that he is entitled to the services of an agent. Still less should I support the view that it is the duty of those agents who give their services as agents for the poor in criminal trials to attend and advise prisoners about their declarations. I most emphatically say that no such duty is laid or intended to be laid upon them by statute, so far as my opinion goes. But looking again to the common law regarding declarations, I cannot help thinking that this law has gradually grown up, and has only quite recently received its full maturity, that it is founded on the principle of voluntary declaration only, and that everything necessary to inform the prisoner of his right in the matter of the declaration is to be communicated to him by the magistrate. That would not necessarily apply to a petty case, but it certainly does imply that when a charge of murder is made against an illiterate woman it would be desirable that the magistrate, before taking the declaration, should inform the accused that he or she had the right to confer with an agent, and I imagine that any agent who might be called in, acting on the principles of good feeling and humanity, would have been willing to come and advise the accused. In what I have said I do not wish to attribute the slightest negligence or inattention to the Sheriff. I do not doubt that he had the matter before him, and that he acted in accordance with what he regarded as his legal duty. It is a delicate and somewhat difficult question, and it is quite possible that other judges may take the same view as the Sheriff has done, but I must in this case act upon my own opinion, especially in a serious criminal charge.

Even if I had more doubt than I entertain, I should act upon the principle of giving the prisoner the benefit of any reasonable doubt in a matter of this kind. I really consider the question doubtful. I think there may be a great deal of doubt as to how far it is the duty of the magistrate to give the information in every case, but I cannot doubt that in a charge of murder it would be the proper thing that the prisoner should be visited by an agent before being examined on declaration. On that ground I am prepared to deal with this question and disallow the declaration, very much in the spirit of those cases where it was held that anything tending to put the accused person at a serious disadvantage, and involving a denial of the rights of accused persons for their protection, is a ground for setting aside the conviction, and of course the same principles would apply in excluding any evidence.

Counsel for H.M. Advocate—Rankine, A.-D. —Dykes. Agent—Procurator-Fiscal for Banffshire.

Counsel for the Panel—J. Dean Leslie. Agent —J. C. Willet, Advocate, Aberdeen.

COURT OF SESSION.

Friday, January 13.

FIRST DIVISION.

[Lord Lee, Ordinary.

WALLACE *v.* WEST CALDER CO-OPERATIVE SOCIETY (LIMITED).

Reparation — Damages for Personal Injury — Excessive Damages.

A widow brought an action of damages for the death of her husband, resulting from personal injuries caused by the defenders. He was a builder by trade, and his whole income from that and other sources amounted to £150. The widow was left unprovided for. The jury awarded her £900. On a motion for a new trial the Court *held* the award excessive, and reduced it to £500.

John Wallace died on 29th June 1887 from injuries received by his being thrown out of a car which collided with a bread van belonging to the West Calder Co-operative Society on 20th April previously. His widow subsequently brought an action of damages against the company, which was tried before Lord Lee and a jury in November 1887, when a verdict was returned for the pursuer—the damages being assessed at £900—being £800 as damages, and £100 as solatium.

The defenders afterwards obtained a rule on the ground of excessive damages.

It was proved at the trial that Wallace was a builder in West Calder, and that he also held the offices of inspector of poor and collector of poor-rates for Livingstone parish. His income was admitted to be £150 per annum from all sources. His widow, who was forty years of age, was left without means.

The pursuer in showing cause argued that the amount of damages must be clearly exorbitant before the Court would interfere—*Landell* v. *Landell*, March 6, 1841, 3 D. 819; *Shields* v. *North British Railway Company*, Nov. 24, 1874, 2 R. 126; *Young* v. *Glasgow Tramway Company*, Nov. 29, 1882, 10 R. 242. There had been cases where the Court had reduced such damages —*Johnston* v. *Dilke*, June 16, 1875, 2 R. 236— either where they had been on the face of them unreasonable, or where no substantial injury had been sustained, but the present was not one of these. In a recent case the Court had refused to set aside a verdict where a father was awarded £400 for the death of his son, a lad of sixteen— *M'Master* v. *Caledonian Railway Company*, Nov. 27, 1885, 13 R. 252.

The defenders argued that the deceased had not been engaged in any prosperous and increasing business, particularly looking to the fact that £80 of his admitted income of £150 came from the public offices which he held. The £100 given as solatium was not objected to, but otherwise the amount given was practically double what it ought to have been.

At advising—

LORD PRESIDENT—The Court are of opinion that this is a very excessive award of damages,

and of course if we were to give effect to this view in the ordinary way we should have to allow a new trial. But the parties are willing to leave the matter in our hands. The amount which the jury have given as solatium is not challenged, and therefore the sum we have to deal with is the £800. The Court are of opinion that this should be reduced to £400.

Lord Mure, Lord Adam, and Lord Lee concurred.

Lord Shand was absent.

The Court pronounced this interlocutor—

"In respect that the pursuer consents that the amount of damages found by the verdict of the jury shall be reduced to £500, discharge the rule for a new trial, and find the defenders entitled to expenses in connection with the application for and discussion upon the rule," &c.

By a subsequent interlocutor on the same day the Court applied the verdict, and decerned for £500; and found the pursuer entitled to expenses in so far as not already disposed of.

Counsel for the Pursuer—J. C. Thomson—Hay. Agents—W. & W. Saunders, S.S.C.

Counsel for the Defenders—Lord-Adv. Macdonald—Rhind. Agent—Robert Menzies, S.S.C.

Thursday, March 22.

OUTER HOUSE.

[Lord M'Laren, Ordinary.

REDDING *v.* REDDING.

Foreign—Jurisdiction—Divorce—Desertion.

Held that a married woman born in Scotland and domiciled there before her marriage, but married to an Englishman with whom she resided in England during her married life, was incapable of acquiring for herself a domicile in Scotland after she had been deserted in England by her husband, so as to found jurisdiction in the Court of Session to entertain an action of divorce by her founded on the desertion.

Robert Redding was married in 1869 in Edinburgh to Margaret Mackinlay, then residing with her parents there, who were domiciled Scots persons. Before the marriage he had been living in discharge of his duty as an officer of Excise for four years in Edinburgh, but had been born of English parents in Berwick. After the marriage the couple lived in Edinburgh for six months, and then removed to Devonshire. They lived at different places in England till February 1880, when the husband deserted his wife and family at Wisbech in Cambridgeshire, and went to America. The wife thereupon returned to Scotland and lived with her mother, then a widow, in Edinburgh, supporting herself and her four children by her own industry. She heard several times from her husband up to October 1880, at which date he was resident in New York, but had no knowledge of his residence since that date.

The wife on 28th January 1888 raised an action of divorce on the ground of desertion against her husband. After proof of the facts stated the Lord Ordinary desired argument as to the jurisdiction of the Court.

The pursuer argued—The wife's domicile in cases of desertion did not follow that of the husband, for it was matter of every day practice to entertain actions of divorce when the husband last transferred his domicile to a foreign country—Fraser on Husband and Wife, p. 1212. If, then, the wife had a capacity to retain a domicile separate from that of her husband, why should she not acquire a new domicile to the same effect? The desertion began in England, but the husband was now in desertion, and the wife was entitled to appeal to the court of the country in which she was permanently resident *animo remanendi* to redress the wrong which her husband day by day continued to inflict upon her. All the text writers agreed on the competency of this—Fraser, 1254; Phillimore, iv. 346; Wharton, sec. 224; Bishop, ii. sec. 128; Bar, sec. 92; Story, 229a—and although there were no decided cases to that effect in this country, America supplied cases—Bishop, *loc. cit.*, and Story, *loc. cit.* Unless this were so the wife had no *forum* to which she could resort, for she did not know where her husband was, and the doctrine of "matrimonial domicile" was now exploded—*Pitt* v. *Pitt*, April 6, 1864, 2 Macph. (H. of L.) 28: *Wilson* v. *Wilson*, L.R. 2 P. and D. 435; *Stavert* v. *Stavert*, February 3, 1882, 9 R. 519. That the remedy of divorce for desertion was unknown in the country in which the spouses had lived as married persons was immaterial if Scotland was *bona fide* adopted as a domicile by the pursuer—*Carswell* v. *Carswell*, July 6, 1881, 8 R. 901.

The Lord Ordinary (M'Laren) on 22nd March 1888 pronounced this interlocutor:—"Finds that the defender is not subject to the jurisdiction of the Court of Session, therefore dismisses the action, and decerns.

"*Note.*—This is an action at the instance of the wife, concluding for a dissolution of the marriage on the ground of desertion. The desertion is clearly proved, and the only question is whether the Court of Session has jurisdiction over the spouses in the matter of the action. The proof was taken before me on the 10th inst., and in her examination the pursuer stated that her husband was born in Berwick-on-Tweed, and that both his parents were Scotch and had lived in Scotland before his birth. But as the pursuer was not professing to speak from personal knowledge or family tradition (because the question is as to the domicile of the husband's parents) I adjourned the proof in order that further evidence might be obtained on this point. On the case being called on the 20th inst., counsel for the pursuer stated that certain members of the husband's family had been communicated with, but that he could not say that their evidence would support the allegation that the husband's parents were of Scottish extraction. The case was accordingly argued on the assumption that the defender Mr Redding was not only born in England, but that England was his domicile of origin.

"The next question of fact is, whether at