proceed on the assumption that they are unreducible. Proceeding then on this assumption, the question is, whether in adjusting the locality of augmentation Miss Robertson may not be dealt with so as to give her relief against injury sustained in previous localities?—whether, since she pays too much of the old stipend she may be allowed to pay proportionally less of the new stipend. The proposal is equitable, and if there is no technical difficulty I am disposed to acceed to it. In doing so an injury is in a certain sense done to the benefice, for if the relief craved were not given, the benefice would reap the benefit of the overcharge in the previous localities. But, on the other hand, if we do not acceed to this proposal Miss Robertson might in the end have to pay to the minister something more than the whole teinds of her lands, and I do not think that any one could be heard in support of that result, for it would come to this, that on account of a mistake the benefice would get more than the whole teinds.

Thus, I think, the only question is between Miss Robertson and the other heritors; and although I was startled by the novelty of the proposal submitted to us, I do not see any objection to it in point of principle. It is a remedy which falls within the working out of a process of locality—which is the counterpart of a multiplepoinding—and in such a process I do not think that it is unfair to take into consideration the present liabilities of parties.

The other Judges concurred.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Objectors—Adam. Agent—James Allan, S.S.C.

Counsel for Common-Agent—Hall. Agent—James Macknight, W.S.

Thursday, February 27.

SECOND DIVISION.

A *v.* B.

Divorce—Domicile—Jurisdiction.

Where a defender in an action for divorce admitted having been born in Scotland in 1836, having resided there until 1860, having then gone to London, married, and resided there until 1870, when he went to India, from which he returned in 1871, since which time he resided in Scotland until the date of the action, and where the adultery was committed in Scotland—*held* that a plea of no jurisdiction, in respect defender was a domiciled Englishman, advanced for the first time on a reclaiming-note, was inadmissible.

The summons in this suit, at the instance of A against her husband, concluded for divorce on the ground of adultery. The pursuer stated that she and the defender were married in England on 7th September 1865; that the defender was born in Edinburgh, and was about thirty-six years of age at the time of the action; that up to the year 1860 he had lived entirely in Scotland; that in 1860 he went to London, and remained there until 1870, when he went to India, from which he returned in 1871; and that, since that time, he had resided in Edinburgh. She also stated that on March 1872 the defender was convicted in the Sheriff Court of Edinburgh, and was sentenced to sixty days' imprisonment in the Calton Jail there, and he was undergoing sentence at the time the action was raised. The defender denied that he had resided in Edinburgh since July 1871. *Quoad ultra* he admitted the pursuer's statements as abovementioned, with the explanation that the defender returned from India shortly after going there, and that he sometime afterwards visited Scotland, which he did for the purpose of starting a company to run the Kirkcaldy and London Steamboats, and that he afterwards returned to London to attend business in connection with the said company, but subsequently returned to Scotland.

The adultery was alleged to have been committed in Edinburgh during 1872. The defender denied the alleged adultery, but took no other plea on record. On 17th July 1872 the Lord Ordinary found the adultery proved, and granted decree of divorce. The defender reclaimed, and abandoned the case on its merits, and for the first time advanced the plea that he was a domiciled Englishman, and the marriage having been entered into in England, the Courts of Scotland had no jurisdiction, it resting with the pursuer to prove the Scottish domicile. Authorities cited, *Ranger* v. *Churchill*, 15th Jan. 1860, 2 D. 307; *Jack* v. *Jack*, 24 D. 467; *Oldaker*, 12, S. 468; *Pitt*, 4 Macq. 627; *Warrender*, 2 S. & M. 192; Fraser's Per. and Dom. Relations, 746; Erskine, 1, p. 42 (Nicolson's edition).

At advising—

LORD BENHOLME—I find quite enough on record to satisfy me of the domicile being in Scotland.

LORD COWAN—I think it is too late after the record has been closed, the proof closed, and judgment delivered, to advance this plea. I am not prepared to admit it as relevant, even if true. A Scottish domicile is admitted on record, and I hold it indispensable to exclude our jurisdiction that the defender should on record have pleaded his English domicile. I do not feel called on to admit any alteration on the record, so as to raise a new issue.

LORD NEAVES—I scarcely think we are entitled to go back where a defender alleges facts such as here, inferring a Scottish domicile.

LORD JUSTICE CLERK—Even now we have no definite statement from the defender. The record amounts to an admission of Scottish domicile, and of our jurisdiction.

The Court adhered.

Counsel for Pursuer—Mackintosh. Agents—M'Kenzie & Black, W.S.

Counsel for Defender—Mair. Agent—Wm. Officer, S.S.C.

Thursday, February 27.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

COCHRANE *v.* JACKSON.

Stipend—Reference to Oath—Prescription.

Where a claim for arrears of stipend was referred to oath, terms of answer by deponent