the negative, and the second in the affirmative.

Counsel for the Pursuer — Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defender—Dundas, Q.C. —Constable. Agents—Purves & Barbour, S.S.C.

Tuesday, March 15.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

WILSON *v.* WILSON.

Husband and Wife—Divorce—Divorce for Adultery—Proof—Single Witnesses to Different Acts—Corroboration.

In an action of divorce for adultery the pursuer, in corroboration of the evidence of a single witness as to a particular incident, founded on the evidence of another single witness as to another incident of a similar kind.

Held (*diss.* Lord Young) that adultery was not proved, in respect (1) that even if the separate incidents were proved they did not necessarily infer adultery, and (2) (*per* Lord Trayner) that the separate incidents were not so connected as to afford corroboration of each other.

This was an action of divorce for adultery at the instance of Mrs Sara Louise Pollock or Wilson against her husband James Wilson, milk van driver, Glasgow.

The pursuer alleged (1 and 2) that the defender had, upon two occasions libelled, committed adultery with a young woman whose name was stated, (3) that he had committed adultery on a night in the end of March or beginning of April 1896 in the close which led to the house in which he was then living, with a woman believed to be a prostitute, but whose name the pursuer stated she had not been able to discover, and (4) that he had committed adultery on another occasion about the end of April or beginning of May 1896 with a woman whose name the pursuer stated she had been unable to discover, on the stair leading to the same house.

The pursuer entirely failed to establish the first and second charges, and she did not ultimately persist in any of them except the fourth. But she relied upon the evidence brought to prove the third charge as corroborating the direct evidence led with a view of establishing the fourth.

From the proof it appeared that the pursuer had a considerable amount of money of her own, that the defender before marriage had got substantial sums of money from her, that the married life of the parties was not happy, and that the pursuer ultimately left the defender in the end of August 1893 upon the ground, as she deponed, of his cruelty and threats of violence, and that since that date the parties had not lived together.

It further appeared that after the pursuer left the defender he became bankrupt and had to give up his business as a cattle-dealer, that ultimately, about February 1895, he entered the service of a dairyman named Hamilton as a milk van driver, since which date he had been living in a bothy where the male employees of the dairyman resided. A considerable amount of evidence was led with a view of showing that this bothy bore a bad reputation in the neighbourhood, and that prostitutes had been seen going into it. More particularly, it appeared that on 21st April 1896 the police, having been called in by the neighbours, two women were found in the house; that thereupon a disturbance arose, in which the defender took part, and that he was consequently charged at a police court held on 28th April 1896 and convicted of cursing, swearing, shouting, and using abusive, obscene, and threatening language to a residenter in the tenement of which the dairyman's house formed part. It was not proved, however, that the defender had anything to do with introducing prostitutes into the house, and it appeared that on the occasion of the disturbance he was in bed asleep at the time when it began, and that his anger was roused owing to his sleep being disturbed. The defender and a milkman, who also lived in the bothy, denied the allegations as to the character of the house, and deponed that prostitutes were never brought into it to their knowledge. The latter also deponed that he never saw a woman in the house except on the night of the disturbance, and that on that occasion the women were brought in by a man who was the worse of drink at the time and had since been dismissed from the employment. Certain other incidental facts in the case are stated by Lord Young.

With reference to the third act of adultery charged, Arthur Stewart, lamplighter, Glasgow, deponed—"In 1896 I resided in a house entering by No. 6 Love Loan. The house in which Hamilton's dairymen lived was in the same stair, and above me . . . I knew Wilson by seeing him in Love Loan. I remember seeing him one night in April or May 1896, between ten and eleven o'clock, in a recess about two yards into the close of the stair going up to the bothy. I was going through to the back court, and when I came to the recess a man stepped out into the close, and I looked at him and saw it was Wilson. There was a woman in the recess. Wilson stepped out from where the woman was. The woman did not have her dress up. Wilson's trousers were not disarranged that I saw. I formed no opinion as to what they had been doing; I just passed on. I don't know whether the woman in the recess was a prostitute. I had not seen Wilson in the company of prostitutes at other times. . . . (Q) With regard to the woman you saw in the recess, had you ever seen her before?—(A) I thought she looked like a woman I saw in Love Loan, who accosted me as a prostitute."

With reference to the fourth act of

adultery charged, William Penman, private in the Royal Scots, deponed—"I resided for some time in 6 Love Loan, Glasgow, in the same stair as Hamilton's bothy. I was then a lamplighter. I knew James Wilson by sight. . . . I once saw Wilson in the company of a woman. I cannot say whether she was a prostitute or not. They were on the stair. I was going round extinguishing my lamps about four o'clock in the morning. Wilson and the woman were lying on the stair. They were pretty close together, side by side. I cannot give the date, but I take it to be about September. I extinguished the lamps at four o'clock in the morning in September. (Q) And in April also?—(A) No, I cannot say at what hour I put them out in April. (Q) Do you remember the month in which you saw him on the stair?—(A) I expect it would be about September. I am not sure whether it was not April or May. I think it was in 1895. (Q) Or 1896?—(A) Somewhere about that. There is a lamp in the stair, and I recognised Wilson. I did not see the woman's face. Her clothes were not up. They were lying close together. (Q) What did you think they were there for at the time?—(A) I could not expect they were there for anything except an immoral purpose. . . . *Cross.*—I have been away from Love Loan for about eighteen months. I left Love Loan shortly after the row when the policeman came. (Q) Then it could not be September 1896 when you saw Wilson?—(A) No; I think it was September 1895. . . . *By the Court.*—On the occasion when I saw Wilson and the woman in the stair they were lying side by side up and down the stair. They did not get up. I passed down at the side of them and they took no notice of me. I took them to be asleep, but whether they were or not I cannot say. I am not sure whether it was before or after the row of which I have spoken, but I think it was about that time. I think it was September, because that would be about the time I was putting out the lights at four o'clock. I do not remember whether I put out the lights at four o'clock in April as well."

With reference to this evidence the defender deponed—"I heard the evidence given to-day by Stewart and Penman. There is no truth in it at all. Such a thing never happened in either case." He also deponed that he had to be up about a quarter to four in the morning to go to the country for the milk.

By interlocutor dated 7th January 1898 the Lord Ordinary (KYLLACHY) found facts, circumstances, and qualifications proved relevant to infer that the defender had committed adultery, found him guilty of adultery accordingly, and granted decree of divorce.

Opinion.—"I have carefully considered the evidence in this case, and I confess that I have had some difficulty as to the result, because there can be no doubt that the evidence of adultery is somewhat narrow. . . .

"I have, however, come to the conclusion that there is, on the whole, sufficient proof that the defender committed adultery with a woman unknown in or about April or May 1896 in a stair leading to the dairymen's bothy, as described by the witness Penman. Assuming that Penman's evidence can be relied on, it is, I think, very difficult to resist the conclusion (which Penman at the time drew) that the defender and the woman seen lying beside him were where they were for an immoral purpose. It is not as if the defender was able to give some explanation of his compromising position. In point of fact he did not attempt to do so, but simply denied that anything of the kind occurred. So that, as I have said, the question really is whether I can rely on Penman's evidence. Now, as to that, I am bound to say that I saw no reason to distrust Penman. He gave his testimony as I thought very cautiously, and with no apparent desire to exaggerate. And although he was somewhat confused as to the date of the occurrence, he in the end was, I think, sufficiently clear that it was about the time of the row in the bothy, which was, we now know, in April 1896. Moreover, although not directly corroborated, there is this much of corroboration in the other evidence—(1) that the defender was about the same time seen by the witness Stewart in a somewhat suspicious situation, leaving the company of a woman in a certain recess near the foot of the same stair; and (2) that although not proved to be cognisant of the introduction of prostitutes into the house in which he lived, he yet did live in a house in which proceedings of that kind took place. I think the whole tenor of the proof, in this part of it, goes at least to make it not improbable that Penman's story is true, and taking it as true, it is, I have come to think, sufficient." . . .

The parts of the opinion omitted dealt with the question of the custody of a child of the marriage, with which the opinions of the Court did not deal.

The defender reclaimed, and argued—Adultery was not proved. The only evidence that the incident from which the Court was asked to infer that adultery ever took place at all, was the testimony of one witness entirely uncorroborated. Evidence as to other facts and circumstances of a similar nature might be used to show the inference which was to be drawn from a particular incident, but the occurrence of the incident itself must be established by something more than the testimony of one witness. This case was ruled by *Robertson* v. *Robertson*, July 19, 1888, 15 R. 1001.

Argued for the pursuer and respondent—Adultery was proved. Where one incident was spoken to by one witness, and another witness spoke to another incident of the same kind and taking place under the same circumstances, that was sufficient evidence, if the nature of the incidents and the other facts in the case led to the inference that adultery took place—*Whyte* v. *Whyte*, March 15, 1834, 11 R. 710; *Taylor* v. *Taylor* (1848), 6 Notes of Cases, 558; *Milton* v. *Milton*, February 25, 1667, M. 12,636, and see also M. 12,101; *Robertson* v. *Robertson*,

cit., was distinguished. The incident spoken to stood alone. Here the two incidents spoken to were of the same kind, and at the same place. There was also the fact that prostitutes were coming about the house. If the incidents were held proved, then the inference that adultery took place was inevitable, especially in view of the fact that, assuming the incidents to have occurred, the defender lied about them, for he did not offer any explanation, but denied that they ever took place at all.

LORD JUSTICE-CLERK—This is a case of divorce in which we must give what practically amounts to a verdict. I have given the case close consideration. The Lord Ordinary has decided it in one way, and it is certainly a serious matter in such a case for us in reviewing his judgment to arrive at another conclusion. But after giving the evidence the best consideration I can, I have come to the decided impression that the case is not proved. There is only one occasion with regard to which there is evidence of any such facts as tend to establish adultery. That is the occasion to which the witness Penman speaks. Now, I quite accept the principle that when there is one witness to a particular occurrence, and that witness is believed, it is not always necessary that another witness should speak to that particular occurrence if there are witnesses who speak to other circumstances which afford corroboration of the single witness's statement. But in this case I shall assume that there were two witnesses who spoke to seeing the pursuer and a woman lying on a stair apparently asleep in the circumstances spoken to by Penman. Would that have proved that adultery had then taken place? I think not. It would have justified nothing more than suspicion, though certainly grave suspicion. I think therefore that adultery is not proved to have taken place on that occasion. Upon the assumption of the truth of the whole of that evidence, the question is—would it justify a conviction of an act of adultery? Would it prove it? I cannot say that it would. In this view the question of corroboration becomes of less importance. The Lord Ordinary says he thinks the whole tenor of the proof, in this part of it, goes at least to make it not improbable that Penman's story is true. But I assume that it was true, and on that assumption I do not think it would justify a finding in fact that adultery had been committed.

LORD YOUNG—I confess that on reading this proof I came to the same conclusion as the Lord Ordinary. But upon consultation with your Lordships I found that this was not your Lordships' view. I have, therefore, again carefully read the evidence, and my original impression has been confirmed into a strong opinion that there is no ground for interfering with the Lord Ordinary's judgment.

The pursuer alleges four acts of adultery. The first two are not proved, and nothing more is proved in connection with them than that the defender's conduct was highly discreditable. It is proved that he was separated from his wife, whom he had treated very cruelly, that he was living in what was nearly a house of ill-fame, that he visited, as an unmarried man, at a house where there was a young girl, although he afterwards admitted that he was married, and that his conduct was such that he was forbidden the house in the interests of the young girl.

The Lord Ordinary is of opinion that the fourth charge is proved by the testimony of two witnesses, who no doubt speak to two different occasions, but who swear to having seen the pursuer on these two occasions in the same place under highly suspicious circumstances, the circumstances on both occasions being of the same kind. They speak to different occasions and to different dates. But the Lord Ordinary believes them. An observation is made upon the evidence of the witness Penman, that some time after the occurrence he was not certain about the date. In spite of this, however, the Lord Ordinary believed him. Uncertainty as to the date under such circumstances is no ground for disbelieving a witness who is otherwise entitled to credit.

I cannot assent to the view that even if the facts to which these witnesses speak are held to be established, these facts would not be sufficient to entitle us to infer that adultery was committed. I take it that these two men are truthful and reliable witnesses, and that the facts they speak to are believed to have taken place. On that supposition, if this evidence is not to lead to the inference that adultery was committed, I do not know under what circumstances adultery could be held to be proved unless there were witnesses who spoke to having seen the act committed. The witnesses who saw the pursuer on the occasions to which they speak came to the conclusion that he had committed adultery. The Lord Ordinary came to the same conclusion. I think it was a reasonable conclusion, and I am not prepared to alter his judgment.

I quite assent to the statement that one witness is not sufficient unless he is corroborated, but such corroboration may be afforded by other witnesses who speak to other facts of a similar nature, and by the general facts and circumstances of the case. Here I take into account all the circumstances—the separation, what led to it, what the defender was doing and the way he was conducting himself, where he was living, and the fact that he was untruthful. If Penman and the other witness are believed, then the defender must be disbelieved. He says that no such incidents as they speak to ever took place.

On the whole matter, I concur in the judgment of the Lord Ordinary. I think it is very hard that this unfortunate woman, who has been so grossly abused, should be still compelled to regard this man as her husband.

LORD TRAYNER—The pursuer in her condescendence charges the defender with the

commission of adultery on four different occasions. The Lord Ordinary has held only one of the alleged acts proved, and in that view the pursuer has acquiesced. It is thought only necessary to deal with the case in so far as it relates to that one act. The pursuer's averment in reference to it is as follows:—"On another occasion about the end of April or beginning of May 1896 the defender committed adultery with a woman whose name the pursuer has been unable to discover, on the stair which leads to the dairymen's apartments." This occasion is spoken to by only one witness, and the import of his evidence is, that on a morning in September of either 1895 or 1896—he thinks "it was September 1895"—he saw the defender lying on a stair with a woman close to him, both apparently asleep. There was nothing about the condition of the clothes of either to attract attention, but on being asked his opinion as to what they were there for, he says, "I could not expect they were there for anything except an immoral purpose." Now, that may or may not be a well-founded opinion, but it is only opinion, and not evidence of any fact. So far as the witness speaks to fact, he does not prove the pursuer's averment. The pursuer tied herself down to an occasion in April or May 1896; her only witness speaks to an occasion in September 1895. It is obvious that the evidence does not prove the averment. Even if I assumed this witness to be speaking to the date and occasion libelled, I should still say that his evidence was insufficient to establish the pursuer's averment. It proved suspicious circumstances, but nothing more. But being only one witness, his evidence, had it been much more to the point than it is, would not have been sufficient without corroboration. The defender denies he was there—the witness says he was. In such a state of the evidence, what proof is there that the defender was on the stair at all? None, according to the decision in *Robertson's* case. Suppose you disbelieve the defender, that is not substantive corroboration of the witness. Is there any other corroboration? The Lord Ordinary thinks there is in the evidence of the witness Stewart, who depones that one night in April or May 1896 he saw the defender step out of a recess in a close, in which recess there was a woman. Nothing suspicious about clothes or attitude—no opinion formed as to what they were doing—"I just passed on"—did not know the woman, but "thought she looked like" a prostitute who had once accosted him. This, I may observe, is the evidence adduced to prove adultery on the third occasion libelled. The Lord Ordinary has held it insufficient for that purpose, but thinks it affords corroboration of Penman's evidence in reference to the fourth occasion. I confess I am not able to see how it can be. How can the evidence of a witness as to what took place in April or May 1896 corroborate the statement of another witness who speaks to something totally different as taking place in September 1895 or September 1896. If the two witnesses had spoken to seeing the defender in company with the same woman on the two different occasions—a woman of bad character—it would have been something. But there is not even that slender connection—indeed no connection whatever—between the circumstances of the two occasions to which Stewart and Penman respectively speak. If Stewart's evidence corroborates Penman's, then Penman's corroborates Stewart's, and on such corroboration the Lord Ordinary might have held the third act of adultery libelled proved, just as well as the fourth. In my opinion there was proof of neither.

I have not overlooked the evidence as to the disturbance that took place at the dairymen's apartments in or about April 1896, but I regard it as quite immaterial to the main issue. All that that evidence amounts to is, that one or other of the defender's fellow-servants introduced into the house two women of bad character, and the neighbours interfered. When the police came the defender was guilty of a breach of the peace, but it rather appears that his unruly conduct on that occasion was the result chiefly of his annoyance at being disturbed in his sleep. The defender is not said to have had anything to do with the introduction of the women into the house, nor to have approved of their being there.

LORD MONCREIFF was absent.

The Court recalled the interlocutor reclaimed against, and assoilzied the defender.

Counsel for the Pursuer—W. Campbell—A. O. M. Mackenzie. Agent—J. Gordon Mason, S.S.C.

Counsel for the Defender—G. Watt—Guy. Agents—Clark & Macdonald, S.S.C.

Wednesday, March 16.

FIRST DIVISION.

GREIG *v.* BALFOUR AND COMPANY.

Expenses—Taxation.

(1) *Precognition of Pursuer.*—A charge for drawing pursuer's precognition and making a copy thereof, *disallowed.*

(2) *Copies of Precognitions.*—Where a pursuer was found entitled to expenses up to the date of a tender by the defender lodged within eight days of the adjustment of issues, a charge by the pursuer for two copies of the precognitions of his witnesses, sent to counsel immediately after the adjustment of issues, *disallowed*, the interval between the adjustment of issues and the trial being close on three months.

(3) *Fees to Counsel.*—Circumstances in which a fee of twenty-five guineas to senior counsel for a jury trial which lasted only one day *allowed.*