

one could prevent Mr Anderson and his friends appointing any committee or any number of committees they liked for managing games in Forfar; but that is very far from saying that they could in law supersede the committee of subscribers by any committee they chose to elect. Mr Anderson therefore, in acting as he did, proceeded in direct violation of his duty as secretary to the respondents. They were both entitled and justified in dismissing him as they did. But then Mr Anderson refuses to acquiesce in his dismissal, and insists that he is entitled to retain the books and other property confided to his charge for the use of this new committee, which has been appointed by the public, and not by the subscribers, while the committee itself claims to have transferred to it the balance of the subscribers' money lying in the old committee's hands. Such a contention and such a claim is not only quite unjustifiable, but most preposterous. I therefore think that the Sheriff's judgment must be sustained in both cases.

The other Judges concurred.

Agent for Appellants in both actions—G. K. Livingston, S.S.C.

Agent for Respondents—John Galletly, S.S.C.

Thursday, July 20.

SECOND DIVISION.

M'MILLAN v. M'MILLAN.

Husband and Wife—Aliment—Arrears. A husband in receipt of an annual income of £640 having deserted his wife, found liable to her for aliment at the rate of £140 per annum; but arrears of aliment refused, on the ground that the husband was liable for the debts contracted by his wife for her maintenance.

This was an action raised in October by Mrs M'Millan against her husband, who was a pawnbroker in Glasgow, for decree of £150 per annum as aliment from the term of Martinmas "next, 1870," and also for £50 as aliment from the date of the pursuer's being excluded from the defender's house till that term.

After a proof, the Lord Ordinary (JERVISWOODE) pronounced an interlocutor in the following terms:—Finds that on or about the 12th July 1870 the defender removed or excluded the pursuer from the house in which, at the said date, they had their residence as married persons, and thereafter refused, and still refuses, to admit the pursuer to the said house, or to receive her therein: Finds that the defender has not established by proof facts relevant or sufficient to warrant or to justify such refusal; and with reference to the foresaid findings, finds as matter of law that the defender is liable in aliment to the pursuer; and farther finds it proved that the defender is in receipt and in possession of an annual income of £640 or thereby: Finds, with reference to the preceding findings, that the defender is liable in payment to the pursuer in aliment at the rate of £140 sterling per annum, payable to her at the terms, and in advance, as concluded for in the summons; and is also liable in payment to her of the sum of £46 sterling, in name of aliment, from the said 13th day of July 1870 until the term of Martinmas thereafter, together with interest at 5 per centum per annum on each of the said termly payments, as concluded for in the summons, and decerns for payment accordingly—but under deduction always

of the sums of aliment already decerned for in favour of the pursuer."

The defender reclaimed.

FRASER and BLACK argued that the amount given by the Lord Ordinary was excessive. Arrears of aliment should not be given, as the husband was responsible for the debts contracted by his wife; *Donald v. Donald*, 22 D. 1118; *Mac-naughton*, 12 D. 703.

SHAND and R. V. CAMPBELL for the respondent.

LORD JUSTICE-CLEEK—It is quite clear that neither the previous rate of living of this husband and wife, while living together, nor the sum stipulated by the marriage-contract, is the test of the allowance which should be made to the wife now that her husband has turned her out. I think the sum of £140 allowed by the Lord Ordinary is reasonable; but I would qualify our interlocutor by the condition that either party may come back to us on any change of circumstances.

As to the arrears, it is a wholesome rule that a wife's allowance is not to be increased on account of debts for which her husband is liable. The husband here has no defence against payment of the accounts referred to, if the furnishings were made and justly charged.

I would therefore propose that the interlocutor of the Lord ordinary be altered as to the arrears, in respect the husband is liable for all his wife's just debts already incurred. *Quoad ultra* I would adhere.

The other Judges concurred.

Agent for Pursuer—T. F. Weir, S.S.C.

Agents for Respondent—Muir & Fleming, S.S.C.

Thursday, July 20.

STEWART v. GELOT.

Process—Reduction—Foreign Stamp Laws—Bill—Res Noviter—Competent and Omitted. A bill drawn in a foreign country, and a letter requesting the drawee to accept it, were sought to be reduced on the ground of fraud, &c. After the verdict of a jury negating fraud, but before decree had been pronounced, the pursuer raised another action of reduction, on the ground that the bill was not stamped according to the law of the country in which it was drawn. The pursuer averred that when he raised the former action he was ignorant of the foreign stamp laws. *Held* that this was not *res noviter*, and that the law of Scotland (the *locus solutionis*), which takes no cognisance of the fiscal laws of other countries applied, although the bill had not been accepted.

Observed that "competent and omitted" in a former action cannot be pleaded till final decree has been pronounced in it.

This was an action of reduction, brought by Dr Stewart, M.D., Paraguay, against Anthony Gelot of Paris, concluding for reduction of—"First, A pretended draft or bill of exchange, dated at Paraguay 8th May 1867, drawn by the said William Stewart, the pursuer, upon the said Robert Stewart, for £4000, payable thirty days after sight to the defender, and bearing to be indorsed by him to Perier Frères & Compagnie, bankers in Paris, and by the said Perier Frères & Compagnie to Robinows & Marjoribanks, merchants in Glasgow, and again by them without recourse to the de-