

undertaken by the wife in her own interest, and not for the exclusive advantage of the person contracting with her, or of some third person. Whether it turns out in the result to be a beneficial transaction cannot be the test, otherwise the questions which have been decided would not have arisen, because it is only when the contract has proved to be disadvantageous that there is any interest to challenge its validity. I therefore agree with your Lordships that the Lord Ordinary's judgment must be sustained.

The LORD PRESIDENT was absent.

The Court adhered.

Counsel for the Pursuer—Salvesen—A. S. D. Thomson. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Defender—D. Dundas—W. Thompson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Saturday, July 13.

FIRST DIVISION.

ARTHUR v. LINDSAY AND OTHERS.

(*Ante*, vol. xxxii. p. 335.)

Expenses—Auditor's Report—Fee to Senior Counsel at Adjustment of Record—Principle of Taxation where Two-Thirds of Expenses as Taxed are Allowed—Expenses of Agent Employed Jointly by Three Defenders where only One Defender is Found Entitled to Expenses.

On objections to a report of the Auditor, held (1) that a fee to senior counsel at the adjustment of the record fell to be allowed; (2) that, where the Court allowed a party "two-thirds of the expenses as the same shall be taxed," the duty of the Auditor was first to tax the account, and then deduct one-third from the taxed amount; and (3) that, where three defenders were represented by the same agent, though by separate counsel, and one only was found entitled to expenses, the successful defender was only entitled to one-third of the agent's charges for work done by him on behalf of all the defenders jointly.

In this action which was an action of damages for slander at the instance of Dr Hugh Arthur, Airdrie, against Alexander Lindsay, William Jameson, and Robert Shanks, Airdrie, the jury awarded the pursuer damages against the defenders Lindsay and Shanks, but returned a verdict for the defender Jameson. The Court, on being subsequently moved to apply the verdict, pronounced the following interlocutor:—"On pursuer's motion apply the verdict, and in respect thereof decern against the defender Alexander Deuchar Lindsay to make payment to the pursuer of £250, being the damages assessed by the jury upon the first issue, and decern against the

defender Robert Shanks to make payment to the pursuer of £25, being the damages assessed by the jury on the first issue applicable to the said defender, and on the motion of the defender William Glasgow Jameson apply the verdict, and in respect thereof assoilzie him from the conclusions of the action, and find him entitled to expenses against the pursuer, and decern: Find the pursuer entitled to two-thirds of the expenses against the defenders Alexander Deuchar Lindsay and Robert Shanks, as the same shall be taxed: Remit the accounts of expenses now found due, when lodged, to the Auditor to tax and to report."

Upon the Auditor's report coming before the Court the pursuer took objection to it, in respect (1) that the Auditor had disallowed a fee paid to senior counsel for adjustment of the record.

Argued for the pursuer—This was an important stage of the case, and one where a senior counsel might be reasonably called in. Moreover, it was a case of great importance, involving as it did the professional character of the pursuer. There were precedents for allowing the fee—*Stoll v. M'William*, March 1, 1856, 18 D. 716; *Clay v. Home*, June 7, 1838, 16 S. 1125.

The Court sustained the objection.

The pursuer objected (2) that the Auditor had taxed the account on a wrong principle. By the interlocutor of the Court it had been found that the pursuer was entitled to two-thirds of the expenses against the defenders Lindsay and Shanks, as the same should be taxed. The Auditor had first disallowed the whole items upon which the pursuer had been unsuccessful, and had then struck one-third off the remainder, following the principles adopted in *M'Elroy v. Tharsis Copper Company*, June 28, 1879, 6 R. 1119. But this should not have been done in the present case, for the Court by striking one-third off the pursuer's expenses had intended roughly to deduct that amount for his non-success on certain of the issues. The Auditor, therefore, should have gone on the assumption that the pursuer was entitled to the whole expenses, and simply struck off one-third of that amount—*Strang v. Brown & Son*, July 19, 1882, 19 S.L.R. 890; *Rigley v. Downie*, July 16, 1872, 9 S.L.R. 627.

The Court repelled the objection, holding that the meaning of the interlocutor was, that the account should be taxed in the ordinary way, and thereafter one-third deducted.

(3) The defender Jameson objected that the Auditor had struck off two-thirds of certain of the items in his account. The three defenders had employed the same agent, but each of them had been represented by different counsel. Where the agent had discharged a duty which might be held applicable to all three defenders, the Auditor, following the case of *Robertson v. Stewart*, July 15, 1875, 2 R. 970, had allowed this defender only one-third of the agent's fees. But this case was distinguishable, for there was really only one case in *Robertson v. Stewart*, and the two

defenders gave joint instructions, and the successful defender was entitled to relief from the other; here there was no joint defence, and this defender was not entitled to relief. Accordingly, he was entitled to the whole of his agent's fees.

The Court repelled the objection, on the ground that the real test was the amount the defender would be out of pocket, and that he would only be liable to pay one-third of the charges in question, the other two defenders being respectively liable each for one-third.

The LORD PRESIDENT was absent.

Counsel for the Pursuer—Salvesen—Clyde. Agents—Drummond & Reid, W.S.

Counsel for the Defender—Lindsay—Younger. Agents—Menzies, Bruce Low, & Thomson, W.S.

Counsel for the Defender—Jameson—Glegg. Agents—Menzies, Bruce Low, & Thomson, W.S.

Tuesday, July 16.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

DOMBROWIZKY v. DOMBROWIZKY.

Husband and Wife—Divorce—Jurisdiction—Domicile.

Spouses who were Jews, born in Russia, left that country owing to the husband's inability to get employment, and came to Scotland, where the husband started business as a hawker. Ten years after they had taken up their residence in this country the wife raised an action of divorce for adultery against the husband, who pleaded "no jurisdiction."

Evidence upon which the Court (*aff. judgment* of Lord Kincairney) repelled this plea, *holding* that the husband had acquired a domicile in Scotland.

Opinion by Lord Kincairney, founded upon the authority of *Jack v. Jack*, 24 D. 467, that for purposes of divorce there may be a matrimonial domicile different from the absolute domicile which will rule succession.

Opinion by Lord Trayner *contra*.

Opinion reserved by Lord Young on this point.

In November 1894 Dina Dombrowizky raised an action of divorce for adultery against her husband Joseph Dombrowizky. No appearance was made for the defender until the proof. After the proof defences were lodged, the defender pleading, *inter alia*, "no jurisdiction."

The following facts appeared from the statements of parties and proof:—The pursuer and defender were both Jews, natives of Russia. They had been married in Russia in 1877. The defender had been employed as clerk in a Government office

in that country. In 1885 he lost his employment in consequence, he said, of an edict discharging all Jews in Government employment. Being unable to earn a livelihood in Russia he left that country, and in company with a friend—Preteca by name—came to Glasgow. In June 1885 his wife and her younger sister joined him in that city, which they had chosen as their place of residence, because they had some friends there. The defender and his wife and her sister continued to live in Glasgow in various houses rented by him until about the beginning of the year 1892. During this period the defender carried on business as a hawker. Three children were born to the spouses in Glasgow, of whom one died and was buried in a burial place, which the defender purchased in the Jewish Cemetery there. In the end of 1891 or the beginning of 1892 the defender was, according to the evidence of the pursuer and her sister, detected by them in an act of adultery. The pursuer stated that after this discovery she discontinued cohabitation with him as his wife. Shortly after this alleged discovery she removed to Edinburgh, where she resided with her sister, who had married a Mr Eisenberg. The defender also came to Edinburgh, where he attempted to start a business, but failed. The spouses did not, however, resume cohabitation. Two acts of adultery were alleged to have been committed by the defender in Edinburgh, in March and August 1894, but these were spoken to by only one witness. The pursuer's sister also spoke to an act of adultery committed in the middle of July 1891.

With reference to the question of domicile the pursuer deponed—"When my husband came to Scotland in 1885 it was with the intention of settling here, and he never expressed any intention of returning to Minsk or to Russia. In conversation with me he always said that he would never leave Scotland; that this was his first place and it would be his last." Mrs Eisenberg deponed—"After the defender came to Scotland first he spoke of remaining here. Throughout the whole time I lived with him in Glasgow he never spoke of going back to Russia; he said he would never go back, but that he would remain here and start business, and so he did." Charles Preteca deponed—"When the defender and I came to Scotland, we came with the intention of remaining here just to find a livelihood. Throughout the years the defender and I have been staying in Glasgow he has never hinted at an intention on his part of going back to Russia. I prefer Scotland to Russia, and from anything that I heard from the defender he seemed to prefer it too. *Cross*.—When we left Russia we left with the intention of taking up a residence in Scotland. We did not come to Scotland to see if it was a good place to live in or not." Isaac Salberg, who had been acquainted with the parties since 1886, deponed—"I have had private talks with the defender on several occasions about his prospects in business and his intentions and so on. He never hinted to me that he meant to leave Scotland and go back to Russia. From any conversation