which was said to contrast this case with one where a child was taken for a "mere holiday". The

evidence did not support that the removal of a child from Switzerland for any purpose was a breach of joint parental authority. Anything short of a change of residence would not engage article 3. It would have been open to the petitioner to plead a different case but he periled his argument on wrongful retention with a latest date of 5 July 2025. The Lord Ordinary had erred in looking beyond that date and considering the situation at the time he was hearing the case. For example, he had stated (at para [18]) "...on no view can T's presence in Scotland now be regarded as a holiday". While he had concluded that T was being wrongfully retained in Scotland it had been incumbent upon the Lord Ordinary to ascertain the date of that retention with certainty; he was wrong to say there was no prejudice to the respondent in not doing so. While there could be cases in which it was not strictly necessary to identify a particular date, the range of possible dates in this case was only 30 June-5 July 2025. The respondent had to answer a claim of wrongful retention on 5 July 2025 and the Lord Ordinary did not appear to have accepted that case.

[14] Ms Berger's evidence was also criticised as there were gaps in the factual information on which it was based. She did not appear to have been informed of the initial lawful removal to France on 26 June and did not refer to it. She had not been given the Swiss court's decision of 14 July 2025, in which it had considered the father's urgent application to transfer custody immediately to him given the mother's hospitalisation. The Swiss court rejected that application as the whole circumstances of the mother's situation were not yet clear and reminded parties formally of the provisions of article 301a paragraph 2 prohibiting the change of a child's place of residence without the consent of the other parent or a decision of the court.

[15] HL's position is that the petition was clearly framed as a wrongful retention; the Lord Ordinary had understood that and reached a conclusion consistent with the pleadings.

Counsel acknowledged that the petition could have been pled on the basis that T was wrongly retained in France from 30 June onwards as the father's consent to his departure from Switzerland had by that time expired. Amending his case to retention on 5 July made no difference as that was the latest date on which the child was being wrongfully retained away from his country of habitual residence. On the rights of custody argument, there had been a single expert witness in the issue of rights of custody under Swiss law. Her evidence was not contradicted by that of any other expert witness. It was not suggested that the Lord Ordinary had been wrong to accept Ms Berger's qualification to give opinion evidence. It was clear from her opinion that the expert understood the term "custody" in a 1980 Hague Convention sense and confirmed that the parental authority held by HL in Switzerland gave him custody rights under the Convention. Those rights then had to be analysed under Swiss law. Having done so, Ms Berger's opinion was that HL's consent was "absolutely required" for either a temporary removal from Switzerland or a retention outside Switzerland.

[16] Counsel acknowledged that the Lord Ordinary had not identified a specific date but that itself was either not an error or, if an error, was not material to the outcome. The UK Supreme Court had confirmed in the case of *In re C (Children)* [2019] AC 1 that there could be cases where a precise date of retention could not be ascertained. While that case involved the different issue of repudiatory retention, the general statement in relation to the absence of a precise date was applicable. The Lord Ordinary's statement that it did not matter whether the date of retention was some later unidentifiable date when the respondent formed the intention to remain in Scotland permanently with T might illustrate a failure on his part to understand the potential issue that the child might have formed a new habitual residence by that later date. However no case that the child had become habitually resident in Scotland had been pled by LL. When the Lord Ordinary referred to T being habitually

resident in Switzerland "at the material time" he must have been referring to the period from 29 June to 5 July 2025. Even if that was wrong, the circumstances of the case did not support the acquisition of habitual residence in Scotland even at a later date. The mother remained in hospital in Switzerland until 15 or 16 July; T did not commence nursery in Scotland until August and on 18 September 2025 LL's position to the Swiss court remained that her residence was in Switzerland and that she was in Scotland temporarily.

[17] On the basis of the Swiss lawyer's evidence and the undisputed facts, the act of bringing T to Scotland on 5 July was sufficient to engage article 3. While Ms Berger had not covered the specific question of whether consent for any holiday, however short, was required, the dispute did not surround the consent given for the holiday to France. It was the act of bringing the child to Scotland that she confirmed unquestionably required the consent of the father.

[18] We have concluded that there was a sufficient basis in the evidence for the judge to conclude that T had been wrongfully retained in Scotland. The interpretation of the Swiss Civil Code was a matter for expert evidence. The conclusion of that expert evidence was that the father had relevant rights of custody under the 1980 Hague Convention and that those rights required his consent to be given to either a temporary removal of the child from Switzerland or a longer-term departure. In our view, from the moment LL failed to return T to Switzerland by midnight on 29 June 2025, the child was being wrongfully retained away from his country of habitual residence. That wrong was compounded by the child being brought to Scotland by LL's father without HL's knowledge or consent. To put it another way, the child having already been wrongfully retained in France, the wrongfulness in law of his retention in France continued and so existed from the moment of his arrival in Scotland. This analysis is consistent with the decision of the Court of Appeal in the case of

In re H (A Child) [2019] 3 WLR 1143 (Moylan LJ at paragraphs 52 - 54), albeit that there the initial wrongful retention was in a non-contracting state.

[19] The Lord Ordinary was correct to point out (at para [20]) that wrongful removal and wrongful retention are treated the same way in the Convention. In our view, however, the only questions requiring an answer in this case were:

1. Where was the child habitually resident when the act occurred? and
2. Were rights of custody being exercised by the father when that act took place (or would have been but for that act)?

On Ms Berger's evidence the answers to those questions in this case are 1. Switzerland and 2. yes. She had been provided with the petition and answers and will have seen that the background included a brief holiday to which the father had given consent. That could explain her reference to the child's residence in Scotland being more than a "mere holiday". Her statement that what occurred required the consent of the father under Swiss law could not have been clearer.

[20] We agree that the case had to be analysed as either a wrongful retention or a wrongful removal as the two are mutually exclusive (*In Re H (Abduction: Custody Rights*) [1991] 2 AC 476 and *Kilgour* 1987 SLT 568*)*. We acknowledge also that the petitioner's written case was a little ambiguous on the point as it stated both that on 5 July the maternal grandfather wrongfully retained the child from Switzerland and also that he took him to Scotland without the consent of the petitioner. That could suggest either removal or retention. That said, we would not be so critical of the petitioner's pleadings as the Lord Ordinary was. On the analysis we have given above, the initial wrongful act took place on 30 June 2025. HL was unaware of the specific circumstances of the events in France that led to the child coming to Scotland on 5 July. We consider that he could have selected

and founded on an earlier date and pinpointed that as the date of wrongful retention (in France) as the relevant breach of custody rights, notwithstanding that the child was subsequently moved to a third (contracting) state. Selecting a specified date for the wrong of 5 July was consistent with the approach contended for by the reclaimer that where the date is not precise it must be within a short time frame.

[21] This case is quite different from those involving an initial consent to a child spending a period in a state other than that of his habitual residence followed by the creation of an intention by the taking parent to remain permanently in that state. In those circumstances, issues of whether habitual residence has changed and when the intention was formed to effect that change can be a relevant, albeit not decisive, factor - *AR* v *RN* [2015] UKSC 35; [2015] SC (UKSC) 129. (at paragraph 21). In the present case there is, even now, no case advanced by the mother that the child's habitual residence has changed. The case against her identified 5 July as the date of claimed wrongful retention. No question should have arisen about whether retention took place on some later, unidentified date. For these reasons, we consider that LL's contention that she did not intend to effect a permanent change in residence in July 2025 is irrelevant. If it is wrong to change a child's residence without the consent of the other parent (article 301a, paragraph 2 of the Swiss Code) then it is clearly wrong also for steps to be taken without such consent that could bring about that change. The limits of HL's consent to T's removal from Switzerland were very clear and were restricted to a 3-day period. Regardless of LL's intentions either while she was in France, in hospital in Switzerland or subsequently, T's retention in Scotland engaged article 3 of the Convention.

[22] In conclusion, while it would have been better for the Lord Ordinary to clarify that the wrongful retention in Scotland was, at the latest, on 5 July 2025, it would have made no

difference to the outcome on the first issue in dispute. The child's retention in Scotland on 5 July having breached the father's article 3 rights of custody in 1980 Hague Convention terms, the court's obligation is then to order his swift return to Switzerland unless the mother has made out her article 13(b) defence.

(ii) The article 13(b) grave risk defence

[23] There was no dispute before us about the applicable law in cases involving a defence under article 13(b) where domestic abuse is alleged. Unless the material does not disclose a *prima facie* case of grave risk on a return of the child to the state of habitual residence, the court must evaluate the material and assess the nature and severity of the risk to the child on assumption that what the respondent says is true. There is a relationship between the level of assessed risk and the need for and type of effective protective measures on a return that requires delicate balancing by the first instance judge (*AD* v *SD* [2023] CSIH 17; 2023 SLT 439, at para [27]).

[24] The judge is said to have erred in his treatment of part of the material. He had not been entitled to find (at para [35]) that the mother had accommodation available to her in Switzerland. The parties had conflicting positions on this but there was no other extraneous evidence of value and so no finding should have been made at all – *D* v *D* 2002 SC 33, at paras [8] and [18]. LL had stated in her supplementary affidavit, sworn on 30 September 2025 (at paragraph 6) that she required to tell her landlord in Switzerland by the end of September "…if I was going to retain my house". She could not afford to retain it. HL had initially reduced the court ordered maintenance payments in August and September and had paid in full only shortly prior to the court hearing in Sion on 18 September. She had ultimately given notice to the landlord on 8 October 2025 that she would not be returning to

the previous family home. The lack of accommodation had to be weighed in the balance with the respondent's mental health and the context of allegations of financial control by HL, who had claims outstanding in the Swiss court to reduce the level of maintenance payments. The Lord Ordinary had been incorrect in stating that HL had complied with all court orders. The withholding of 2,500 Swiss Francs (from the total of 7,440 Francs due each month) in August and September was a breach of the Swiss court's order.

[25] There was no guarantee that the respondent's legal costs in Switzerland would be met either by court order or legal aid. While the judge had correctly identified that court's power to award expenses, the uncertainty about whether this would be done went to the effectiveness of the identified protective measures. Had the judge approached these issues correctly he would have found the grave risk defence established. If it was necessary then to go on to consider whether to exercise discretion on whether to return T, the lack of accommodation and the backdrop of financial abuse were relevant. Further, HL had enjoyed relatively limited contact with T, who was now settling well in Scotland.

[26] The petitioner did not accept that this was the sort of exceptional case where it was vital to have protective measures in place, though such measures were available. The burden of establishing the article 13(b) defence was squarely on the respondent. It was clear that the Swiss court had granted protective measures in this case previously and could do so again. There was nothing to suggest that the respondent faced new financial constraints. She had attended the hearing in Sion personally on 18 September 2025 and continued to have legal representation in the proceedings there. The lease relative to LL's Swiss accommodation had been produced in this case and illustrated that it was for an indefinite period, with 3 months' notice of termination required. Notice had to be given in writing and sent by registered post. There was no vouching of LL's claim that she had given such notice.

LL's supplementary affidavit was not inconsistent with the Lord Ordinary's finding that she had accommodation in Switzerland. Accommodation was in any event one of six factors relevant to the issue of alleged risk. It was for LL to confirm where she and T would stay in Switzerland if she gave up her accommodation there.

[27] While the Lord Ordinary had not been quite correct to state that HL had complied with all court orders given the deductions from aliment he had made, albeit with an explanation, he had complied with the vast majority of the orders made. The case could be contrasted with *AD* v *SD*, where there had been persistent breaches by the husband of orders made to protect the wife from abuse. The judge had weighed all of the relevant factors, including all those advanced by LL in relation to the possible lack of ongoing support in Switzerland from her family following a return.

[28] We have concluded that the first instance judge did not err in his approach to the article 13(b) defence in this case. Cases involving a defence to a return to the state of the child's habitual residence where there is a backdrop of alleged domestic abuse continue to be sensitive and difficult. They involve the delicate balancing exercise described in *AD* v *SD* at para [27]. As the Lord Ordinary in the present case pointed out, the significance of there being ongoing proceedings between this couple in Switzerland cannot be overstated. In addition to detailed evidence about the available measures, including sanctions for breaching them, available in the state of habitual residence, the judge had the Sion court's order of 18 September 2025 listing what measures would be in place following a return (narrated at para [14] of the Opinion). These include, as the Lord Ordinary put it, a "ready-made package of provisions designed to meet {T's} welfare needs" that will take effect immediately. It is unusual for first instance judges in this jurisdiction to be provided with that level of clarity and certainty from the court of habitual residence. Any concern

about the effectiveness or otherwise of the relevant protective measures must be balanced against those factors and the considerable activity there has been to date in the Tribunal de Sion.

[29] On the specific issue of accommodation, we consider that LL's reliance on the decision in *D* v *D (*cited above*)* is misplaced. The Inner House (appellate court) was dealing only with the issue of habitual residence and there was no extraneous evidence at all in relation to the parties' competing accounts. In the present case, there was a bundle of material relating to the article 13(b) defence, which involves a multi-faceted test. The Lord Ordinary was entitled to find, having considered the affidavits and supporting documents, that LL had accommodation in Switzerland. There was documentary evidence of a requirement to give 3 months' notice and no documentation to support LL's contention that she had intimated an intention to quit the property. In any event, generally it would be inappropriate to permit a litigant in these circumstances to decide unilaterally to give up settled accommodation in the state of habitual residence and pray that in aid of an article 13(b) defence. We were told that matters have now moved on and that the landlord of the family home in Switzerland has let the property to new tenants. If that is so, LL and T will require to find accommodation on return to Switzerland, at least for the duration of the contested proceedings there. The level of maintenance ordered by the Swiss court was deemed sufficient to include the rental payments for the previous home. That court is seised of the issue of maintenance payments for both LL and T and would be best placed to determine any applications to vary the sums currently awarded. We reject any notion that the appellant would have insufficient means to secure accommodation in the state of habitual residence.

[30] The Lord Ordinary does appear to have overlooked HL's withholding part of the maintenance payments in August and September when stating that he had complied with all orders of the Sion court. The context (para [40]) was the judge's consideration of the allegations of physical, mental and psychological abuse, albeit that financial control was also mentioned. He had recorded, (at para [29]) and so must be assumed to have taken into account, LL's concerns about alleged financial control and HL's applications to reduce the level of maintenance. We do not consider that his reference to "all orders" rather than the more accurate "almost all orders" is in the circumstances an error of any significance.

[31] So far as the expense of litigation in Switzerland is concerned, the documentary evidence confirms that there are two ways in which LL can seek assistance with the costs of participating in the Swiss proceedings. The first is an application for the *provisio ad litem,* by which the Swiss court can order one party to make advance payment of the other's legal fees, where the applicant could not otherwise cover the costs of the contested litigation. As an alternative state funded legal aid is in principle available. At an earlier stage, in March 2025, the Swiss court had exercised its power in relation to the *provisio ad litem* in the respondent's favour. The respondent has already made a relevant application to the Swiss court, although the Swiss court reserved questions of costs when it considered matters in September 2025. Again, the availability of this category of protective measures in the state of habitual residence was understood and taken into account correctly by the Lord Ordinary.

[32] We consider it important to emphasise that, as with any case involving similar applications under the 1980 Hague Convention, the child's return to Switzerland is ordered so that the state of his habitual residence can determine the dispute about his care and upbringing. In this case that dispute is quite far advanced. The Scottish court has made a

decision on jurisdiction, not on the merits of the substantive dispute. For the reasons given, the judge's decision that HL's custody rights have been breached by T's wrongful retention and his rejection of the mother's article 13(b) defence were sound. The reclaiming motion is refused. We shall adhere to the Lord Ordinary's interlocutor, save for the substitution of 5 January 2026 as the date by which T must be returned to Switzerland, given that the date fixed by the Lord Ordinary has now passed. We shall reserve meantime all questions of expenses.