

being sent to me—of my being bothered with that bill? He said he was hard up, and asked if I would lend him as much money as would pay it. I lent him, so far as I remember, £38 or £39 for the purpose of taking up that bill. I did not tell the bank that I had not signed that bill. I never thought anything about it. I just gave the money to my brother-in-law to pay the bill, as he had asked it for that purpose, and said that he was hard up." Whatever else this proves, this is clear, that Urquhart, in the knowledge that his brother-in-law had forged his name to the bill, gave him money to retire it. As he knew that this former bill had been forged, is it possible that he did not understand that the bill which forms the subject of the present proceedings was also forged? Urquhart's position, when he got the notice of 3d August 1871, was this—He knew that his brother-in-law had been in the habit of forging bills in his name to raise money, and that he had now forged another bill. To keep silence for three weeks under these circumstances is a clear case of adoption.

Very few of the cases cited for the suspender have much bearing on the present case. The nearest is that of *Brown v. British Linen Company*, 16th May 1863, 1 Macph. 793. It was there held that the facts averred by the respondents were sufficient to entitle them to a counter issue of adoption. The Lord President said, "I do not think mere silence without anything more is enough to constitute adoption; but when intimation is given to the acceptor that he is regarded as responsible, and when he finds that his name is being forged to bills by the same drawer; it becomes his duty to repudiate the bill." It appears to me that this doctrine is peculiarly applicable to the present case, the circumstances of which are even stronger.

The case of *Boyd*, 12th December 1854, was very different from the present. The bank alleged that they had been induced to discount the bill charged on by the circumstance that previous bills with the same signature had been retired with the knowledge of the suspender. The issue they proposed to take was, Whether, for a period reaching back from the date of the bill charged on, the suspender adopted and accredited the signature as his subscription? But they did not put in issue, Whether the suspender knew that the signature was forged? This was a weak case in answer to an allegation of forgery. But in the present case knowledge on the part of the suspender of the forgery of the previous bills, and of the forgery of this particular one, is equally clear.

The other Judges concurred.

The Court adhered, with the addition mentioned above.

Agent for Suspenders—Charles S. Taylor, S.S.C.
Agents for Respondents—Tods, Murray, & Jamieson, W.S.

Friday, June 14.

SECOND DIVISION.

COUPER AND LOGAN v. RIDDELL.

Separate Aliment—Parent and Child—Husband and Wife.

A widow with four children having con-

tracted a second marriage with a man whose antenuptial conduct had been immoral, the children sued their mother and stepfather for separate aliment, on the ground that his character precluded them from living with him. The stepfather, a country surgeon with a small income, whose character appeared to have been respectable subsequently to his marriage, offered to implement the obligation to support his wife's children by alimentering them in his own house. *Held* that, in the circumstances, this was a sufficient offer, and that the stepfather could not be compelled to pay for their separate aliment.

This was an action for separate aliment at the instance of Marion Walker Logan, a girl of fourteen years, eldest daughter of the deceased Alexander Logan, farmer at Boon, in Berwickshire, and Peter Couper, tutor-dative to the three other pupil children of Alexander Logan, against their mother, Mrs Marion Logan or Riddell, widow of the said Alexander Logan, and afterwards wife of Robert Riddell, surgeon in Lauder, and against the said Robert Riddell as her administrator-in-law. Alexander Logan died on 4th December 1864, and his widow married the defender Riddell on 18th February 1867. The pursuers pleaded that the defender Mrs Riddell was bound to aliment and educate the children, and that Mr Riddell, as her husband and administrator, was liable for the said aliment. They further pleaded that the defenders, in consequence of their immoral character and conduct, were unfit to be entrusted with the custody of the children. The defenders admitted their obligation to support the children, but offered to implement it by alimentering them in their own house; and they pleaded that, in consequence of the smallness of their means, this was a sufficient and relevant answer to the conclusions of the summons.

The Lord Ordinary (GIFORD) allowed the pursuers a proof of their averments. It was proved that the defender Riddell had been guilty of immoral conduct prior to his marriage, and he admitted in letters written upwards of five years before the present action was raised, that he had had improper intercourse with a Mrs Bloomfield, a sister of the deceased Alexander Logan. It also appeared that in 1867 Riddell was dismissed by the Board of Supervision from his appointment as medical officer of the parish of Lauder, as being an unfit person for that office, but the precise grounds of his dismissal were not stated. The defenders offered to prove that their character during the subsistence of the marriage was not open to challenge; but the Lord Ordinary disallowed proof on this point, on the ground that their "general character" was not impugned. The Lord Ordinary then pronounced the following interlocutor:—

"*Edinburgh, 12th February 1872.*—The Lord Ordinary having heard parties' procurators, and having considered the closed record, proof adduced, productions, and whole process—finds that the defenders are not bound to aliment and maintain Mrs Riddell's children by her first marriage otherwise than in family with the defenders themselves, along with and in the same manner as the defenders aliment, clothe, educate and maintain their children by their present marriage: therefore, and in respect of the defenders' offer upon record, assoilzies the defenders from the whole conclusions of the libel, and decerns; finds the pursuer, Peter Couper, liable in expenses, and remits the account thereof,

when lodged, to the auditor of Court to tax the same, and to report."

To this interlocutor was appended an elaborate note, explaining the grounds of judgment.

The pursuers reclaimed.

SCOTT and MONCREIFF, for the pursuers, insisted strongly on the circumstance that the defender Riddell had been admittedly guilty of seducing the aunt of the children, and that the matter was of such notoriety as entirely to preclude the possibility of their ever going to reside in his house.

SOLICITOR-GENERAL, PATTISON, and HARPER, for the defenders, answered that the alleged immoral conduct of the defender took place five or six years before the raising of the action; that during the subsistence of the marriage his character had been respectable; and that the smallness of his income rendered it impossible for him to aliment the children otherwise than in his own house.

At advising—

LORD JUSTICE CLERK—If I were asked to assent to all the views expressed by the Lord Ordinary, I could not entirely concur with him. It appears to me that he has mixed up two questions—that of a right to the custody of children, and that of aliment. The question here is one of aliment, and must be decided by entirely different principles from one of custody. It is a claim in equity arising from the natural claim of the children against their mother, which of course resolves itself into a claim against her second husband. The answer of the defenders to the demand of the pursuers is,—“We admit the obligation, and we propose to discharge it by taking the children into our family;”—and generally this is a reasonable answer. The question is whether it is a sufficient answer in this case, and I have come to the conclusion that it is. No doubt the conduct of the defender Dr Riddell, in former years, is strongly to be reprobated, and I have not been moved by any of the explanations of it that have been attempted. I believe, too, that Mrs Riddell was to some extent cognizant of his proceedings. But it must be borne in mind that all these things happened upwards of five years ago, and that Dr Riddell's present general character is not impugned. In these circumstances, I am of opinion that the defenders' offer to take the children into their house is sufficient, and that we cannot call upon them to pay a separate aliment.

LORD COWAN—There is no doubt considerable delicacy as to the principles on which we should dispose of this case, but I am satisfied that the Lord Ordinary has arrived at a sound conclusion, subject, however, to some explanation. This is not an application for the custody of children; such a case would have to be decided on different principles. The claim here is for aliment. The defence by which the claim is met is, that the defenders have no income sufficient to aliment these children out of their own house, but are willing to receive and entertain them in their family. Now, is this a relevant defence? Suppose Mrs Riddell had been a widow, and there had been no flagrant criminality on her part, the defence would have been sufficient. What, then, is the result of her second marriage? It is to transfer the obligation to aliment the children from the mother to their stepfather, and all the defences pleadable by her become competent to him. I am of opinion that the defence pleaded in this case is both competent and relevant. Had Dr Riddell been shameless and criminal in his conduct, the case might have

been different. I am not much moved by the letters written by him five or six years ago. They show that he was guilty of very shameless conduct at that time, but since then it appears that he has enjoyed a respectable practice. The pursuers admit that they do not impugn his general character, and we must therefore hold it to be respectable now. If that be the case, is his offer relevant in the circumstances? The whole annual income enjoyed by Dr and Mrs Riddell amounts to £190 only. It is therefore surely impossible to say that they can afford to pay for the separate maintenance of these children. The defenders say—“Here is a door opened to you, by which you may enter your mother's house, and be there alimented,”—and in saying so they seem to me to make a reasonable and sufficient offer. Had the question been one of the custody of the eldest girl being sought by Dr and Mrs Riddell, I might have hesitated before sending her to a home where she will probably be somewhat uncomfortably situated; but the case is one of aliment, and, in the whole circumstances, the defences that have been pleaded must be sustained.

LORD BENHOLME—The question is, Has the demand for aliment by these children against their mother and her husband been well answered? If, in the first place, we suppose that there had been no imputation whatever against the character of the married pair, and they had had plenty of funds, they would unquestionably have been entitled to implement their obligation by taking the children into their own house. That is the general rule. But where anything is alleged against the character of the person liable for aliment, that rule is liable to be modified, in accordance with equitable considerations. A strong circumstance in the present case is that the defenders have hardly enough to support their own children. Had they been charged with cruelty or immorality, the benefit of implementing the obligation by alimentering the children in their own house might, perhaps, have been denied to them; and one might even imagine circumstances in which the benefit would be refused when the conduct of the parents was not very bad. But the whole circumstances—the pecuniary position, as well as the character of the parties—must be taken into consideration. In the present case it is quite clear that the circumstances are such as to render it difficult or impossible for the defenders to maintain the children out of their house; while, on the other hand, there is no such serious imputation on their character as to render it impossible for the children to reside with them. On the whole, therefore, I concur with the Lord Ordinary.

LORD NEAVES—This is a somewhat remarkable case. The defenders are not in affluent circumstances. They have a family of their own, which may perhaps be increased. Their defence is—“We cannot afford to split up our household into two parts.” This, in the circumstances, is a complete answer to the claim. The strong statements in the record with regard to the character of the defenders have not been substantiated. No doubt their antenuptial conduct was not strictly correct, but it is not proved to have been known to the children. Dr Riddell, too, appears to have got into a most painful position some years ago with regard to a woman who is now gone to her account. But the memory of such offences is not to be kept up for

ever. His character appears now to be unimpeachable, and I cannot think that we ought to impose upon him a burden which would inevitably involve him in ruin. I therefore concur in the opinions that have been delivered.

Agents for Pursuers—A. Duncan & G. V. Mann, S.S.C.

Agents for Respondents—Keegan & Welsh, S.S.C.

Saturday, June 15.

FIRST DIVISION.

BILDSTEIN v. BOCK & CO.

Arrestment—Ship—Register—Jurisdiction.

Arrestments on a foreign ship used *ad fundandam jurisdictionem* and on the dependence of an action against a person who had been the owner, recalled at the instance of a party who, *ex facie* of the foreign register, was now the owner.

This was a petition by Alexander Bildstein, Odessa, praying for recall of certain arrestments at the instance of E. Bock & Co., Glasgow, on the Russian ship 'D. Jex,' of which the petitioner was, *ex facie*, the registered owner.

The petitioner set forth that he had purchased the vessel from her former owner, Carl Adolphus Busch, merchant, Odessa, in September 1870, and produced the necessary documents to instruct the transference. On 3d October 1871 the vessel sailed from Odessa for Glasgow, with a cargo for which she had been chartered by Busch. On her arrival at Glasgow Bock & Co. procured letters of arrestment *ad fundandam jurisdictionem* against Busch, in virtue of which they arrested the ship, on the allegation that Busch was the sole or part owner thereof. Thereafter, on 7th February 1872, Bock & Co. raised an action against Busch in the Court of Session for certain sums, and, in virtue of the warrant contained in the summons, arrested the vessel in security.

Messrs Bock & Co. lodged answers, in which they denied that the petitioner was the true owner of the vessel, and averred that Busch had all along continued to be the owner, and acted as such. They averred that the petitioner was a clerk at Odessa, and that the registration of the ship in his name was a mere device on the part of Busch for preventing the ship from being made answerable for their just claims. In support of these averments the respondents produced a letter from Busch after the date of the alleged sale, which showed that he still acted as owner.

SOLICITOR-GENERAL and STRACHAN, for the petitioner, argued that a creditor could not use arrestments on a ship which did not, *ex facie* of the register, belong to his debtor; *Duffus*, Feb. 13, 1857, 19 D. 430; *Schulz*, Dec. 5, 1861, 24 D. 120; *Grant*, Dec. 14, 1867, 6 Macph. 155.

WATSON and MACLEAN for the respondents.

At advising—

LORD PRESIDENT—It seems to be taken for granted that if a creditor cannot use arrestments on a foreign ship his remedy is gone. The proper course for the respondents is to sue Busch at the port of Odessa, his domicile. It happens to be convenient to the respondents, being resident in Glasgow, to sue him in the Courts of this country, and they may be able to do so if they can find means to found jurisdiction. But we must not

strain our rules to enable parties to found jurisdiction. The rule laid down in the case of *Duffus*, and followed in the subsequent cases, is a most salutary and proper rule.

The other Judges concurred, observing that the respondents had not made out so strong a case of fraud as was done in the case of *Grant*, in which, nevertheless, the arrestments were recalled.

The Court recalled the arrestments.

Agent for Petitioner—William Duncan, S.S.C.
Agents for Respondents—J. & R. D. Ross, W.S.

Saturday, June 15.

SECOND DIVISION.

SPECIAL CASE—GRANT, AND MURRAY AND
COUTTS.

Succession—Liferent and Fee—Vesting.

A testator bequeathed £500 to his daughter, "in liferent only, and not affectable by her debts or deeds," and to her children in fee, and also a share of the residue of his estate to his daughter, in "liferent, and not affectable by her debts or deeds," and to her children in fee. He likewise declared that no legacy should be payable till the majority of the party entitled thereto, and that the share of any son or daughter who should predecease ("without leaving issue") before the term of payment should revert to the estate. The daughter and her children having perished at sea in the same vessel—*held* that the £500 had vested in the children immediately on their birth; that the share of the residue had likewise thus vested in them, notwithstanding the omission of the restrictive word "only" in the provision of the liferent of that share to their mother; and that neither of these sums reverted to the estate.

This was a Special Case for the opinion and judgment of the Court, between William Grant, Twin Cottage, Chapel Street, Aberdeen, executors of the deceased Rev. George Grant, sometime of Aberdeen, and executor of the deceased children of the said Mr Grant, of the first part; and Mrs Elspet Ogilvie or Murray, widow of Alexander Murray, Whitehills, parish of Boyndie, county of Banff, and William Coutts, solicitor, Banff, a majority and quorum of the trustees of the said deceased Alexander Murray, of the second part. By a trust-disposition and settlement, dated 17th May 1860, and with codicil annexed, dated 1st October 1860, Alexander Murray, residing in Whitehills, in the parish of Boyndie and county of Banff, conveyed to trustees for the purposes therein specified, his whole estate, heritable and moveable, and he nominated his trustees his sole executors. Among the purposes of the trust-deed were the two following:—"(12th) I bequeath to each of my daughters Elspet Murray, Ann Murray, Barbara Murray, Margaret Jane Murray, and Helen Murray, the sum of £600 sterling, and in case of any of them predeceasing leaving issue, such issue shall succeed to the parent's share, but specially providing and declaring that there shall be paid to each of my said daughters, within six months after my death, the sum of £100 sterling, being part of the before-mentioned £600, which provision of the balance of £500 to each, in favour of my said daughters