

The Court dismissed the appeal, affirmed the interlocutor of the Sheriff-Substitute dated 5th May 1913, and remitted the cause to him to proceed as accords.

Counsel for Pursuers (Respondents)—Clyde, K.C.—Hon. W. Watson. Agents—Webster, Will & Co., W.S.

Counsel for Defenders (Appellants)—Sandeman, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Tuesday, June 17.

### FIRST DIVISION.

(SINGLE BILLS.)

TAYLOR v. STEEL-MAITLAND.

(Reported *supra*, p. 395.)

*Expenses — Taxation — Sheriff — Employment of Counsel — Sheriff in Interlocutor Disposing of Merits of Case Sanctioning Employment of Counsel — Interlocutor of Sheriff Recalled by Court of Session — Auditor Allowing Fees to Counsel.*

Where a Sheriff-Substitute in an interlocutor disposing of the merits of a case had sanctioned the employment of counsel in the Sheriff Court, and that interlocutor had been recalled by the Court of Session, it was held that the Auditor was entitled to treat the certificate of employment of counsel as still in force.

The arbiter appointed by the Board of Agriculture and Fisheries in a reference under the Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII. cap. 64) between Mrs M. R. Steel-Maitland of Barnton, Midlothian (*respondent*), and James Taylor, farmer at Easter Drylaw, on the said estate (*claimant and appellant*), submitted a case, under section 9 of the Second Schedule of the Act, for the opinion of the Sheriff of the Lothians and Peebles at Edinburgh.

On 23rd August 1912 the Sheriff-Substitute (GUY) pronounced an interlocutor disposing of the merits of the case and sanctioning the employment of counsel in the Sheriff Court.

The claimant appealed to the Court of Session, and on 28th January 1913 the Court recalled the interlocutor of the Sheriff-Substitute.

The respondent having been found entitled to expenses, and the Auditor having lodged his report on the respondent's account of same, the appellant objected thereto in so far as he (the Auditor) had allowed, *inter alia*, fee to counsel in the Sheriff Court. The ground of objection was that the interlocutor in which the Sheriff-Substitute had sanctioned the employment of counsel had been recalled, and there was no longer in force any certificate of the Sheriff entitling the Auditor to allow that fee.

The Court repelled the objection.

Counsel for the Appellant—Guild. Agents—Guild & Guild, W.S.

Counsel for the Respondent—Mitchell. Agents—John C. Brodie & Sons, W.S.

Wednesday, June 18.

### SECOND DIVISION.

[Sheriff Court at Dundee.]

FLORENCE v. SMITH.

*Parent and Child — Filiation — Proof — Intercourse Subsequent to Date of Conception — Denial by Defender of Intercourse.*

In an action of filiation where the parties were living in the same neighbourhood at the date of the conception, but no meeting was proved to have occurred, held that proof of intercourse at a date subsequent thereto, together with the defender's denial of such intercourse, was sufficient corroboration of the pursuer's story.

Catherine Eleanor Florence, Warthill, Aberdeenshire, *pursuer*, brought an action of affiliation and aliment in the Sheriff Court at Dundee against George Smith, Dundee, *defender*.

Proof was allowed, the import of which sufficiently appears from the note (*infra*) of the Sheriff-Substitute (NEISH), who on 26th July 1912 assolized the defender.

*Note.*—"The parties to this case resided on neighbouring farms in Aberdeenshire, their fathers were related, they were at school together, and have known each other from childhood. The pursuer has always resided with her father at Knowley, except for a period from January 1909 to May 1909, when she was in Aberdeen attending cooking classes.

"The defender on leaving school in January 1906 went to a bank in Inverurie. In May 1908 he was transferred to Durno. He remained there till January 1910, and during this period resided at home. From Durno he was transferred to Huntly, and remained there till September 1911, when he was transferred to Lochee. While at Huntly he came home at times for the week-end.

"The pursuer says she was sweetheating with the defender, and this is the view taken of their relations by her father, her sister, her brother, Adam Addison, and John Addison. On the other hand, the defender's mother will not admit that her son was more friendly with the pursuer than with any other girl, although she admits that she knew that 'Eleanor was fond of George.' The defender's brother Robert did not look upon them as sweethearts. The defender admits that he was 'on pretty friendly terms' with the pursuer, and walked her home pretty often from church and choir practice. He has taken her arm and put his arm round her

waist, but he had not kissed her except when they were children. He was not courting the pursuer. 'I liked her; that was all. I had nothing against her.'

"There are two incidents to which I must refer in connection with the degree of intimacy between the parties.

"The first took place about the end of 1909 after choir practice. The defender drove his sister home to Tocher, then got on his bicycle and met the pursuer and her sister at the end of Tocher Road. He saw the girls home to Knowley, and at the gate he left his bicycle with the pursuer's sister Alice and went with the pursuer to the back of the house. The pursuer then says the defender tried to have connection with her, but that she resisted him. The defender denies that he attempted connection, and says his going away with the pursuer was by way of a joke to tease the younger sister. He says he expected Alice to lay down the bicycle and come and look for the truants. That part of the joke certainly did not come off. The idea of a joke never occurred to Alice, who says she was asked to hold the bicycle and light the lamp. Nor did it occur to the pursuer's father that it was a joke against Alice. He, finding Alice with the bicycle, took it inside the house, locked the door, and did not give the bicycle back to the defender till he had chaffed him, he does not say on what subject, but certainly not I fancy on playing hide-and-seek with Alice. The impression left on my mind is that the idea of a joke upon Alice is an afterthought, and that the defender desired to be alone with the pursuer.

"Again, I doubt the defender when he says that he merely went out to take a run on his bicycle. I believe he came just to meet the girls on their way back from choir practice. I also doubt his tale about the soft tyre. At any rate this incident is not put to the girls.

"In my opinion, whether or not the defender attempted connection on this occasion, he left Alice and went round to the back of the house for the purpose of being alone with the pursuer, and not, as he says, to play a game of hide-and-seek with Alice.

"The next incident took place in the loft or barn at Knowley about six weeks before the Premnay expedition, which took place in September 1910. The description of this building is very confused in the evidence, but it seems to have had a door and a trap-door down to the cart-shed. It is admitted that the parties were in the loft together. The pursuer says the defender locked the door and again attempted connection, but without success. The defender denies both these statements. The pursuer's brother Douglas came to look for them, the defender jumped through the trap-door, and the pursuer came out at the door. Again the defender says he jumped through the trap-door for a joke.

"I do not say that the evidence with regard to these incidents necessarily leads to the conclusion that the defender did attempt connections on these occasions.

After all, the parties had known each other since childhood, they were near neighbours, their families were on terms of intimacy, and their fathers were related. I should have thought these incidents trivial had it not been for the impression left on my mind that the defender is unduly anxious to avoid any imputation of intimacy with the pursuer. Whether or not they were sweethearts, I think it is not easy to read the evidence in the case without coming to the conclusion that they mutually evinced a decided preference for each other's company, and when the occasion served preferred that they should not be troubled with the presence of a third party.

"I ought to say a word about the post-cards which the pursuer has produced. Again, looking to childhood friendship of the parties, I do not know that they are unduly affectionate in their terms. The pursuer says she destroyed letters which she had, at the defender's request. The defender denies that he made any such request. It she did so, it is a little difficult to understand why she did not burn the post-cards also. She says herself that she did not burn the post-cards because she had the post-cards at Knowley and the letters in Aberdeen, but if, as the pursuer says, the bonfire took place in Aberdeen, she has preserved three of the post-cards which she received in Aberdeen, and presumably she had them there.

"*Premnay, September 1910.*—This is the first occasion upon which the pursuer speaks to connection. The defender and his brother were bicycling to Premnay. They were overtaken by the pursuer and her brother. The four visited a mutual friend in Premnay. On the way back the party divided at Old Rayne. The pursuer and defender took the long road, the other pair took the short road, and the four met again at Rayne School. The pursuer says connection took place on this occasion. Defender denies it. There is controversy as to how long James Smith and Douglas Florence had to wait at the school. Douglas says twenty minutes or half-an-hour. James says five minutes. The defender says he suggested a race; his brother corroborates him. I see no reason to doubt that a race was suggested, but I also suspect that the defender wanted to get away with the pursuer alone. Whether or not connection took place on this occasion is a very difficult question. I do not think it can be said that this public road during the daytime was a suspicious or secret place; no one saw any familiarity between the parties on this ride; and although I do think the parties may be fairly described as sweethearts by this time, I do not think I am prepared to say the connection on this occasion is proved.

"*September 1910—January 1911.*—The pursuer says she had connection with the defender several times between these dates. She gives neither day nor place, and there is no evidence as to the parties even having been seen together during this period.

"*The end of January or beginning of February 1911.*—The pursuer speaks to