

has been brought here, but as it has been brought here, I think your Lordships can do nothing with it but dismiss it also, with costs.

Agents for Watt—William Officer, S.S.C., and William M. Hacon, London.

Agents for Sheriff Thomson—Millar, Allardice, & Robson, W.S., and Simson & Wakeford, Westminster.

Agents for Sheriff-Clerks—Tods, Murray, & Jamieson, W.S., and Burchells, Westminster.

COURT OF SESSION.

Thursday, June 9.

SECOND DIVISION.

RULE v. BAXTER.

Poors-Roll—Remit. Circumstances in which held that application for remit to poors-roll ought to be refused.

The litigation in this case began in 1861 by an action at the instance of Baxter against Rule in the Sheriff-Court of Lanark, for payment of the sum of £175, 3s. 3d., decreed for in a reference between the parties as to the sale and purchase of certain quantities of wood. The Sheriff decided against Rule in 1863. During that year Rule advocated, but failed to proceed, whereupon, on 2d June 1863, Baxter obtained decree of protestation. Thereafter, on 15th May 1865, Rule raised an action of reduction of the adverse award in the reference, and of the judgments in the Sheriff-Court. In this action, after a proof had been led on commission, the Lord Ordinary pronounced judgment, giving effect to certain of the reductive conclusions. No interlocutor was subsequently pronounced except one of wakening on 20th November 1868. In July 1869 a remit was made to the reporters on *probabilis causa*, but no steps therein taken till March 1870, when, on the case coming before the reporters, it was found to be asleep under the remit, and accordingly dismissed. A new certificate having been obtained, the motion for a remit was now renewed, whereupon

BRAND, for Baxter, opposed the remit, on the ground (1) that in the circumstances the applicant ought not to be indulged in further litigation; (2) that the certificate was disconform to the A. S.; and (3) that as the applicant was in receipt of 13s. per week, he was not entitled to the benefit of the poors-roll. The following authorities were referred to on the last point; *Duncan v. Morrison*, Jan. 16, 1863; *Inglis v. M'Phun*, Feb. 10, 1863; *Williamson v. Irvine*, Nov. 21, 1863; and *Sutherland*, Jan. 28, 1864.

SPEIRS in answer.

The Court held that in the whole circumstances they must refuse the application.

Agent for Pursuer—J. Barclay, S.S.C.

Agent for Defender—R. Denholm, S.S.C.

Saturday, June 11.

FIRST DIVISION.

BRODIE v. BRODIE.

Husband and Wife—Divorce—Process—Adultery—Recrimination—Sisting. In an action at the instance of the husband decree of divorce on

the ground of adultery was pronounced; and against this, judgment the wife reclaimed. Previous to the decree by the Lord Ordinary being pronounced she brought an action on the same ground against her husband; but the Lord Ordinary sisted the process in it *hoc statu* because of the reclaiming note against his interlocutor in the first action, but gave leave to the wife to reclaim against this latter interlocutor. *Held*, the proper course was to have sisted the process furthest advanced, so as to let both actions be considered at the same time.

Observed, it is settled law that recrimination is no bar to divorce; and (*dub.* Lord Ardmillan) decree of divorce might be pronounced against both parties.

On 22d October 1869 the pursuer raised an action of divorce against his wife on the ground of adultery; and on 13th January 1870 she raised an action of divorce against him on the ground of acts of adultery, which she said were committed anterior to those that he alleged she had committed. On 5th February the Lord Ordinary (ORMIDALE) pronounced decree of divorce in the action at the husband's instance. The wife reclaimed, and the note was boxed to the Court on the 26th February. The record in the action at the wife's instance was closed on the 19th February; and when the wife asked a proof of her averments, the husband replied the action was incompetent in respect of the dissolution of the marriage by the decree of the 5th February. On 25th May the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, in respect of the dependence of a reclaiming note against the Lord Ordinary's judgment of divorce in the action at the instance of the defender against the pursuer, sists the present process *hoc statu*; and, on the motion of the pursuer, grants leave to her to reclaim against this interlocutor.

"*Note.*—The Lord Ordinary was moved by the pursuer to allow her a proof in the present case, and to proceed as if the marriage in question had not been already dissolved. The Lord Ordinary did not think that this would be a correct course; but he has, in the meantime, sisted the present process, and the pursuer may again move in it in the event of the judgment in the other case being recalled. The Lord Ordinary has also granted leave to the pursuer to reclaim against the present interlocutor, in order that she may, if so advised, have both cases before the Inner-House at the same time."

Mrs Brodie reclaimed.

SCOTT for her.

FRASER in answer.

At advising—

LORD PRESIDENT—Sisting is a question for the discretion of the Court. Recrimination is not a good defence for a wife to plead in an action against her. That was first expressly decided by the case of *Lockhart* in 1799. But that case also decided that she may raise a counter action. I cannot therefore consent to put the wife out of Court as the Lord Ordinary has done. What I think he should have done was to sist the action that was in advance of the other. And as we have the power, I think we should sist the process in the husband's action, so as to have both suits ripe for decision at the same time, and then we shall have it in our power to grant decrees against

both parties. It is important that we should follow this course; for the decision may affect status as well as patrimonial interests.

LORD DEAS was of the same opinion. It had been quite settled for more than half a century that by the law of Scotland recrimination could not be pleaded in answer to an action of divorce for adultery, whatever the law might be in England. And it had been equally settled, though not for so long a time, that in mutual actions decree might go out against both.

LORD ARDMILLAN thought the course proposed right, but he reserved his opinion on the point whether both parties could get decree. Divorce was the remedy of an innocent party, and this view was sanctioned by some of the highest consistorial authorities in England.

LORD KINLOCH agreed with his Lordship in the chair as to the proper course to be followed. He would not express a contingent opinion on the result. If he did, it would be probably not the same with that last indicated. But it was at present unnecessary to say anything on the point.

Agent for Mr Brodie—Lindsay Mackersy, W.S.
Agent for Mrs Brodie—James Barton, S.S.C.

Friday, June 11.

SECOND DIVISION.

SPECIAL CASE — THE NEW DUMBARTON STEAMBOAT CO. AND THE TRUSTEES OF THE CLYDE NAVIGATION.

Shipping Dues Exemption Act 1867—Clyde Navigation Consolidation Act—Private Trading Company—Resident Burgesses of Dumbarton—Clyde and Harbour of Glasgow Rates. Held (1) that the exemption in favour of resident burgesses of Dumbarton from payment of rates leviable in the Clyde and at the Harbour of Glasgow was a personal privilege; (2) that a private trading company, although composed entirely of resident Burgesses of Dumbarton, was not a person or body corporate in the sense of the Shipping Dues Exemption Act; (3) that the compensation provided under that Act was claimable only by the individual partners of the private company, and to the extent of the average amount of profit drawn by them severally from the exemption during the statutory period; and (4) that the compensation when fixed continues to be payable until one or other of the events occurs by which its endurance is determined.

This is a Special Case for the opinion and judgment of the Court, adjusted between the New Dumbarton Steamboat Company and the individual partners thereof, and the Clyde Trustees. The following are the mutual statements in the case:—
“1. The said trustees are the trustees appointed and constituted under and by virtue of ‘The Clyde Navigation Consolidation Act 1858,’ for carrying into effect the provisions of the said Act. 2. By section 97 thereof it is made lawful for the said Trustees ‘to levy on and in respect of all vessels entering or using the River (Clyde) or Harbour (of Glasgow), the rates specified in the Schedule (G) to this Act annexed: and all such rates shall be paid by the owner, agent, master, consignee or other person in charge of such vessels.’ 3. Prior to the passing of the said Act the resident bur-

gesses of Dumbarton were entitled to exemption from certain rates leviable in the River Clyde and at the Harbour of Glasgow. 4. These exemptions were saved as provided in the said Act by section 108, whereof it is enacted that ‘whereas certain exemptions from payment of rates leviable on the River Clyde and at the Harbour of Glasgow and at the Harbour of Dumbarton are conferred on the resident burgesses of Dumbarton and Glasgow respectively by the 44th, 45th, 46th, 47th, and 48th sections of the fourth recited Act (*i.e.* 6 Geo. IV., c. 117, 1825), the 62d section of the fifth recited Act (*i.e.* 3 and 4 Vict., c. 118, 1840), and the 15th, 16th, and 17th sections of the sixth recited Act (*i.e.* 9 Vict., c. 23, 1846), which are saved by this Act to the effect mentioned in this section; and whereas it is expedient that the said exemptions should be continued during the lives, and should on the terms hereinafter mentioned be extinguished upon the deaths of the existing burgesses: Be it enacted that the said exemptions shall extend to the several rates imposed by this Act, so far as contained in the schedules (G) and (H) hereunto annexed (except the rates for the use of docks) as fully as if the said sections were contained in this Act and applied to the said several rates: but such exemptions shall apply only to the persons who were burgesses of Dumbarton and Glasgow respectively on the 10th day of June 1858, and at such times as such burgesses respectively are actually resident in the said towns respectively: and all such exemptions and all immunities conferred on or claimed by such burgesses under the above recited sections of the recited Acts, or the contract therein mentioned, shall be suspended so long as such burgesses respectively shall not reside within the said towns respectively, and shall wholly cease and determine upon the deaths of the said burgesses respectively.’”

The Special Case then recites the history of a copartnership entered into in December 1863 by burgesses of Dumbarton who held that character on 10th June 1858, for the purpose of owning and employing steam vessels between Dumbarton and Glasgow, and sets forth that the interest in that Company is now held by John Macmillan, William Whyte, and William Paterson, who are the sole partners. The Special Case then contains the following statements:—“The said Company commenced business a short time after its formation. The said Company acquired three steam vessels (the ‘Leven,’ the ‘Lennox,’ and the ‘Lochfyne’), which were registered in name of certain of the partners as trustees for behoof of the Company, and not in a certain number of 64th parts or shares as individual owners. These vessels respectively began to ply between Glasgow and Dumbarton on the following dates, viz:—‘Leven’ (passenger steamer), 31st May 1864; ‘Lennox’ (passenger steamer), 15th June 1864; ‘Lochfyne’ (luggage steamer), 21st January 1864. The Leven and Lennox ceased to ply between the said places on the following dates, viz:—‘Leven,’ 10th November 1866; ‘Lennox’ 27th December 1866. These vessels were sold by the said Company, the bills of sale thereof having been executed on the 27th December 1866, and registered on 2d January 1867. The dues leviable by the Trustees of the Clyde Navigation, under the said schedule (G), annexed to the Clyde Navigation Consolidation Act 1858, in respect of the Leven and Lennox, were not exacted for the periods prior to the following dates in virtue of the exemption contained in the be-