

the oath. There was no appearance for the respondents, and the Court, after hearing counsel for the suspender, suspended the conviction upon the ground stated.

Counsel for Suspender—Mr Scott. Agent—D. F. Bridgeford, S. S. C.

COURT OF SESSION.

Tuesday, March 12.

FIRST DIVISION.

MARTIN v. MARTIN.

Agent and Client—Husband and Wife—Expenses.

A wife raised an action of aliment against her husband, but before it was terminated she returned to her husband's house, and so virtually put an end to the action. Held that the wife's agents were entitled to sist themselves as parties, and decree pronounced in their favour against the husband for the expenses due to them.

Mrs Martin raised an action in the Sheriff Court at Glasgow for the purpose of obtaining interim alimment from her husband until the rights of parties should be determined by a competent Court. The husband's defence was a denial of the ill-treatment upon which the action was founded, and an offer to receive the pursuer into his house.

After proof, the Sheriff-Substitute assolizied, but the Sheriff Principal found ill-treatment proved, and decerned for aliment. The husband advocated, and, after an interlocutor against him from the Lord Ordinary, the Inner House pronounced an interlocutor on 28th June 1866, finding ill-treatment proved, decerning for certain sums of expenses *ad interim*, and for interim alimment until the farther consideration of the case. *Quoad ultra* the case was superseded until the third sederunt day in November last, in order that the wife, if so advised, might raise an action of separation and aliment. No such action was raised by the wife, and no step was taken by either party in the case. The parties are both about eighty years of age.

Messrs M'Gregor & Barclay, S. S. C., who had been the wife's agents, now compared in the case, and craved the Court so to dispose of the case as to give them decree for expenses, and to allow the decree for expenses in the Sheriff Court to be extracted. The grounds upon which they rested their application were that the husband had not paid the interim alimment allowed by the last interlocutor of the Court, although he had paid the expenses thereby decerned for; that the wife, without consulting the comparers, had returned to her husband's house, and that consequently the action had been put an end to, and no separation and alimment could be raised.

FRASER and GEBBIE, for comparers.

R. V. CAMPBELL, for the husband, admitted that the wife had returned to the husband's house, and stated that she had returned acknowledging she was ill-advised in raising the action, and referring to a son and daughter as having been the real *domini litis*. He contended that the agents' remedy was to try their right to expenses either against the defender or the son and daughter by an action at their own instance. Neither of the parties was moving in this suit; if the pursuer was not going on, the defender was not asking absolvitor, and the agents, being mere third parties, should not

be allowed to interpose and to proceed with a suit affecting the personal relations of husband and wife with a view to getting decree for expenses. 1. The ordinary rule was that agents were allowed to proceed with a case notwithstanding a compromise when an interlocutor was pronounced necessarily implying expenses. No such interlocutor existed here, for the Court clearly intended the pursuer's right to expenses to be contingent upon her proceeding to raise a separation and upon her success in showing grounds for that remedy. Farther, the case was out of the principle of the rule. The wife had taken no benefit by the interlocutor of Court, and had simply accepted a tender which the defender had made from the very first. Then it was not suggested that there had been any fraud or collusion between the parties to defeat the agents' claim. It was monstrous to say that an agent's consent was required to every amicable compromise between the parties to a lawsuit. On the contrary, both in England and Scotland, it was the law that his right to the expenses, which might be decerned for in a suit, was subject to the contingency of a compromise without fraud. 2. The ordinary rule did not apply. No case had been found in which the agents of a party in a consistorial action had been allowed to proceed with the action notwithstanding a compromise. There was reason to limit the agents' right in such actions (1) because, in actions of this class, the wife's expenses might, if the Court thought fit, be provided for in advance by interim decrees; and (2) because of the personal nature of the conclusions.

At advising,

The LORD PRESIDENT said that the agents had a good claim, but there was considerable difficulty in regard to the manner in which it could be made effectual in this action. He thought, however, that in respect the husband himself stated that the wife had returned, and that the action was therefore virtually at an end, an interlocutor might be pronounced in the agents' favour.

The other Judges concurred, and an interlocutor was accordingly pronounced in the terms proposed by the Lord President, decerning, in name of Messrs M'Gregor & Barclay, for the expenses here and in the Sheriff Court.

Agents for Husband—Neilson & Cowan, W. S.
Agents for Comparers—Parties.

Tuesday, March 12.

JURY TRIAL.

(Before Lord Barcaple.)

PAGAN v. WILLIAMSON.

Reparation—Assault. Action of damages by a tenant against his landlord for assault.

In this case Allan Cunningham Pagan, farmer, Innergeldie, in the parish of Comrie, Perthshire, was pursuer; and David Robertson Williamson of Lawyers, presently residing at St Fillan's, in the county of Perth, was defender. The following was the issue:—

“Whether, on or about the 24th day of July 1866, in or near a field on the farm of Innergeldie, on the estate of Lawyers, in the county of Perth, the defender did assault the pursuer—to the loss, injury, and damage of the pursuer?”

Damages were laid at £2000 sterling.

Before the case was opened, parties withdrew