

1860.
March 6th and 7th.

MRS. MAXWELL, WIDOW, APPELLANT (a).
McCLURE, RESPONDENT.

Domicile.—The Respondent, domiciled in England, took up his abode in Scotland under circumstances which, had they stood alone, would have sufficed to constitute a Scotch domicile; but inasmuch as he all the time retained his English residence, and performed certain functions in England, Held that he had not abandoned his English domicile.

Evidence.—A party whose domicile was in question called as a witness by his opponent, and examined to prove what was passing in his own mind at a given period with reference to his domicile.

PRIOR to the Act of the 18th Vict. c. 23. one half of the personal estate of a wife predeceasing her husband without issue of the marriage went to the next of kin.

The case brought before the House by this Appeal depended upon the law of Scotland as that law stood prior to the Statute.

Mrs. Maxwell claimed the half of her niece's personal estate, that niece, Mrs. McClure, the wife of the Respondent, having departed this life on the 8th April 1851, her husband surviving.

The husband, resisting the demand, averred that the law of Scotland did not apply, because before his marriage he was domiciled in England, and such his English domicile had not been changed by him. The question, therefore, was one purely of domicile.

(a) This case is very fully given in the Court of Session Reports, 20 Sec. Ser. 307. It was one entirely of facts, the Lord Chancellor saying, "there is here no question of law."

The First Division of the Court of Session held that the Respondent's domicile had not ceased to be English.

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Against this decision Mrs. Maxwell appealed, and was supported by Mr. *Mundell* and Mr. *Adam*.

For the Respondent the *Attorney-General* (a) and Mr. *Anderson* addressed the House.

The only noticeable thing in the case was, that the Respondent, whose domicile was in question, had been in the Court below called by his opponent, Mrs. Maxwell, and examined as a witness to prove his intention as to domicile. The *Lord Chancellor* (b) said: "You ask an interested witness what was passing at a given period in his own mind." His Lordship, however, in delivering his opinion, commented and relied on the evidence thus obtained.

The Law Peers concurred with the Court of Session in deducing from the evidence the conclusion expressed in the above headings.

Interlocutor affirmed and Appeal dismissed.

(See the next case.)

DODDS AND GREIG—MAITLAND AND GRAHAM.

(a) Sir Richard Bethell.

(b) Lord Campbell.