

amount of money awarded, however, my own impression was that it was too large.

We shall discharge the rule and apply the verdict.

The Court discharged the rule and refused to grant a new trial.

Counsel for the Pursuer—Morison, K.C. —W. T. Watson. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defenders—Macmillan, K.C.—Wark. Agents—Hope, Todd, & Kirk, W.S.

Saturday, March 8.

FIRST DIVISION.

(SINGLE BILLS.)

CAMPBELL v. OSBORNE & HUNTER.

Process—Jury Trial—Transmission of Cause for Trial at Sittings—Act of Sederunt, November 19, 1910, sec. 3—Note Appended to Rolls of Court Appointing Time for Lodging Papers.

The rolls of Court issued on 28th February 1913 contained notice of the ensuing sittings for jury trial, the following note being appended to the notice:—"Note.—With regard to the transmission of causes for trial at these sittings, agents are referred to the Act of Sederunt, dated 19th November 1910. A copy of the Lord Ordinary's interlocutor allowing the trial to proceed at the sittings, along with a print of the closed record and of the adjusted issue or issues, must be handed to the keeper of the rolls of the Division in which the cause is to be tried, and that not later than 12 o'clock noon on Wednesday, the 5th day of March, otherwise the cause will not be taken at the sittings." Section 3 of the Act of Sederunt November 19, 1910, provides—"If the cause is to be tried at the sittings the process shall forthwith be transmitted . . . to the clerk of the Division. . . . A copy of the Lord Ordinary's interlocutor allowing the trial to proceed at the sittings, along with a print of the closed record and of the adjusted issues, shall also be handed to the keeper of the rolls of such Division." The agent for the pursuer in an action of damages which the Lord Ordinary, on 20th February 1913, had appointed to be tried at the sittings, tendered the necessary copy interlocutor and prints to the Keeper of the Rolls on 5th March 1913 within office hours, but after twelve o'clock. The case not having been included in the list of causes for trial at the sittings, and the pursuer having thereupon presented a note to the Lord President for authority to the Keeper of the Rolls to receive the copy interlocutor and prints and include the cause in the said list,

the Court *discharged* the order for trial and *remitted* the cause to the Lord Ordinary.

Henry Campbell, 4 Mary Street, Port-Dundas, Glasgow, *pursuer*, brought an action of damages against Osborne & Hunter, electrical engineers, 99 Douglas Street, Glasgow, *defenders*. On 18th February 1913 the Lord Ordinary (SKERRINGTON) approved of an issue and fixed a diet for the trial of the cause. On 20th February, on the motion of the pursuer, the Lord Ordinary discharged the diet, and appointed the cause to be tried at the sittings in the ensuing vacation.

No. 109 of the rolls of the Court of Session for the Winter Session 1912-13, issued on 28th February 1913, contained notice of the sittings of the Court for the trial of civil causes by jury in the ensuing vacation. Annexed to the notice was the note which is *quoted* in the *rubric*. The Act of Sederunt November 19, 1910, referred to in the note, so far as pertinent to the present question, is also *quoted* in the *rubric*.

The pursuer's agent, in terms of the Act of Sederunt, transmitted the process to the Clerk of the Division. On 5th March 1913, within office hours, but after twelve o'clock noon, he tendered to the Keeper of the Rolls a copy of the Lord Ordinary's interlocutor of 20th February, and prints of the closed record and of the adjusted issue. The said copy interlocutor and prints were refused by the Keeper of the Rolls upon the authority of the note already referred to. Thereafter the rolls of Court containing the list of causes for trial at the sittings was issued and the case was not included in the list.

The pursuer presented a note to the Lord President, praying him "to move the Court to grant authority to the Keeper of the Rolls to receive the said copy interlocutor and print, and thereafter to include the present cause in the list of causes for trial at the forthcoming sittings, . . . and to publish the name of the same in the appropriate rolls of Court, or otherwise to postpone the hearing in the present cause from the forthcoming sittings for jury trials till a date to be afterwards fixed, and to remit the cause to the Lord Ordinary with power to fix of new a diet for the trial of the cause."

On 8th March counsel for the pursuer, in Single Bills, moved the Court to grant the first branch of the prayer, and argued—On a sound construction of section 3 of the Act of Sederunt November 19, 1910, "forthwith" appearing in the first part of the section did not fall to be read into the latter part thereof. So far as regarded the Act of Sederunt, the papers were therefore lodged timeously, and the note in the rolls of Court could not add a condition to their reception which was not in the Act.

The Court, without giving opinions, pronounced this interlocutor:—

"The Lords . . . discharge the order for the trial of the cause at the sittings

in the ensuing vacation, and remit to the Lord Ordinary to proceed as accords."

Counsel for the Pursuer—A. M. Mackay.
Agents—St Clair Swanson & Manson, W.S.

Wednesday, March 12.

FIRST DIVISION.

BARKWORTH v. BARKWORTH.

Jurisdiction—Husband and Wife—Expenses—Parent and Child—Petition by Wife for Access to Children.

A wife from whom the Lord Ordinary had granted her husband decree of divorce on the ground of desertion presented a petition to the Court for access to her children, who were in minority. Before the petition was heard the Court had, on a reclaiming note by the wife, recalled the decree of divorce, holding that there was no jurisdiction. Thereafter the petition for access was heard.

Held (1) that it followed from the former decision that neither had the Court jurisdiction to regulate family arrangements about the children; and (2) that the wife was entitled to her expenses because she was entitled to bring the petition at the time she did.

On 26th September 1912 Mrs Fanny Susannah Copeland or Barkworth, *petitioner*, presented a petition for access to the children of the marriage (who were all in minority) between her and John Edward Barkworth, *respondent*, for whom answers were lodged.

The petitioner and respondent were married on 15th February 1894. On 25th October 1911 the respondent raised an action of divorce against the petitioner on the ground of desertion, and on 9th July 1912 the Lord Ordinary (DEWAR) granted decree. On 15th August 1912 the petitioner presented a reclaiming note, and on 4th February 1913 the Court recalled the interlocutor on the ground of no jurisdiction.

Thereafter this petition was heard on 18th February when various authorities were cited for the petitioner and respondent on the question of access, but no authorities were cited on the question of jurisdiction.

At advising—

LORD PRESIDENT—This is a petition at the instance of a married lady, and the prayer of the petition is that the Court should give certain orders as to allowing her access to her children.

When the petition was brought affairs were in this position—An action for divorce for desertion had been brought by the husband against the wife, and on 5th July 1912 the Lord Ordinary, who had previously repelled a plea of no jurisdiction which had been tabled by the defender, pro-

nounced decree of divorce. This petition was boxed upon the 26th September 1912. A reclaiming note was taken against the decree of divorce, and when that reclaiming note came up here in the month of February the interlocutor of the Lord Ordinary was recalled upon the ground that there was no jurisdiction in the matter, the Division holding that the domicile of the husband was not Scotch but was English.

That fact seems to me to alter entirely the position of affairs when this petition was presented, because we have this petition now at the instance of a lady who has successfully pled in the action of divorce that the marriage is not liable to be dissolved by the Scots Court because of want of jurisdiction over the spouses. I think that that fact necessitates as a corollary the domicile of this petition, for I think it is impossible that we should have no jurisdiction to settle the question of the marriage and at the same time have a jurisdiction to deal with the family arrangements about the children.

The parties to this petition are at this present moment married people. If the wife does not choose to live with the husband that is her own matter, but I am quite clear that if she wants any redress upon the question of the children she must apply for it in the Court where the domicile of the spouses is, namely, the Court of England. The only fact in regard to the husband is that he has got a house and lives in Scotland. The children themselves are in England for a large part of the year because the boys are at school there. I need scarcely say that if there was any order of the English Court upon the matter we should give the assistance of this Court to see that it was carried out in Scotland, but as matters stand I think the petition falls to be dismissed.

I think the petitioner here is entitled to her expenses. I do not go upon any question of the conduct of the parties, because that would be deciding upon a fact as to which I know nothing, but I think that in the position in which the wife was, namely, a wife divorced for desertion and the husband not seeing eye to eye with her as to what access should be given to her children, she was entitled to bring the petition at the time she did.

LORD JOHNSTON—I agree with your Lordship.

LORD MACKENZIE—I also agree.

LORD KINNEAR was absent.

The Court dismissed the petition and found the petitioner entitled to expenses.

Counsel for the Petitioner—Horne, K.C.—MacRobert. Agents—Bell, Bannerman, & Finlay, W.S.

Counsel for the Respondent—Wilson, K.C.—Lord Kinross. Agents—Gillespie & Paterson, W.S.