

stitution merely, it should have been framed on that principle, and expenses only asked in the event foresaid. This has not been done, expenses are asked simpliciter and in the ordinary way, therefore I hold that the decree asked is one against the defender personally. Her defence against this is simply that she is not in possession of executory estate sufficient to pay the debt. That is the substance of her case. If she is not in possession of any executory estate, then decree cannot go out at all. If she can pay a dividend upon debts due by the deceased, then the decree may be modified so as to give the pursuer right to a sum proportional to his debt. In this state of matters there can be no satisfactory conclusion till we know the one important fact in the case, namely, what is the amount of the executory estate which the defender ought to have in her hands. I think, therefore, that we must order proof upon this point.

The rest of the Court concurred.

An interlocutor was accordingly pronounced, allowing parties a proof upon the subject of the amount of executory estate in the defender's hands.

Agent for Pursuer—P. L. Beveridge, S.S.C.
Agents for Defender—Murdoch, Boyd, & Co., S.S.C.

Friday, February 9.

NOTMAN v. KIDD.

Sheriff—Process—Appeal—Competency.

Held incompetent to appeal against an interlocutor of the Sheriff, recalling that of his Substitute, opening up the record, and ordering condescendence and answers, and finding the pursuer liable in expenses, on the ground that such interlocutor was not one "giving interim decree for payment of money" in the sense of the Sheriff-court Act of 1853, section 24.

Counsel for Appellant—Paterson. Agents—J. & A. Peddie, W.S.

Counsel for Respondent—Black. Agent—David Forsyth, S.S.C.

Thursday, February 22.

SCORGIE v. HUNTER.

Husband and Wife—Reparation—Slander—Process—Decree—Expenses.

The rule that a husband is not liable for the wife's slander does not apply to a case in which he is present and joins approvingly in the wife's abusive language.

Where a husband and wife had joined in a slander, although the wife had taken the leading part, the husband was found liable in £5 of damages, and the wife in 5s. The husband was also found liable in expenses.

Form of decerniture against a married woman.

This was an appeal from the Sheriff-court of Aberdeen.

Eliza Scorgie brought an action of damages against Leslie Hunter and Catherine Hunter for verbal slander and ill-treatment, concluding against each of the defenders for £20.

The defenders raised a counter action of damages against Scorgie, also for verbal slander.

Both actions arose out of circumstances which took place on 3d July 1871, and which are set forth in the interlocutor pronounced by the Court.

The Sheriff-Substitute (COMRIE THOMSON) conjoined the actions, and afterwards (8th August 1871) pronounced an interlocutor, which, after findings in fact, proceeds—"Finds, as matter of law, that Mrs Hunter represented her husband in the shop at the time, and that he so identified himself with her actings that he is liable in damages along with her, and as taking burden on himself for her; therefore finds the said defenders, Mr and Mrs Hunter, liable in damages to the pursuer Scorgie; assesses the amount thereof at £5, 5s. sterling, and decerns therefor against the said defenders in terms of the libel; finds the pursuer Scorgie entitled to expenses of process; allows an account," &c.

On appeal, the Sheriff (GUTHRIE SMITH), on 6th November, affirmed the interlocutor appealed against.

On 24th November 1871 the Sheriff-Substitute decerned for £22, 16s. 5d., as the taxed amount of expenses, against the defenders Leslie Hunter and Mrs Catherine Matthew or Hunter.

Mr and Mrs Hunter appealed to the Court of Session.

RHIND, for them, argued that, in any view, the husband was not liable for the wife's slander.

JAMESON for the respondent.

The case of *Barr v. Neilson*, March 20, 1868, 6 Macph. 651, was referred to.

The Court had no doubt that the interlocutor of the Sheriff-Substitute correctly expressed the facts of the case. In perfectly unconnected acts of slander there could be no joint liability. But here the husband joined approvingly in the wife's abusive language, and finally laid hands on the pursuer, and attempted to push her out, and therefore must be held to have adopted his wife's improper proceedings. The only difficulty is the precise form in which decree should go out.

The case was again put out to-day, February 22.

To meet the difficulty that damages against the wife could only be recovered during the subsistence of the marriage from her separate estate, if she had any, JAMESON, for pursuer, asked for decree against the husband only.

The Court considered that this would involve absolvitor of the wife, which would be inappropriate, as she was the worst offender; and accordingly proposed to divide the damages into two unequal parts, finding the husband liable in much the larger part, and the wife (under reservation) in the other part.

The following interlocutor was pronounced:—

"Edinburgh, 22d February 1872.—Recal the interlocutor of the Sheriff-Substitute of 8th August 1871, the interlocutor of the Sheriff of 6th November 1871, and the interlocutor of the Sheriff-Substitute of 24th November 1871, and in lieu thereof Find, in point of fact—1st, that on the occasion libelled, in the public bar of the tavern in Aberdeen, then kept by Leslie Hunter and Catherine Matthew or Hunter, his wife, defenders in the original action, the said female defender, in presence and hearing of the said other defender, her husband, and of the persons named in the libel, or some of them, accused the pursuer in the said original action, Eliza Scorgie, of being drunk, said she was a dirty trull or trail, ordered her out and to go home and dress herself, and used towards her other approbrious and abusive epithets, mean-