

with the husband. Apart, however, from that, the circumstances are not such as to warrant a separation, and we know of no authority for a wife so deserting her husband applying to the Court for its authority to regulate her access to a child of the marriage. It will, I think, be in accordance with your Lordships' desire that I do not enter more into detail, and simply say that the petition is not legally maintainable, and should be refused. The affectionate terms of the husband's letters preclude the idea that he will in any spirit of vindictiveness deny or unduly limit the access of the mother to her child. The child may naturally be a bond of love to draw the spouses together.

We think the petition ought to be refused.

LORD CRAIGHILL and LORD LEE concurred.

LORD JUSTICE-CLERK was absent.

Counsel for Petitioner—J. P. B. Robertson.  
Agents—Mackenzie & Black, W.S.

Counsel for Respondent—Asher—Mackintosh.  
Agents—Adam & Sang, W.S.

Saturday, March 5.

## FIRST DIVISION.

[Lord Adam, Ordinary.]

EARL OF SOUTHESK AND OTHERS *v.* THE  
INCH BLEACHING COMPANY AND  
OTHERS.

*Process—Issue—River—Nuisance.*

In an action of declarator and interdict brought by riparian proprietors against the occupants of paper-mills and other works and the police commissioners of a burgh, to prevent them from polluting a river to the nuisance of the pursuers, the Lord Ordinary adjusted an issue, whether the defenders polluted the river "to the nuisance of the pursuers or their authors, or one or more and which of them?" The Court (*diss.* Lord Shand) held that the words "and which" should be deleted from the issue.

The Earl of Southesk and other riparian proprietors on the river South Esk raised an action of declarator and interdict against the Inch Bleaching Company, Messrs Guthrie, Gray, Peter, & Company, paper manufacturers, The East Mill Company, spinners and bleachers, Messrs Guthrie, Martin, & Company, distillers, and the Commissioners of Police of the Burgh of Brechin, to have them prevented from polluting the said river.

The Lord Ordinary (ADAM) adjusted this issue for the trial of the case—"Whether between the 11th day of June 1877 and the 11th day of June 1880 the Commissioners of Police of the burgh of Brechin did, by discharging sewage or other impure matters, or permitting sewage or other impure matters to be discharged, from the sewers or drains under their charge, at or near the burgh of Brechin, into the Skinners Burn, the Den Burn, and the Glencaldham Burn, or one or more of them, before their confluence with the river South Esk, and into the said river South Esk itself, pollute the water of the said river South

Esk, to the nuisance of the pursuer or their authors, or one or more and which of them?"

The pursuer moved the Court to vary the issue by deleting therefrom the words "and which." They contended that the words were unnecessary, and contrary to the usual form of issue in such cases—*Duke of Buccleuch, &c. v. Cowan, &c.*, 23d Feb. 1866, 4 Macph. 475, and 21st Dec. 1866, 5 Macph. 214.

At advising—

LORD PRESIDENT—I think the issue should be "to the injury of the pursuers or their authors, or one or other of them."

LORD SHAND differed.

LORD DEAS concurred with the Lord President.

LORD MURE—My opinion has been distinct from the very first that the insertion of the words "and which" is a departure from the style of issue on which cases of this sort have been satisfactorily tried, and that the Lord Ordinary ought not to have put these words in the issue. I think they are more likely to confuse than to assist the jury, and that the issue without these words is well fitted to try the question. If the words are required here they might as well be required in every indictment where more than one person is brought up for trial in a criminal Court.

The Court remitted to the Lord Ordinary to adjust the issue in terms of the above opinion of the Court.

Counsel for Pursuer—D. F. Kinnear, Q.C.—H. Johnston. Agents—Mackenzie & Kermack, W.S.

Counsel for Defenders—J. P. B. Robertson—Jameson. Agents—Webster, Will, & Ritchie, S.S.C.

Tuesday, March 8.

## SECOND DIVISION.

[Lord Adam, Ordinary.]

TRAILL *v.* DEWAR.

*Agreement—Partnership—Obligation to Enter on New Partnership at Termination of Subsisting Contract—Reparation.*

Two persons who were carrying on business in partnership with a third, entered into an agreement that at the termination of the existing contract neither should enter into any new arrangement for carrying on the business without concurrence and consent of the other, and that unless otherwise agreed each should at that date retain an equal interest of not less than one-third in the business. Held, at the termination of the existing contract, (1) that this agreement could not be enforced against one of the parties who was unwilling to enter into a new contract, in respect that it supplied no data for determining the duration of a new contract; (2) following *M'Arthur v. Lawson*, July 19, 1877, 4 R. 1134, that in respect that the Court could not