

Along with a petition, the pursuer produced the following certificate of the marriage :

No. 2.

subscribed by the celebrator and parties, with a reference to oath of the defender, that the certificate was genuine, held competent evidence of marriage.

*Gritnay Green, June 10th, 1786.*

“ This is to sertfay to all persons, that may be scurned, That Charles Blount from Salisbury, and Elisbith Ann Wycihe from the same plese, both comes before me, and declares themselves to be both single persons, and is now mareyed be the way of thee church of Scotland, as day and det abuve mentioned, by me.

“ DAVID M'FARSON.

“ C. B. BLOUNT.

“ ELIZTH. ANN WYCHE.”

The Commissaries, not considering this as sufficient evidence of marriage, allowed the petitioner to prove her allegation, that a marriage was actually celebrated between the parties in Scotland.”

The pursuer referred this fact to the oath of the defender, and also that the certificate was genuine.

The Commissaries, “ In respect of the particular circumstances of the case, which are fully explained by the interlocutor, of date the 20th of February last, found the mode of proof offered in this minute incompetent.”

But the Lord Ordinary, after reporting a bill of advocation to the Court, remitted to the Commissaries, with instructions to sustain their jurisdiction in this case, in respect the summons was executed against the defender when resident in Scotland, and possessing a domicil there: Find it competent to refer to the oath of the defender, the authenticity of his subscription at the certificate of marriage produced, and that said certificate is genuine; admit the said reference, and grant commission accordingly.”

Lord Ordinary, *Meadowbank.*

D. D.

*Fac. Coll. No. 241. p. 543.*

\* \* \* The defender having failed to depon on the reference, the Commissaries held him as confessed, and pronounced decree of divorce.

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1801. June 27. MARIA MORCOMBE, *against* JOHN LAW MACLELLAND.

No. 3.

JOHN LAW MACLELLAND was by birth a Scotsman. He served an apprenticeship to a surgeon in Dumfries; attended the medical classes at the University of Edinburgh; and was afterward appointed a surgeon's mate in the Navy; in which service having become valetudinary, he was appointed surgeon to the Myrmidon receiving ship, stationed at Plymouth.

A process of divorce in Scotland found incompetent against a person who was born and educated in

No. 3. In 1779, he was married at Plymouth to Maria Morcombe, an English-woman.

Scotland, but had married an English-woman in England, and never afterward returned to Scotland.

After living together many years, it was alleged by Maria Morcombe, that her husband had deserted her, and lived in adultery with another woman; on which account, she brought a process of divorce against him before the Commissaries of Edinburgh. To this action he was cited edictally at the pier and shore of Leith, and a certificate by a notary was produced, that a copy of the summons had been delivered to him at Plymouth, where he retained his situation in the Myrmidon, without having ever been in Scotland since his first appointment in the Navy.

The defender declined the jurisdiction of the Commissaries, who pronounced the following judgment: "Considering that the courts of one country ought not to be converted into engines for either eluding the laws of another, or determining matters foreign to their territory, and that decreets of divorce pronounced by incompetent courts, cannot effectually and securely either loose the bonds, or dissolve the marriages, or fix the states of the parties thereto, but might become causes or snares to involve other persons, as well as the parties and their children, in deep distress; and observing it to be admitted in the libel, that the marriage of the pursuer and defender was celebrated in England; that they resided constantly in England since their marriage; and even that the crime on which divorce is here demanded to be decreed, was committed in England; therefore find that the action is not competent in Scotland, and ought not to have been brought before this court; and dismiss the process in all its parts, for want of jurisdiction and of power."

The Lord Ordinary having refused a bill of advocation, the pursuer, in a reclaiming petition,

Pleaded: In a *questio status*, like the present, the defender would be amenable to the courts of Scotland even *ratione originis*. But in truth, having been constantly in the navy service ever since he left Scotland, he has acquired no other *forum*, and consequently the country in which he was born and educated is still his proper domicil; 11th June 1745, Dodds, No. 14. p. 4793; 8th March 1796, Pirie, No. 104. p. 4594; 13th June 1800, French, No. 1. *supra*.

The Lords unanimously refused the petition, without answers.

Lord Ordinary, *Armadale*.

For Petitioner, *R. H. Cay*.

*R. D.*

*Fac. Coll. No. 242. p. 545.*

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1803. July 1. STROTHER *against* READ and Others.

No. 4.  
Assignees  
under an  
English com-

A COMPETITION having arisen between Richard Strother of Killinghall near Kneasborough, a creditor of Edwards and Duplex, merchants in Leeds,