and of course if we were to give effect to this view in the ordinary way we should have to allow a new trial. But the parties are willing to leave the matter in our hands. The amount which the jury have given as solatium is not challenged, and therefore the sum we have to deal with is the £800. The Court are of opinion that this should be reduced to £400.

Lord Mure, Lord Adam, and Lord Lee concurred.

Lord Shand was absent.

The Court pronounced this interlocutor—

"In respect that the pursuer consents that the amount of damages found by the verdict of the jury shall be reduced to £500, discharge the rule for a new trial, and find the defenders entitled to expenses in connection with the application for and discussion upon the rule," &c.

By a subsequent interlocutor on the same day the Court applied the verdict, and decerned for £500; and found the pursuer entitled to expenses in so far as not already disposed of.

Counsel for the Pursuer—J. C. Thomson—Hay. Agents—W. & W. Saunders, S.S.C.

Counsel for the Defenders—Lord-Adv. Macdonald—Rhind. Agent—Robert Menzies, S.S.C.

Thursday, March 22.

OUTER HOUSE.

[Lord M'Laren, Ordinary.

REDDING *v.* REDDING.

Foreign—Jurisdiction—Divorce—Desertion.

Held that a married woman born in Scotland and domiciled there before her marriage, but married to an Englishman with whom she resided in England during her married life, was incapable of acquiring for herself a domicile in Scotland after she had been deserted in England by her husband, so as to found jurisdiction in the Court of Session to entertain an action of divorce by her founded on the desertion.

Robert Redding was married in 1869 in Edinburgh to Margaret Mackinlay, then residing with her parents there, who were domiciled Scots persons. Before the marriage he had been living in discharge of his duty as an officer of Excise for four years in Edinburgh, but had been born of English parents in Berwick. After the marriage the couple lived in Edinburgh for six months, and then removed to Devonshire. They lived at different places in England till February 1880, when the husband deserted his wife and family at Wisbech in Cambridgeshire, and went to America. The wife thereupon returned to Scotland and lived with her mother, then a widow, in Edinburgh, supporting herself and her four children by her own industry. She heard several times from her husband up to October 1880, at which date he was resident in New York, but had no knowledge of his residence since that date.

The wife on 28th January 1888 raised an action of divorce on the ground of desertion against her husband. After proof of the facts stated the Lord Ordinary desired argument as to the jurisdiction of the Court.

The pursuer argued—The wife's domicile in cases of desertion did not follow that of the husband, for it was matter of every day practice to entertain actions of divorce when the husband last transferred his domicile to a foreign country—Fraser on Husband and Wife, p. 1212. If, then, the wife had a capacity to retain a domicile separate from that of her husband, why should she not acquire a new domicile to the same effect? The desertion began in England, but the husband was now in desertion, and the wife was entitled to appeal to the court of the country in which she was permanently resident *animo remanendi* to redress the wrong which her husband day by day continued to inflict upon her. All the text writers agreed on the competency of this—Fraser, 1254; Phillimore, iv. 346; Wharton, sec. 224; Bishop, ii. sec. 128; Bar, sec. 92; Story, 229a—and although there were no decided cases to that effect in this country, America supplied cases—Bishop, *loc. cit.*, and Story, *loc. cit.* Unless this were so the wife had no *forum* to which she could resort, for she did not know where her husband was, and the doctrine of "matrimonial domicile" was now exploded—*Pitt* v. *Pitt*, April 6, 1864, 2 Macph. (H. of L.) 28: *Wilson* v. *Wilson*, L.R. 2 P. and D. 435; *Stavert* v. *Stavert*, February 3, 1882, 9 R. 519. That the remedy of divorce for desertion was unknown in the country in which the spouses had lived as married persons was immaterial if Scotland was *bona fide* adopted as a domicile by the pursuer—*Carswell* v. *Carswell*, July 6, 1881, 8 R. 901.

The Lord Ordinary (M'Laren) on 22nd March 1888 pronounced this interlocutor:—"Finds that the defender is not subject to the jurisdiction of the Court of Session, therefore dismisses the action, and decerns.

"*Note.*—This is an action at the instance of the wife, concluding for a dissolution of the marriage on the ground of desertion. The desertion is clearly proved, and the only question is whether the Court of Session has jurisdiction over the spouses in the matter of the action. The proof was taken before me on the 10th inst., and in her examination the pursuer stated that her husband was born in Berwick-on-Tweed, and that both his parents were Scotch and had lived in Scotland before his birth. But as the pursuer was not professing to speak from personal knowledge or family tradition (because the question is as to the domicile of the husband's parents) I adjourned the proof in order that further evidence might be obtained on this point. On the case being called on the 20th inst., counsel for the pursuer stated that certain members of the husband's family had been communicated with, but that he could not say that their evidence would support the allegation that the husband's parents were of Scottish extraction. The case was accordingly argued on the assumption that the defender Mr Redding was not only born in England, but that England was his domicile of origin.

"The next question of fact is, whether at

the time when the defender deserted his wife he had come to be domiciled in Scotland. The facts are these—For a period of four years prior to the marriage the defender had resided in Edinburgh, where he had a situation in the Inland Revenue Office. The Edinburgh residence was continued after the marriage for a period less than a year, terminating in 1870; the spouses then resided in Devonshire for three years; and after a short stay in London settled in Cambridgeshire, where the defender held the position of superintendent of police. Here the spouses remained from 1874 to 1880, when the defender left his wife and went abroad. It appears to me that if I were to conclude that a Scottish domicile was acquired by reason of the defender's residence in Edinburgh for five years, I must also conclude that the English domicile was re-acquired by the subsequent residence of the spouses in England for ten years. The character of the residence was the same in both cases, and the result is either that the defender must be taken to have retained his domicile of origin from the beginning until the act of desertion was committed, or, if he had at one time acquired a Scottish domicile, that he re-acquired his English domicile by accepting a permanent situation there, and was in fact domiciled in England at the time when he deserted the pursuer. Since 1880 the pursuer has been resident in Edinburgh, and she regards Scotland as her present domicile, and claims to sue for a divorce on grounds recognised by the law of Scotland.

"The question is, as I have said, whether this Court has jurisdiction. It has come to be authoritatively settled that the jurisdiction of the court in actions of divorce is founded on the domicile of the spouses; because a divorce is a proceeding which affects the *status* of the spouses, and ought only to be granted by a judge who has universal jurisdiction over the parties. In general this will be a universal jurisdiction over both spouses, because of the rule that the wife's domicile follows that of the husband. There is, however, in my opinion an exception to this rule, because I agree in the opinion expressed by Lord Westbury in *Pitt* v. *Pitt*, 2 Macph. 32, to the effect that after a cause of action has arisen the husband is not entitled by changing his domicile to subject his wife to the jurisdiction of the courts of a foreign country, or to bring her under the dominion of a system of positive law to which she is a stranger. From this consideration it would follow that Mr Redding by settling in America could not subject his wife to an action at his instance in an American Court, or oblige her to seek redress for the wrong he had done in the Courts of America. For the purposes of adjudicating on any question of conjugal right I conceive that the Courts of England remain open to Mrs Redding, notwithstanding her husband's disappearance; and her remedy (possibly an imperfect one) is such as the laws of England confer on a deserted wife. These considerations are evidently antagonistic to the wife's claim in the present case to prosecute a divorce suit in Scotland. If the husband is not entitled to change the jurisdiction against the wife, it follows in my opinion that the wife has not the power by her change of residence to create a new jurisdiction against the husband. It is quite certain that the Court of Session has not a universal jurisdiction against the defender in this case. (1) To sustain the jurisdiction in respect of the wife's election to fix her domicile here (supposing that she has the power to do so) would, I apprehend, be tantamount to a revival of the old system of founding consistorial jurisdiction on special grounds applicable to one of the parties. (2) In general, when jurisdiction is founded *ratione domicilii*, it is the defender's domicile that is alone considered. Here the domicile founded on is that of the pursuer. This is another objection. But (3) the determining consideration in my mind is that the Court which is to make a decree dissolving a marriage ought to have jurisdiction over both parties. Where one of the spouses has wrongfully withdrawn from the country, it may not unreasonably be held that the jurisdiction against him or her is not destroyed by the party's own wrongful act. It is matter of familiar practice that this Court grants decrees of divorce against deserting spouses who have quitted the country finally to all appearance, and whose place of residence may even be unknown. If in such a case the husband is the pursuer, his wife's domicile is not changed by her desertion. If the wife is the pursuer, we act on the principle that the husband cannot by his own wrong change the joint domicile to the prejudice of the wife. But these rules do not appear to have any application to a case where the husband's last known domicile is England, and where the wife is not seeking to maintain the *status quo*, but to set in motion the courts of a country which she claims to have chosen as her domicile, but to which it cannot be shown that her husband owes obedience."

Counsel for Pursuer—Gillespie. Agents—Tawse & Bonar, W.S.

VALUATION APPEAL COURT.

Friday, March 16.

(Before Lord Lee and Lord Fraser.)

BERWICK *v.* ASSESSOR OF THE COUNTY OF FIFE.

Valuation Roll—Lands Valuation Act, 1854 (17 *and* 18 *Vict. c.* 91), *sec.* 6—*Farm—Grazings Let for Part of the Year.*

Lands which were let for grazing during six months only in the year were valued upon the principle of allowing a deduction of 40 per cent. upon their annual value ten years previously.

On appeal Lord Lee was of opinion that the valuation was *right*, and Lord Fraser was of opinion that the valuation was *wrong*, holding that the rent received afforded the best means of ascertaining the value of the land. The Judges being thus divided in opinion, the determination of the Valuation Committee stood.

At a meeting of the Valuation Committee of the Commissioners of Supply of the county of Fife,