given us. But then I am quite clear that we have enough for the present case, for negligence would not amount to wilful misconduct, because negligence implies merely a man's failure to advert to something which it is his duty to do, or which a reasonably prudent man in his circumstances would have done; whereas what the statute requires is a wilful violation of some known rule. I am therefore of opinion with Lord M'Laren that both questions should be answered as he proposes.

LORD ADAM, who was absent from the debate, intimated that the LORD PRESIDENT who was absent from the advising, had had the opportunity of considering Lord M'Laren's opinion and concurred therein.

The Court answered both questions in the affirmative and remitted to the Sheriff to make an award of compensation in terms of the findings set forth in the case.

Counsel for the Appellants—D-F. Asher, Q.C.—J. Wilson. Agents — Anderson & Chisholm, Solicitors.

Counsel for the Respondents—Shaw, Q.C —Scott Brown. Agents—Mitchell & Baxter, W.S.

Friday, February 24.

SECOND DIVISION.

[Lord Kyllachy Ordinary.

MANDERSON *v.* SUTHERLAND

Husband and Wife—Foreign—Divorce—Domicile—Jurisdiction—Separate Actions of Divorce and for Patrimonial Rights—Res judicata.

Decree of divorce in absence was pronounced in the Court of Session on 23rd February 1898 in an action by a wife against her husband. The defender was described as "tobacco manufacturer, sometime in Edinburgh, at present in Douglas, Isle of Man." His domicile of origin was in Scotland, and some of the acts of adultery libelled and proved in the action were committed before the defender left Scotland in 1889. Thereafter he lived in the Isle of Man. On 29th March 1898 the wife raised an action against her former husband to have it declared that she was entitled to *jus relictæ* out of his estate, and for an accounting to have the amount ascertained. The defender averred that at the date of the decree of divorce and at the date of the present action he was domiciled in the Isle of Man, and pleaded no jurisdiction.

Held (*diss.* Lord Young) that until the decree of divorce was reduced the defender must be presumed to have been domiciled in Scotland at its date, and that the pursuer was entitled to decree for her *jus relictæ*

Opinion (by Lord Moncreiff) that decree of divorce having been competently pronounced, the pursuer's right to terce and *jus relictæ* immediately emerged, and that the Court which pronounced the decree of divorce was entitled and bound to follow it up by imposing on the defender the penalties due according to the law of Scotland.

On 12th January 1898 Mrs Jessie Manderson, domestic servant, Edinburgh, raised an action of divorce in the Court of Session against James Sutherland, "tobacco manufacturer, sometime in Edinburgh, at present in Douglas, Isle of Man," on the ground of adultery committed in Edinburgh in 1880 and 1889 and intervening years, and in the Isle of Man in 1889 and 1895 and intervening years. On 15th October 1873 the pursuer and defender, who were then domiciled in Scotland, had been married to each other in Edinburgh and cohabited as man and wife for upwards of seven years, during which one child had been born of the marriage. This action was duly served on the defender and personally intimated to him, but he did not defend the same. Proof in the cause was led before Lord Kyllachy on 19th February 1898. The defender was cited as a witness but did not appear. On 23rd February Lord Kyllachy found the adultery proved, including acts of adultery libelled as having occurred in Scotland, and pronounced decree of divorce against the defender with expenses. These expenses were paid by the defender.

On 29th March 1898 the pursuer raised another action before Lord Kyllachy against the defender. In this action she asked the Court (1) to pronounce declarator that she was entitled to her terce out of the lands and heritages belonging to the defender on 23rd February 1898, and to ordain the defender to condescend upon the lands and heritages belonging to him so that the terce might be ascertained, and (2) to pronounce declarator that she was entitled to her *jus relictæ* as at 23rd February, and to ordain the defender to hold just count and reckoning and to make payment to her of the amount thereof, failing which to pay to her £500.

The pursuer averred that at the date of the decree of divorce the defender was heritable proprietor infeft in part of the top flat and attics of house property at 112 Leith Street, Edinburgh, let to several tenants, the rental being about £45 *per annum*. She further averred that he had for many years been engaged in business as a tobacco manufacturer, and had made a considerable sum, amounting to about £1500.

The defender admitted that he was proprietor of part of top flat and attics at Leith Street mentioned by the pursuer, and offered to satisfy the pursuer's claim to terce as far as that property was concerned, but alleged that the tobacco trade in the Isle of Man was unprofitable, and at the date of the divorce he had no moveable estate and that he had none now. He averred that at the time the action of divorce was raised and decree pronounced he was not subject to the jurisdiction of the Court, and that the decree was invalid.

"Explained and averred that defender, without any intention of ever returning, left Scotland at Whitsunday 1889, and acquired in 1889, and has ever since possessed, a domicile in the Isle of Man. He went to Douglas with the intention of permanently residing there, and he has in fact resided there ever since. He is tenant on lease of the house which he occupies there, and also of the premises in which he carries on business there. He has abandoned his domicile of origin, and has no intention of returning to Scotland. He was at the date of the said decree of divorce, and is still, domiciled in the Isle of Man. . . . The decree of divorce does not entitle the pursuer to *jus relictæ* out of defender's moveable estate. The defender is and has for years been domiciled in the Isle of Man, and the law of his said domicile does not entitle a wife to *jus relictæ* in the event of her obtaining a divorce in Scotland. By the law of the Isle of Man divorce *a vinculo* is not granted for desertion or adultery, and such a divorce granted abroad is not recognised as valid, or as having any patrimonial consequences, and the courts of that island are bound by their law to refuse effect for any purpose to any decree of divorce *a vinculo* granted by the courts of other countries. The pursuer therefore could not enforce her decree in the courts of the Isle of Man, or obtain the judgment which she has sued for in the present action."

The pursuer pleaded—"1. The pursuer having obtained decree of divorce against the defender, is entitled to be paid her legal provisions out of his estate as if he were naturally dead."

The defender pleaded—"2. The defender is entitled to absolvitor in respect (1) that the decree of divorce is invalid, and (2) that it has no effect for the purposes of the present action, the defender being domiciled in the Isle of Man, the law of which does not recognise the said decree as valid, or as having any legal effect, or at all events any effect on the rights of parties as regards property."

On 3rd November 1898 the Lord Ordinary pronounced the following interlocutor:—"Finds, declares, and decerns in terms of the declaratory conclusions of the summons; *quoad ultra* appoints the defender to lodge an account of his estate, heritable and moveable, as concluded for in the summons, within one month from this date: Grants leave to reclaim."

Note.—"It appears to me that I must assume, for the purposes of this case, that the decree of divorce which was sometime ago pronounced in this Court was a valid decree, and in so assuming I must, of course, also assume that this Court has jurisdiction to pronounce the decree. The grounds upon which the Court held that it had jurisdiction I need not enter upon. They were explained at the time, and for the present purpose must be held to have been sufficient. All that is, I think, scarcely disputable. Again, I must further assume—if the assumption is necessary—that in the Isle of Man and elsewhere a divorce so pronounced will on the principles of international law be recognised. Of course, if the courts of one country are asked to give effect to a judgment pronounced in another country, they may inquire whether the courts of that other country had proper jurisdiction; but then they will at least *prima facie* assume the affirmative. Nor can we here assume that even after inquiry they will reach a different conclusion.

"Accordingly I cannot accede to the suggestion of the defender that because divorce for adultery is not recognised in the Isle of Man, the courts of the Isle of Man—if it were necessary to appeal to them—would refuse to give effect to the decree of divorce.

"That being so, the next question is, whether—the divorce being valid, and this Court having jurisdiction to pronounce it—this Court has not now also jurisdiction to pronounce the decree here sought, that decree being really no more than a corollary of the decree of divorce. I take it that that question must be considered as if this action had been brought simultaneously with or immediately after the action of divorce. Indeed, I apprehend that the question is the same as if the conclusions of this summons had been appended to the conclusions of the action of divorce. And accordingly what I have to consider is whether if—having pronounced decree of divorce—I had been asked to pronounce decree in terms of this summons, I could have refused on the ground that while I had jurisdiction to grant divorce I had no jurisdiction to grant the remedies which divorce involves. I do not think I could have so refused. If this Court had jurisdiction to separate the parties and to free them from the conjugal relation, it had, and has, I apprehend, jurisdiction to grant the remedies which according to our law follow the disjunction of the conjugal relation. Now, these remedies include this, that a wife where she is the innocent party shall have the same rights over her husband's estate as if he were naturally dead, and it is not disputed that the rights sought here are simply the rights which the pursuer would have had if her husband were naturally dead."

The defender reclaimed, and argued—The defender had at present, and had when the decree of divorce was granted, his domicile in the Isle of Man. The ordinary rule was that the domicile of the wife followed that of the husband. If it were held that adultery had been committed in Scotland prior to the defender changing his domicile, and that the defender went to the Isle of Man and acquired a domicile there for the purpose of evading an action of divorce, then such circumstances gave rise to an exception to the rule that the Court had no jurisdiction over a person whose domicile was in a foreign country. But the exception was only recognised as regards *status;* it did not extend to rights following upon divorce, or to succession. A foreign Court might recognise the decree of divorce as

dissolving the marriage, but not as giving effect to the consequences; it would give effect to the decree according to its own system of law. The wife's rights must be measured by the law of the Isle of Man, where the husband had his domicile. By the law of the Isle of Man there was no such debt against a husband's estate as *jus relictæ*. The whole summons was based on the principle of intestate succession to a person deceased, and succession was always regulated by the law of the place of domicile—*Niboyet* v. *Niboyet*, 1878, L.R., 4 P.D. 1, opinion of L.-J. Brett, 13. The case must be tested apart from the accident that the defender possessed heritable property in Scotland. The defender admitted the pursuer's claim to terce from the heritable estate in Scotland.

Argued for pursuer—The decree of divorce which was granted on the footing that the defender was a domiciled Scotsman had not been challenged by the defender. It must therefore be assumed that the decree of divorce was based on the ground that the Scots Courts had jurisdiction against him because his domicile was Scots. Decree of divorce would not have been granted unless the husband had his domicile, in respect to succession, in Scotland at the date of the commencement of the proceedings—*Low* v. *Low*, November 19, 1891, 19 R. 115; *Le Mesurier* v. *Le Mesurier* [1895], A.C. 5-17; *Armytage* v. *Armytage* [1898], Probate, 178, opinion of Gorell Barnes, J., p. 185. Being domiciled in Scotland at the date of the divorce, the defender must be treated, *quoad* his wife's rights, as if he had died on that date. The pursuer was therefore entitled to decree for terce, and *jus relictæ*. The wife might possibly have to go to the Isle of Man to enforce the decree, and might encounter legal difficulties there, but that was no reason why she should be refused the decree in the Court to which she was entitled.

At advising—

Lord Justice-Clerk—At the beginning of last year the present pursuer, being the wife of the defender, raised an action of divorce against him, the summons in which was duly served upon him, and after proof led decree of divorce was pronounced. I agree with the Lord Ordinary in holding that in the present case it must be taken that this Court had jurisdiction to pronounce the decree by which the spouses were divorced. The defender in this case, upon whom the summons was duly and personally served, took no steps to stop that action in respect of want of jurisdiction, and has taken no proceedings to set aside the decree pronounced on any legal ground. The next question is, whether the Court which has sustained its jurisdiction and pronounced decree of divorce can refuse to apply the law applicable to the patrimonial rights of a person who has obtained dissolution of a marriage on the ground of unfaithfulness. The decree of divorce having in this country the same effect as regards these rights as if the party divorced had died, the spouse who obtained the divorce asks the Court to give her a decree for terce and *jus relictæ*. In the ordinary case this would follow as a matter of course. But here the defender maintains that he is domiciled in the Isle of Man, and that he was domiciled there at the time of the decree, and that therefore the decree is invalid, as the law in the Isle of Man does not recognise a decree of divorce. I do not think that either of these contentions can receive any effect here. If the defender takes the proper means to raise the first question it will have to be dealt with, but in the meantime the jurisdiction of the Court has been exercised, and must be held to have been properly exercised. But if the Court could and did put an end to the conjugal relation, I cannot hold that it had not and has not jurisdiction to order effect to be given to these consequential alterations in the patrimonial rights of parties which the law of Scotland attaches to a divorce *a vinculo*. Whether when judgment has been given in this Court the pursuer may have difficulty in obtaining operative effect for it in whole or in part in consequence of the defender being in, or being domiciled now in, another part of the United Kingdom, is not a question which need be considered. But I hold that she has a right, as following on the divorce, to have her case adjudicated upon here, and that the Lord Ordinary has done right in pronouncing the declarator contained in his interlocutor. He has not done anything more than give declarator. Whether the pursuer may have difficulties in future in making the declarator operative is not a matter for our consideration. The sole question before us now is only whether it was right to pronounce that declarator. On that I have no doubt, and therefore in my opinion the interlocutor should be adhered to.

Lord Young—The action contains conclusions with reference to two matters—(1) terce, and (2) *jus relictæ*. With regard to the declaratory conclusion that the pursuer is entitled to terce, restricting it, as I assume is implied, to lands and heritages in Scotland, I see no objection to it. With regard to the conclusion for an accounting in regard to such lands, the only objection I see to it is that it is quite idle and useless, as it is not suggested that the pursuer has any other lands in Scotland than the part of the flat, of which he acknowledges that he is the owner. I assume that the pursuer does not contend that the terce to which she is entitled extends to lands situated out of Scotland. Even if she did, the conclusion would be idle, as there is no suggestion that the defender is possessed of any lands out of Scotland. The conclusion for an accounting as regards terce is therefore idle.

There are also a conclusion with respect to *jus relictæ* and a conclusion for a count and reckoning to discover the amount thereof. The Lord Ordinary has decerned in terms of the declaratory conclusions of the summons, and appointed the defender to lodge an account of his estate, heritable

and moveable, within a month from the date of the interlocutor. I have already stated that as regards lands situated in Scotland I see no objection to the decree for terce. But as far as it relates to *jus relictæ* I am unable to assent, and I will explain my reasons. It is not an objection to jurisdiction; it is an objection to what is done in exercise of jurisdiction — an objection to the judgment pronounced, which I think erroneous.

On the facts here we have a remarkable illustration of the rapidity with which divorce proceedings are conducted in this country.

The pursuer's action of divorce against the defender was raised on 12th January 1898. Defender did not appear. Evidence was led on 19th February, and decree pronounced on 23rd February. I do not think that many countries could justly boast of such rapidity in carrying through divorce proceedings.

In that action the pursuer and defender are designed exactly as in this—the pursuer as "domestic servant, Edinburgh," and the defender as "tobacco manufacturer, sometime in Edinburgh, at present in Douglas, Isle of Man." The adultery charged is first in Edinburgh from 1880 to 1889, and second in the Isle of Man from 1889 to 1895, the averment of the pursuer being that in June 1889 the defender "went to Douglas, Isle of Man," and that the woman with whom he had been cohabiting in Edinburgh "followed him to Douglas shortly after, and the defender thereupon gave her out as his wife, and they openly cohabited as husband and wife there till her death in 1895. The pursuer further avers—"When he (the defender) went to Isle of Man in 1889 he ceased to carry on business in Edinburgh, and began to carry on and still carries on a tobacco business there."

In this action the defender avers—[*His Lordship read the defender's averments already quoted in the narrative*].

The Lord Ordinary, with reference to the grounds on which he sustained his jurisdiction in the divorce action, says—"The grounds upon which the Court held that it had jurisdiction I need not enter upon. They were explained at the time, and for the present purpose must be held to have been sufficient. All that is I think scarcely disputable. Again, I further assume—if the assumption is necessary—that in the Isle of Man and elsewhere a divorce so pronounced will, on the principles of international law, be recognised. Of course if the courts of one country are asked to give effect to a judgment pronounced in another country they may inquire whether the courts of that other country had proper jurisdiction, but then they will at least *prima facie* assume the affirmative. Nor can we here assume that even after inquiry they will reach a different conclusion."

I should myself have felt serious doubt about sustaining an action of divorce by a domestic servant in Edinburgh, against her husband, who was at the date of the action and had for ten years been resident and carrying on business in the Isle of Man. I am, however, disposed to assent to the view that we are not now required or even entitled to inquire what were the grounds or views in point of law on which the Judge proceeded in sustaining his jurisdiction, and whether or not they were sound, it being sufficient that an *ex facie* valid decree of divorce was pronounced, and that we are not now sitting as a court of review upon that decree.

I have said enough to indicate why, while taking the decree as effecting a valid divorce, I am unable to regard it as establishing that the defender was at the date of it a domiciled Scotchman with respect to the succession to his personal estate. On his averments to which I have referred, which indeed are in accord with the pursuer's averments in the action of divorce, he was at the date of the decree and for about 10 years previous to it domiciled in the Isle of Man, so that his legal succession would be governed by Manx law.

But the decree of declarator which the Lord Ordinary has pronounced is based on the assumption that on 23rd February 1898 the defender was, with respect to the legal succession to his personal estate, a domiciled Scotsman, and that his widow was entitled to *jus relictæ* accordingly. I must say that I think that the Scots law with regard to the claims of an innocent wife who has divorced her husband has not been sufficiently attended to. It is a very singular law, and may operate unjustly, because it proceeds on an imaginary death at a particular time, and deals with the claims of the wife upon that supposition. I have seen it operate with the gravest and grossest injustice to a husband who had made obligatory provisions for his wife in a contract of marriage. He may have provided his wife with the income of his whole estate, heritable and moveable, after his death, and as under the rule of our law he is supposed to have died at the date of the decree of divorce, the wife is entitled to get the whole income of his estate during her life. This is an illustration of the manner in which the rule of our law operates unjustly to the husband although guilty, and in a manner too favourable to the wife although innocent. But there are cases also in which the law operates unfavourably to the wife. It is a mistake to say that the law gives her a right to *jus relictæ*. It gives her no such thing if *jus relictæ* is excluded by an antenuptial marriage-contract, she is only entitled to what is provided in lieu of it, which may be very trifling. The idea of *jus relictæ* being given to the wife assumes that the husband died on 23rd February 1898, a domiciled Scotsman, and died without leaving any deed affecting his wife's rights. The decree of declarator that she is entitled to *jus relictæ* assumes that. I say that I cannot assume that with respect to a man who avers, and in entire accord with the statements on the other side, that for the past ten years he has been resident in the Isle of Man, and that he is there without any intention of making his home elsewhere. If he is domi-

ciled in a foreign country then the Scots law of *jus relictæ* is inapplicable. I cannot therefore assume that if he had died on 23rd February 1898, his wife would have been entitled to *jus relictæ*. But that is the assumption on which the action proceeds, and I am therefore not prepared to pronounce any such decree as that pronounced by the Lord Ordinary.

I should also desire greatly to aid an innocent wife in avoiding useless litigation. I put the question to her counsel if there was any idea that the defender was possessed of personal estate in Scotland. He answered that he had no reason to suppose it. It is plain from the pursuer's averments on record that what she looks to is the possibility of finding personal estate in the Isle of Man. But the defender states that his business has not been profitable, and that he has no personal estate that would yield anything to his wife. Is it sensible that we should have an accounting as to the defender's personal estate in the Isle of Man? He avers that it is *nil*. Where are we to stop? Are we to send a commission to the Isle of Man to inquire as to the facts? You cannot do that without the aid of the Manx Court? I suggested why should not the pursuer go there direct. Should you not ascertain what the Manx law is on the subject, because you cannot reach anything in the Isle of Man without the aid of the Manx Court. You can tell them the Scots law on the matter, and show them the decree of divorce. If the Manx law is the same on this subject as the law in England, and I believe also in Scotland, then a foreign decree of divorce will be given effect to exactly in same manner as a decree of divorce in their own courts. In English law the Court compels the husband to give the wife who has divorced him a suitable maintenance. If that is also the Manx law, would it not be preferable to anything that we could do? I think that is the proper course to take. If the Manx Court will not recognise our decree at all, you are helpless. I have no doubt as to our having jurisdiction, and if it could be beneficially exercised on behalf of the parties I would exercise it. But I think this Court is *forum non conveniens*.

With the exception therefore of the declarator as to terce, I would recal the interlocutor appealed against, and allow the case to stand over in order that the pursuer may take proceedings in the courts of the country where the defender is a domiciled resident and carrying on his business.

Lord Trayner—I agree with the Lord Ordinary in thinking that the decree of divorce pronounced by this Court, at the instance of the pursuer against the defender, must be taken, for the purpose of the present case, as a valid decree. It is open to the defender to reduce that decree, if he can establish relevant grounds for doing so, but we cannot entertain objections to a final and extracted decree of our own Court where these are stated merely by way of exception. Nor can we now take into consideration the averments made in the action of divorce by either party. The record in that case is not before us.

If the decree is valid, it involves the idea that the defender, when the decree was pronounced, was a domiciled Scotchman. Otherwise, the decree was not and could not be valid. The fact that the defender was resident in the Isle of Man is not at all inconsistent with the view that he was still a domiciled Scotchman. But if the defender was (as I must hold him to be) a domiciled Scotchman when the decree of divorce was pronounced, then the effect of the decree was to give the pursuer the same rights and claims on the defender's estate as if the defender had died leaving the pursuer his widow. The legal claims of the widow of a domiciled Scotchman are *jus relictæ* and right of terce, and these are the claims for which the pursuer seeks decree in the present case. These are claims of debt for which the defender's estate is liable, that estate being both heritable and moveable. If the defender had died, his representatives administering his estates, if subject to our jurisdiction, could have been ordered by us to produce an account of the deceased's estate under their administration in order that the amount of the widow's claims might be ascertained and decerned for. The defender is managing and administering his own estate; he is subject to have the same order pronounced against him, for there is no doubt —indeed it is admitted—that the defender, although resident in the Isle of Man, is subject to our jurisdiction, in respect he is the owner of heritage in Scotland, in any action for a claim of debt brought against him.

As therefore we have jurisdiction to determine what pecuniary claims the pursuer has against the defender, I think we are bound to exercise that jurisdiction when the pursuer appeals to us to do so.

The only defence stated (besides that the decree of divorce is invalid) is that any decree we pronounce will be unavailing, because the courts of the Isle of Man will not enforce it, they not recognising a widow's right to *jus relictæ*. I do not know whether that is so or not, in point of fact, and do not care to inquire, because assuming the fact to be as stated, it is a fact with which, in my opinion, we have no concern. If the pursuer is entitled according to our law to the decree which she asks, it must be pronounced. To say that a foreign court will not enforce it is just as little to the purpose as to say that the decree will be of no practical value, because the defender has not the means to implement it. The pursuer is entitled to our decree whether she can or cannot make it practically effectual here or elsewhere.

I think the Lord Ordinary's interlocutor should be affirmed.

Lord Moncreiff — In February 1898 Lord Kyllachy granted the present pursuer decree of divorce against the present defender on the ground of adultery committed both in Scotland and in the Isle of Man.

No appearance was made for the defender; but the decree was pronounced *causa cognita* both as regarded jurisdiction and on the merits. On obtaining decree of divorce the pursuer raised the present action for the purpose of vindicating the rights of terce and *jus relictæ* which accrued to her in consequence of the decree of divorce. The defender has appeared and opposes this demand on the ground (first) that the decree of divorce is invalid, and (secondly) that it would not be recognised in the Isle of Man (in which he says he is domiciled) as valid to any effect, or at all events as regards the rights of parties as to property. He does not plead "no jurisdiction," or "*forum non conveniens.*" The question arises with the defender himself, and not with executors or trustees resident in another country.

In my opinion the Lord Ordinary has rightly repelled this defence. My view, shortly stated, is this—The Lord Ordinary has granted divorce, we must assume rightly, on the footing that he had jurisdiction to entertain the action. We must also assume that he did so on the footing that the defender's complete domicile was in Scotland.

According to the judicial opinions in the cases of *Pitt* v. *Pitt*, 4 Macq. 627, *Stavert* v. *Stavert*, 9 R. 519, and *Low v. Low*, 19 R. 115, and *Le Mesurier*, L.R. App. Ca. 1895, p. 517, in order to establish jurisdiction in Scotland against a husband, defender in an action concluding for divorce *a vinculo*, his complete domicile for the purposes, *inter alia*, of succession, must be shown to be in the country in which divorce is sought.

Decree of divorce having been competently pronounced, the pursuer's right to terce and *jus relictæ* immediately emerged; and in my opinion the Court which pronounced the decree of divorce was entitled and bound to follow it up by imposing on the defender the penalties due according to the law of Scotland. The decree having been pronounced in absence, the defender might (if he was not too late) have taken steps to have it set aside. But he has not done so, and does not propose to do so, and therefore in this action, in which no more is asked than that the legal and necessary consequences of divorce obtained on the footing that he is a domiciled Scotsman should be enforced against him, the defender is precluded from maintaining, at least in this Court, that he was not at the date of the decree, and is not now, a domiciled Scotsman.

It is said that the decree if granted will not be enforced in the Isle of Man. I do not think that we are concerned with that question at present. It is the less material because as regards the pursuer's claim for terce the defender has heritable estate in Scotland, and the pursuer's claim admittedly must be decided by the *lex loci rei sitæ;* and even as regards the claim for *jus relictæ* we are informed that it will not be necessary for the pursuer to appeal to the legal authorities in the Isle of Man, as the defender has sufficient real property in this country to satisfy her demand.

I would only further observe in regard to the question of jurisdiction that in the action of divorce there was really no difficulty in sustaining the jurisdiction of the Court, because some of the acts of adultery libelled, and which were held proved by the Lord Ordinary, were committed in Scotland at a time when the defender was undoubtedly a domiciled Scotsman. Now, according to our law a husband cannot after committing adultery in Scotland deprive the wife of her remedy of divorce and her patrimonial rights consequent upon it by changing his domicile as I assume the defender sought to do in this case, by going to the Isle of Man and residing there with his paramour. See *Pitt* v. *Pitt*, *per* Lord Westbury, 4 Macq. 640; *Jack* v. *Jack*, 24 D. *per* Lord Neaves, p, 476, per Lord Ardmillan, p 477; *Reading* v. *Reading*, *per* Lord M'Laren, 15 R. 1102, and *per* Brett, L.-J., in *Niboyet*, L.R., 4 P.D.|14.

What the defender apparently desires is that the decree of divorce should stand, and that while in consequence of the decree of divorce he would escape all liability to aliment his wife in the future according to the law of Scotland, he should at the same time escape liability for those compensatory consequences, and rights in her favour, which according to the same law should accompany a decree of divorce.

If the defender desired to escape the consequences of the decree of divorce his course was, if it was not too late, to reduce the decree in absence pronounced against him. As he has not thought fit to do so, I think we are bound to affirm the Lord Ordinary's interlocutor.

The Court adhered.

Counsel for the Pursuer — Lorimer. Agents—Bell & Bannerman, W.S.

Counsel for the Defender—A. S. D. Thomson. Agents—Finlay & Wilson, S.S.C.

Friday, February 3.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

M'EWAN *v.* CORPORATION OF GLASGOW.

Church — Manse — Assessment — Heritor Real Rent.

A municipal corporation was infeft in a wayleave through certain lands for the purpose of forming a conduit for conveying water to a town. *Held* (*rev.* judgment of Lord Stormonth Darling) that it was liable to assessment for the upkeep and repair of the church and manse of the parish in which these lands were situated, in respect of the conduits, water-pipes, &c., which it had constructed, and that its proportion of the assessment fell to be calculated upon the real rental thereof as instructed by the valuation roll.