

APPENDIX.

PART I.

FORUM COMPETENS.

1800. *June 13.*

LIEUTENANT-COLONEL FRENCH *against* HENRIETTA PILCHER.

LIEUTENANT-COLONEL FRENCH, a native of Scotland, where his regiment, which had lately returned from India, was quartered, raised a process of divorce before the Commissaries of Edinburgh, against his wife Henrietta Pilcher, founded on the following statement: The pursuer was privately married to the defender, a native of England, at Gretna Green, whence they immediately proceeded on a visit to his father in Scotland, where they soon after declared themselves married, before two Justices of the Peace, and were fined for having contracted an irregular marriage. After living for some time in Scotland, publicly, as man and wife, they joined his regiment in England, and went with it to India. The defender having there fallen into bad health, returned to Britain without the pursuer, and was guilty of adultery, first in Scotland, (where she resided a few weeks with his relations,) and afterward, for years, in England and abroad.

At the date of the summons, the defender resided in London, where the summons was served on her personally; but no appearance was made for her.

The Commissaries dismissed the action, "in respect the defender was not cited within Scotland, nor in any shape amenable to the courts of this country."

In a bill of advocacy, which the Lord Ordinary ordered to be printed and reported to the Court, the pursuer maintained, that the action was competent, because the marriage was contracted in Scotland, on the laws of which parties must have relied for the regulation of all the rights consequent on it; because the pursuer was born, and though much abroad with his regiment, has been

No. 1.

A process of divorce for adultery found competent before the Commissaries of Edinburgh, although the crime was alleged to have been committed by the defender most frequently out of Scotland, and she was an Englishwoman, and resident in England at the date of the summons, which, however, was served on her personally, the marriage having been contracted in Scotland, where the

No 1.
pursuer was
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uniformly domiciled in Scotland, which must likewise be the legal domicil of his wife the defender; and because the crime was in part committed there; 11th June 1745, Dodds against Westcomb, No. 14. p. 4793; 8th March 1796, Pirie against Lunan, No. 104. p. 4594.

Observed on the Bench: The case of Lunan is decisive of the present, which is even more favourable for the pursuer, from his domicil being in Scotland, from which that of his wife cannot be separated. But the defender should have been cited both at market-cross and pier and shore, and at the house of her husband.

The Lord Ordinary having "advised with the Lords, remitted to the Commissaries, with instructions to sustain their jurisdiction."

Lord Reporter, *Stonefield*.

D. D.

Fac. Coll. No. 183. p. 420.

1801. *June 27.*

ELISABETH ANN WYCHE, and ATTORNEY, *against* CHARLES BURREL BLOUNT.

No. 2.

The jurisdiction of the Commissaries sustained in a process of divorce for adultery, the summons having been executed against the defender personally, when resident with his regiment quartered in Scotland; although the marriage had been irregularly celebrated at Gretna Green; the parties were English; had lived together only in England, and the crime was committed there.

An improbable certificate

ELISABETH ANN WYCHE raised an action of divorce before the Commissaries of Edinburgh, against Captain Charles Burrel Blount, which was executed against him personally when residing at Musselburgh, where his regiment was quartered, founded on the following statement.

The parties are English. Their parents being mutually averse to their union, they were married at Gretna Green in 1786. They immediately returned to England. Their parents were reconciled. They lived openly, and were universally considered as man and wife, and had four children. In 1792, the defender deserted the pursuer, and has since been guilty of adultery.

No appearance was made for the defender.

The Commissaries allowed a proof, which was taken by commission in England, and established the cohabitation of the parties; the birth of the children; the desertion and subsequent conduct of the defender, all as libelled. Upon advising the proof, "The Commissaries (20th February 1801) having considered and compared the libel with the proof, found it not proved, either that the marriage of the pursuer or defender, who are not Scotch but English by birth, was celebrated in Scotland, or that they cohabited in Scotland, as husband and wife any time after their marriage, or that the defender has had any sufficient or settled residence in Scotland, or even that the crime on which the divorce is founded was committed in Scotland; therefore found, that the action is not competent in Scotland, and ought not to have been brought before this court; and dismiss this process for want of jurisdiction."