

No 1.  
pursuer was  
born and had  
his domicil.

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."

Along with a petition, the pursuer produced the following certificate of the marriage :

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subscribed by the celebrator and parties, with a reference to oath of the defender, that the certificate was genuine, held competent evidence of marriage.

*Gritnay Green, June 10th, 1786.*

“ This is to sertfay to all persons, that may be scurned, That Charles Blount from Salisbury, and Elisbith Ann Wycihe from the same plese, both comes before me, and declares themselves to be both single persons, and is now mareyed be the way of thee church of Scotland, as day and det abuve mentioned, by me.

“ DAVID M'FARSON.

“ C. B. BLOUNT.

“ ELIZTH. ANN WYCHE.”

The Commissaries, not considering this as sufficient evidence of marriage, allowed the petitioner to prove her allegation, that a marriage was actually celebrated between the parties in Scotland.”

The pursuer referred this fact to the oath of the defender, and also that the certificate was genuine.

The Commissaries, “ In respect of the particular circumstances of the case, which are fully explained by the interlocutor, of date the 20th of February last, found the mode of proof offered in this minute incompetent.”

But the Lord Ordinary, after reporting a bill of advocation to the Court, remitted to the Commissaries, with instructions to sustain their jurisdiction in this case, in respect the summons was executed against the defender when resident in Scotland, and possessing a domicil there: Find it competent to refer to the oath of the defender, the authenticity of his subscription at the certificate of marriage produced, and that said certificate is genuine; admit the said reference, and grant commission accordingly.”

Lord Ordinary, *Meadowbank.*

D. D.

*Fac. Coll. No. 241. p. 543.*

\* \* \* The defender having failed to depon on the reference, the Commissaries held him as confessed, and pronounced decree of divorce.

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1801. June 27. MARIA MORCOMBE, *against* JOHN LAW MACLELLAND.

JOHN LAW MACLELLAND was by birth a Scotsman. He served an apprenticeship to a surgeon in Dumfries; attended the medical classes at the University of Edinburgh; and was afterward appointed a surgeon's mate in the Navy; in which service having become valetudinary, he was appointed surgeon to the Myrmidon receiving ship, stationed at Plymouth.

No. 3.

A process of divorce in Scotland found incompetent against a person who was born and educated in