

cial interest of her own which could support the onerousness of this stipulation in a question with creditors of her husband.

LORD ASHBOURNE—My Lords, I concur.

LORD MACNAGHTEN—My Lords, I also concur.

LORD SHAND—My Lords, I agree with the Lord Chancellor and with my noble and learned friend Lord Watson in holding that the clause in the second part of this deed which has been founded upon does not take off the effect of the earlier words with regard to the purpose for which this annuity was given. No doubt there are words which might be construed as having that effect if they were taken literally, but I think it would require much more distinct language and much more definite expression than we have here to operate so far as practically to wipe out and destroy the purpose as originally declared for which this money was given. Taking it, then, as a provision of £1000 a-year to be applied by her towards the expenses of her husband's household and establishment, I can only say, as has been said by all the learned Judges I think in the Court below, that that is really the administration of the estate for the husband's own benefit. It is no doubt true, as has been pressed upon your Lordships, that the wife would get some benefit from that administration, but primarily it is an administration for his benefit. It is a provision which he is making for himself to operate during his own life and to cease at his death; and being so, it is clear, according to the law of Scotland, that that is inoperative in a question with creditors where a deficiency of funds arises as in this case.

Therefore, my Lords, I concur with your Lordships in thinking that the decision of the Lord Ordinary and of the Inner House must be adhered to.

Interlocutor appealed from affirmed, and appeal dismissed with costs.

Counsel for the Appellant—Graham Murray, Q.C.—R. B. Haldane, Q.C. Agents—Loch & Company—Dundas & Wilson, C.S.

Counsel for the Respondent—Lord Advocate (Balfour, Q.C.)—Maconochie. Agents—Neish, Howell, & Macfarlane—Maconochie & Hare, W.S.

## COURT OF SESSION.

Friday, March 22.

OUTER HOUSE.

[Lord Kyllachy.

HALL v. HALL.

*Husband and Wife—Divorce—Domicile—Jurisdiction.*

An Englishman married a Scotswoman in February 1889. The marriage was cele-

brated in Scotland, and the parties lived together in Scotland for about eighteen months. The husband then deserted his wife, and left the country. In 1895 the wife brought an action for divorce on the ground of desertion. She maintained that there was a matrimonial domicile in Scotland sufficient to found jurisdiction. The action was undefended. Lord Kyllachy granted decree of divorce.

Thomas James Graham Hall, medical student, whose domicile was in England, married Mrs Christina Jeannette Kirsopp or Hall, a Scotswoman, at Portobello on 16th February 1889. The parties lived together in Edinburgh till August 1890, when Hall deserted his wife. Shortly afterwards he went to London and subsequently to America, where he had since remained. In 1895 the wife brought an action for divorce on the ground of desertion.

The action was undefended.

After hearing proof the Lord Ordinary (KYLACHY) continued the cause for argument on the question of jurisdiction.

The pursuer argued—It was not maintained that the defender had acquired a Scots domicile of succession. But there was here a matrimonial domicile sufficient to found jurisdiction. A matrimonial or consistorial domicile, even when the husband's domicile of succession was foreign, was recognised by the Scotch courts—*Jack v. Jack*, 24 D. 467. Opinions adverse to this doctrine were expressed in the House of Lords in *Pitt v. Pitt*, 4 Macph. 627, but the contrary was not decided. The doctrine had since been upheld by Lord President Inglis in *Wilson v. Wilson*, 10 Macph. 573; and *Stavert v. Stavert*, 9 R. 519; and by Lord Fraser, *Husb. and Wife*, ii. 1255, 1276.

The Lord Ordinary pronounced this interlocutor:—"Finds it established that the pursuer and defender are lawfully married persons, and that the defender has wilfully deserted the pursuer, her society and fellowship, and has continued in wilful desertion of the pursuer for a period of more than four years prior to the date of the summons: Therefore divorces and separates the defender from the pursuer, her society, fellowship, and company in all time coming, and finds, declares, and decerns in terms of the conclusions of the summons for divorce: Finds the pursuer entitled to the custody and keeping of Marguerite Cartwright Ferrers Graham Hall, the only child of the marriage between the pursuer and defender: Finds the pursuer entitled to expenses," &c.

Counsel for the Pursuer—W. K. Dickson. Agent—R. C. Gray, S.S.C.