

Friday, April 25.

(Before Lords Herschell, Watson, and Morris.)

BEGG v. BEGG.

(*Ante*, February 25, 1887, vol. xxiv. p. 367; 14 R. 497.)

(*Ante*, February 27, 1889, vol. xxvi. pp. 81 and 402; 16 R. 550.)

*Husband and Wife—Divorce—Adultery—Evidence—Subornation of Perjury—Wife's Costs Refused.*

Mrs Begg appealed against two decisions of the Second Division impugning (1) a judgment of divorce on the ground of her adultery as being contrary to evidence; and (2) a judgment in her action for reduction of the decree of divorce as having been obtained by subornation of perjury.

Counsel for the respondent were not called upon.

The House affirmed the decisions of the Second Division and dismissed both appeals.

The appellant applied for costs in the divorce appeal. Application refused, following the rule stated by the Lord Justice-Clerk (Moncreiff) in *Kirk v. Kirk*, 13 S.L.R. 65; 3 R. 129.

Counsel for the Appellant—Sir Charles Russell, Q.C.—R. Johnstone—G. W. Burnet. Agents—Fardells, Dashwood, & Canning, for Robert Stewart, S.S.C.

Counsel for the Respondent—D. F. Balfour, Q.C.—Finlay, Q.C. Agents—William Robertson & Company, for Stuart & Stuart, W.S.

Thursday, August 7.

(Before the Lord Chancellor Halsbury, and Lords Watson, Herschell, Macnaghten, and Morris.)

BLAIR v. THE NORTH BRITISH AND MERCANTILE INSURANCE COMPANY AND ANOTHER.

(*Ante*, July 10, 1889, vol. xxvi. pp. 213 and 659; 16 R. 947.)

*Bankruptcy—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), secs. 9, 15, and 22—Sequestration—Oath of Verity—Terms of Oath.*

In a process of sequestration the debt of the petitioning creditors was constituted by two Sheriff Court decrees to which they had obtained an assignation. The oath set out in general terms that the debt in question was due, and the decrees and assignation were produced to the Justice of Peace. *Held* (*aff.* judgment of the First Division) that a petition by the bankrupt for the recall of the sequestration on the ground that the oath did not set forth in terms that the sum in the decrees

had not been paid either to the assignees or to the cedent, fell to be refused.

Their Lordships were unanimously of opinion that measures should be taken to prevent cases for which there was no foundation being brought *in forma pauperis* on appeal to the House of Lords.

This case is reported *ante*, July 10th 1889, vol. xxvi. pp. 213 and 659; 16 R. 947.

The pursuer appealed to the House of Lords.

Counsel for the respondents were not called upon.

At delivering judgment—

LORD CHANCELLOR—My Lords, I confess that I am certainly struck with the scandal which such a case as this may be considered to throw upon the administration of justice. Here is a case which was positively unarguable in the first Court, it has then gone to the Court of Session, and having by the united authority of the whole of that Court been declared to be unarguable, it now comes before your Lordships in such a way as to show that whatever may be the ingenuity and ability of the learned counsel who have argued it on behalf of the appellant, there is really no arguable point in the whole of this litigation. In an effort to get out of that which was the real subject of the appeal the learned counsel have, not unnaturally, desired to raise some other points than those actually contained in the appeal, which suggests the remark that with their ability and learning they must have known that no part of this case is really arguable. Under those circumstances the respondents here have had to meet a case which now in the final Court of Appeal has come before your Lordships *in forma pauperis*.

My Lords, I cannot forbear saying that the frequency with which these causes *in forma pauperis* are presented at your Lordships' bar, when there is really no substantial point to be argued, renders it certainly a fit matter for consideration, whether some new rule on that subject ought not to be made by statute. I doubt very much whether your Lordships have the power to interpose any further barrier than that which already exists upon the flow of *forma pauperis* cases to this tribunal.

My Lords, every point which has been raised has been sufficiently met in the course of the argument by the interlocutory observations of your Lordships, and I certainly do not myself propose to pay this case the compliment of attempting to restate in other words what has been abundantly and clearly laid down by all the learned Judges in the Courts below.

I therefore move that the appeal be dismissed.

LORD WATSON—My Lords, I can only express my concurrence in the proposed judgment, which I hope will put an end to this miserable litigation. I need not say that I deplore with your Lordship that state of matters which permits a case of

such a wretched description to reach the bar of your Lordships' House.

LORD HERSCHELL—My Lords, I am of the same opinion. I desire to express my concurrence in the observations which my noble and learned friend on the woolsack has made as to the necessity of some course being taken which will put a stop to cases being brought *in forma pauperis* on appeal to your Lordships' House (thereby putting the other party necessarily to expense) for which there is not the slightest shadow of foundation. It appears to me that where the person appealing seeks for power to sue *in forma pauperis*, which he can only do by permission, and which confers upon him a very considerable right in respect of his freedom from obligation to pay the costs of the other party even if he is unsuccessful, it would be no interference with any reasonable right of appeal to require as a condition that he should show, in the first instance, some reasonable foundation for the appeal which he seeks to prosecute in that form.

LORD MACNAGHTEN—My Lords, I quite agree in all the observations which have been made by the noble and learned Lords who have preceded me.

LORD MORRIS concurred.

Their Lordships affirmed the judgment of the First Division and dismissed the appeal.

Counsel for the Appellants—Robertson—Bannerman.

Counsel for the Respondents—Lord Advocate, Q.C. — Maconochie. Agents—Grahames, Currey, & Spens, for J. & F. Anderson, W.S.

---

Thursday, August 7.

(Before Lord Herschell and Lords Watson, Macnaghten, and Morris.)

LAIDLAY AND OTHERS (LAIDLAY'S TRUSTEES) *v.* THE LORD ADVOCATE.

(*Ante*, July 12, 1889, 26 S.L.R. 738; and 16 R. 959.)

*Revenue—Inventory Duty—Partnership—Share in Trading Company—Whether Indian or British Company—Death of Partner—Transfer of Shares.*

A partnership of fourteen persons in Great Britain and two in India carried on a business "for the production . . . of indigo and silk and other produce, and for the sale in Calcutta, or shipment for realisation in Europe, of such produce."

The partnership deed provided that the business in India should be conducted by managing agents in Calcutta who could not be dismissed so long as

they held certain shares in the partnership, and who alone had power to use the name of the firm; and further, that all the partnership books were to be kept in Calcutta. The annual balance-sheets were prepared and the profits appropriated to the partners by the managing agents, who annually sent to London certified reports and abstracts of accounts showing the business and profits, and the interest of each partner therein, and generally executed all acts in connection with the practical working of the business.

A financial firm in London were constituted agents for the partnership in Europe, and it was agreed that on the security of a mortgage over the assets they should make the necessary advances for carrying on the business, and that the produce of the business, or, if realised in India, the proceeds thereof, should be remitted to them. The profits were paid to the partners through the London agents, who were irrevocably appointed arbiters to determine any dispute between partners or their representatives.

The property of the partnership was vested in three trustees resident in this country in terms of the partnership deed.

Six of the parties resident in this country were constituted a committee to advise with the agents in London and Calcutta, and to decide, subject to the approval of a general meeting of the partners, on all matters affecting the partnership.

The deed also provided that on the death of a partner the partnership should not be dissolved, nor should his representatives become a partner, but the interest of such . . . partner . . . shall cease on the 30th September next after his decease, . . . and his share . . . shall be dealt with in manner following . . . if his representatives shall desire to sell such share to any of the partners or to any other person, to be approved by the committee, the same may be sold for such price as may be agreed on." If not sold within six months the fair value of the share was to be determined by the London agents, and upon the representatives executing a transfer or assignment of the entire share, the trustees of the partnership were to pay to the representatives the sum so ascertained.

A partner of the firm, domiciled in Scotland, died, and his executors sold his shares to his three sons. The executors failed to include the value of these shares in the inventory of personal estate belonging to the deceased in this country, and they were sued by the Inland Revenue for additional inventory duty. *Held* (*rev.* the judgment of the First Division) that the asset of the deceased's estate for which inventory duty was sought was not of the nature of a claim for a sum of money, but was a share of a business and assets