

EXTRACTS from the Journals of the House of Lords (a), relating to the Appeal, Hon. Dame Anne Warrender and Sir G. Warrender.

7th July, 1834.

Upon reading the petition of the Right Honourable Sir George Warrender, Baronet, setting forth, "that in the month of September last, the Petitioner brought an action of divorce in the Court of Session in Scotland, on the ground of adultery, against the Honourable Anne Lady Warrender, who was then, and still is, residing in France: that to this action Lady Warrender gave in certain defences of a dilatory or preliminary nature, and also certain defences on the merits of the action, and the Lord Ordinary ordered cases to be prepared by the parties on the said dilatory or preliminary defences, to be lodged within a time limited;" and the same having been lodged, his Lordship made avizandum therewith to the Judges of the First Division of the Court: that on the 28th of June last, the Judges of the said division pronounced an interlocutor in the following terms: "The Lords having advised the cases for the parties they repel the preliminary defences, and remit to the Lord Ordinary to proceed in the cause." That by an Act passed in the sixth year of the reign of his late Majesty, King George the Fourth, chapter 120, intituled "An Act for the better regulating of the forms of process in the Courts of law in Scotland," it is *inter alia* enacted (section 5) that in a case such as the present "it shall not be competent to appeal to the House of Lords against the interlocutory judgment, where the action is not dismissed, unless express leave shall be given by the Court, reserving the effect of the defence, if an appeal should afterwards be taken in the cause when finally decided." That Lady Warrender, without applying for the leave of the Court, has given notice that she is to attempt an appeal in this case to their Lordships' House; but in terms of the said Act of Parliament, the same being clearly incompetent, and as an order for service by their Lordships might hang up this matter for an indefinite time, the Petitioner therefore prays their Lordships that such appeal be not received, nor any order for service made thereon.

It is ordered that the said petition be referred to the Appeal Committee.

A petition and appeal of the Honourable Dame Anne Warrender, wife of the Right Honourable Sir George Warrender, Baronet, complaining of an interlocutor of the Lords of Session in Scotland of the First Division, dated 28th June, 1834, and praying "That the same may be reversed, varied, or altered, or that the Appellant may have such relief in the premises as to this House in their Lordships' great wisdom shall seem meet; and that the said Sir George

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Case in which before the appeal was received a petition was presented by the party in possession of the judgment of the Court below, praying that such appeal should not be received, inasmuch as the interlocutor was one repelling a preliminary or dilatory defence without leave obtained to appeal. Report by the Appeal Committee that the appeal ought to be received, and order made by the House accordingly.

(a) Vol. lxvi., pp. 782, 783.

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Warrender may be required to answer the said appeal, being offered to be presented to the House.”

Ordered, that the said petition and appeal be referred to the Appeal Committee, to consider whether the said appeal ought to be received.

21st July, 1834.

Upon reading the petition of the Right Honourable Sir George Warrender, Baronet, setting forth, “that on the 7th of July instant, the Appellant presented her petition in the nature of an appeal against an interlocutory judgment of the First Division of the Court of Session in Scotland, of the 28th day of June last, repelling certain preliminary or dilatory defences, made by the Appellant against an action of divorce brought against her by the Respondent: that on the same 7th day of July instant, the present Petitioner presented his petition to their Lordships, stating certain grounds upon which he was advised that the said appeal was incompetent, and praying that the same might not be received; and the said petitions of the said Dame Anne Warrender, and of the present Petitioner, have been referred by their Lordships to their Committee on Appeals: that the Petitioner being advised that the said appeal is incompetent upon other grounds than those stated in his former petition, and that such other grounds had been brought under the consideration of their Lordships in another cause in several respects similar to the present, begs leave to state those other grounds in an additional petition to their Lordships:” That by an Act passed in the 48th year of the reign of his late Majesty King George the Third, chapter 151, section 15, it is *inter alia* enacted, “that hereafter no appeal to the House of Lords shall be allowed from interlocutory judgments, but such appeals shall be allowed only from judgments or decrees on the whole merits of the cause, except with the leave of the division of the Judges pronouncing such interlocutory judgments, or except in cases where there is a difference of opinion among the Judges of the said division:” That by their Lordships’ standing order, of date the 9th day of April, 1812, it is ordered, “That when any petition of appeal shall be presented to this House from any interlocutory judgment of either division of the Lords of Session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the Court below, shall sign a certificate, or declaration, stating, either that leave was given by the said division of the Judges, pronouncing such interlocutory judgment, to the Appellant or Appellants, to present such petition of appeal, or that there was a difference of opinion amongst the Judges of the said division pronouncing such interlocutory judgment.” That in the appeals, *Tovey v. Lindsay*, from the Court of Session in Scotland, in an action of divorce,

severally presented to their Lordships on the 12th of March, 1811, and 14th of December, 1812, a similar point occurred as in the present case, in regard to the competency of the appeals; and the Appellant in that case admitted that the judgment was interlocutory, and she founded the competency of her appeal solely upon this ground, that there was a difference of opinion among the Judges of the division by whom it was pronounced: That in the present case the judgment was interlocutory, as in the case of *Tovey v. Lindsay*, but there was, in the present case, no difference of opinion among the Judges, nor any leave granted by these Judges to the party to appeal; and therefore praying, "That upon these additional grounds also, the said appeal be not received."

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It is ordered, That the said petition be referred to the Appeal Committee.

8th August, 1834 (a).

REPORT FROM APPEAL COMMITTEE.

"That the Committee had met, and considered the petition of the Right Honourable Sir George Warrender, Baronet, praying their Lordships that an appeal, intended to be brought by the Honourable Anne Lady Warrender, from an interlocutor of the first division of the Court of Session, dated the 28th of June, 1834, to which she calls the Petitioner as Respondent, may not be received, nor any order of service made thereon; and had also considered the said appeal of Lady Anne Warrender against Sir George Warrender, so referred to this Committee; and had also considered a further petition of the said Respondent, Sir George Warrender, praying their Lordships, that upon the additional grounds set forth in this petition, the said appeal may not be received; and had heard the agents thereon; and the Committee are of opinion, That the said appeal ought to be received."

Which report, being read by the clerk, was agreed to by the House, and ordered accordingly.

(a) Journals, vol. lxvi., p. 945.