

pregnancy. If that were alleged to be an impossibility it would require to be proved. The other evidence in the case really takes away all ground of dispute. The conduct of the defender herself when her confinement was imminent, as proved by the above-mentioned witness, it is impossible to reconcile with the idea that the husband was aware of the pregnancy. This witness says defender asked her to come up, "I asked her, why are you so dull?" She shook her head and said, "I will be put to the door." . . . I also said to her, "how in the name of peace did you manage that, when your husband was here on the Saturday and stayed till the Sunday night?" She said, "he is not a jealous man, and he never suspected anything of the kind." I said that was very singular to me; and she said it was the truth." It is clear that the defender was aware that her husband never suspected anything wrong. Then observe this witness' account of what took place after the confinement. "On the Saturday one of the daughters went over to Leith, and her father came across with her on the Sunday night. I was in the house shortly after he came. One of the children came up for me, and when I went down I found the defender in a kind of nervous state about her husband having come. She said to me, 'Oh! if I was only out of this.' . . . The pursuer was then in the room looking in a very distressed way. . . . I was once in the house on the Monday. The pursuer was then packing up his chest, and he was a very distressed man. He said to me 'you have seen my chest packed up often; but never in such a case as this.'" Now if all this is true, the whole conduct of both parties is utterly inconsistent with the notion that the husband knew of his wife's condition. The woman herself confesses that he did not. If the husband had such knowledge, he must have been an accomplished actor to have acted as he did before the witness. Therefore one is led to think that the defender's own account is the truth, viz.: that the pursuer was not a jealous or observant man, and that he was not aware of his wife's condition. I must say that I am satisfied, not only that condonation is not proved, but that it is proved by reliable evidence that there was nothing of the kind.

LORD DEAS—There is no doubt that the defender committed adultery. The whole case turns on condonation. I presume that if a man cohabits with his wife after he knows of the adultery there is no doubt but that is condonation; and that in this case, if the man cohabited after he knew the wife was in a state of pregnancy, there is just as little room for doubt here. There is no doubt of the fact that the pursuer did cohabit after the pregnancy, and within two or three days of the birth of the child. The only thing on which there can be a doubt is, whether he was aware that she was in a state of pregnancy. I do not remember ever seeing so narrow a case on evidence as we have here. I do not think much stress is to be laid on the personal appearance of the woman. One witness who was intimate in the house, says she never observed it and had no suspicion of it. Several other witnesses say they did observe it and had no doubt about it. But still it is not by any means so very remarkable a thing that an individual, even the husband himself, should not observe it, merely from the wife's appearance. The fact that the witness above mentioned did not notice it

would probably be enough on that point. The difficulty arises from his sleeping with his wife from November till within two or three days of the birth on the 8th March. He does that and yet says he was ignorant that she was pregnant. The natural and reasonable presumption is that he was not and could not be ignorant. If that stood alone, I do not know that more proof would be necessary. I think there would be reasonable evidence that he knew. The main thing on the other side consists in the statements which the wife made just before the birth of the child; and certainly she says that she believed the pursuer had no suspicion. That does not come to much; for in most cases the wife is a very favourable witness for her husband, and that has been observed even where the husband has attempted to murder her. Besides, at the time she made these statements she does not appear to have given up the idea that he would forgive her. Coupling these two circumstances, that makes it not so satisfactory as if it had been proved by other evidence. But I agree with your Lordship that any evidence we have in addition goes in the same direction, because I quite agree that the behaviour of the man goes to confirm the notion that he did not know. But taking all that, the case is very narrow. If this had occurred in a higher rank of life, it would not have been very easy to take the man's story off his hand without something more. I would have required evidence of men of skill and experience, as to whether it was possible for such a thing to happen as is here averred. We have had occasion to know from our judicial reading that such a thing is possible. The only difficulty is that it is a very rare and peculiar case; and it occurs where there is no change in the appearance of the woman externally, and where the woman does not know herself. If we knew that this was one of those cases that would have been satisfactory. Taking all the circumstances into account, without making this a rule for other cases I am not prepared to dissent from the decision your Lordship has arrived at.

LORD ARDMILLAN and **LORD KINLOCH** concurred with the **LORD PRESIDENT**.

CRICHTON for the defender moved for expenses.

The Court refused to allow anything more than the agents' outlay.

Agents for Reclaimer and Defender—**D. Crawford & J. Y. Guthrie, S.S.C.**

Agent for Respondent and Pursuer—**James S. Mack, S.S.C.**

Friday, December 23.

SCOTT, PETITIONER.

Pupil—Allowance to Father for Maintenance. Circumstances under which a further allowance to a father out of the estate of his pupil son, for the son's maintenance and education, was refused.

It having been one of the conditions of the disentail of the estate of Malleny, of which Major Scott of the 42d Highlanders, the present petitioner, became fee simple proprietor, that a provision of £18,000 should be secured upon the estate for his eldest son, Carteret Cunninghame Scott, then a pupil, a factor *loco tutoris* was in 1866 appointed by the Court to manage the said fund

belonging to the pupil. In the same year Major Scott applied to the Court for an allowance out of the interest of the pupil's estate, for his maintenance, support, and upbringing. The Court allowed him a sum of £250 per annum. Of this date (11th November 1870), Major Scott applied to the Court to enlarge the foresaid provision to £400 per annum, his son the pupil being now nine years of age. It was stated that in consequence of the arrangements connected with the disentail of the estate of Malleny, and the different interests which had to be provided for, Major Scott received little or no present advantage from the possession of the estate.

The petition came up on the report of Lord Mackenzie.

At advising—

LORD PRESIDENT—I do not think that Major Scott has made out any case for the present application. A boy living in family with his father, who is quartered with his regiment at a station in this country, certainly cannot cost the father anything like the amount which he already has as an allowance for him. It is not said that there is any present purpose of sending the boy to a public school, nor is it even said that the time when he should be so sent has yet arrived. When that time does come, the Court will be quite ready to re-consider this application, but they will then require to have precise and distinct information as to the expenses which are proposed to be incurred on the boy's behalf, both at school and during those times of vacation when he may be residing at home.

The other Judges concurred.

Application refused.

Agent for Petitioner—H. W. Cornillon, S.S.C.

Friday, December 23.

BLACKS v. MURRAY AND SON.

Copyright—Second Edition—Notes—Quotations—Extent of Alteration. The defenders, who were a publishing firm, issued a book which professed to be a reprint of the original edition of a work, the copyright of which original edition had expired. There was, however, a later edition of this work, with notes, alterations, and additions, still within the protection of copyright, and the copyright in which was the property of the pursuers. From this last edition the defenders borrowed certain notes, a few of which were original, and the rest consisted of quotations from various works, which were used by way of explanation and illustration. They also took from certain other works, exactly in the same position with the work last mentioned, (1) notes consisting of quotations, and (2) passages abridged from the text as altered in the copyright editions. Held (1) as regarded all the notes borrowed the defenders had infringed the pursuers' copyright; (2) (*diss.* Lord Kinloch) with respect to two of the passages quoted from the text there was no infringement, as what was taken did not exceed the limits of legitimate quotation; (3) (*diss.* Lord Deas) that as regarded the last passage complained of, there was also no infringement, the alteration in the copyright edition being too insignificant.

This was an action at the instance of Messrs Adam & Charles Black, publishers, Edinburgh, against Messrs Alexander Murray & Son, publishers, London, for alleged infringement of the copyright possessed by the former firm in certain works of Sir Walter Scott. The summons concluded for the sum of £2000 sterling in name of damages, and as reparation for the loss and injury sustained by the pursuers through the defenders' wrongous invasion of the pursuers' copyrights of the edition of the "Minstrelsy of the Scottish Border," in four volumes, forming a portion of the poetical works of Sir Walter Scott in twelve volumes, edited by J. G. Lockhart, with Sir Walter Scott's "Introductory remarks, notes, and music to various ballads;" of the edition of the poem "On the Massacre of Glencoe," forming a portion of the said poetical works in twelve volumes; of the following portions of the second edition, with the author's introductions, alterations and notes, of the Waverley Novels in forty-eight volumes, viz., selections from "Old Mortality" and the "Antiquary." The summons farther concluded for delivery of all the copies of the book published by the defenders entitled the "Minstrelsy of the Scottish Border" which might remain unsold, or at least of the portions of said book which were complained of; and also for interdict against the continued publishing of the said book.

The peculiarity in the case was that the original text of all the works, the copyright of which the defenders were accused of infringing, was out of copyright, and the pursuers only claim for copyright in second or subsequent editions of said works. There was no dispute as to the editions claimed being copyright, and no question of title. The piracy complained of was of the following nature:—*First*, the defenders were accused of having copied the advertisement, or parts thereof, prepared by Mr Lockhart, and printed at the beginning of the copyright edition of the "Minstrelsy of the Scottish Border," and of having printed the same, or parts thereof, as a preface to their volume. It was farther averred that they had taken from the said copyright edition of the "Minstrelsy" forty notes, eight of which consisted of original matter, and thirty-two of quotations. These forty notes were a portion of two hundred notes, of which fifteen were original matter, which had been introduced for the first time by Mr Lockhart in the copyright edition of the "Minstrelsy."

Second, it was averred that the defenders had copied from the copyright edition of "Old Mortality" a note by Mr Lockhart, consisting of a quotation from the Bannatyne Club Papers, with an introduction by Mr Lockhart, and also from the text of the said novel the description of the battle of Drumclog, and a similar description of the battle of Bothwell Bridge.

Third, it was further stated that an account of the Massacre of Glencoe, originally published in the Encyclopædia Britannica, and used by Mr Lockhart as an illustration in the eighth volume of Sir Walter Scott's poetical works, had been copied by the defenders, and printed by them for the same purpose.

Lastly, the poem entitled "Glenallan's Earl," which is part of the text of the novel "The Antiquary," was alleged to have been copied by the defenders from the copyright edition of that novel. In the cases of the notes, which consisted of quo-