Saturday, July 7.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

FLETCHER'S TRUSTEES *v.* FLETCHER AND OTHERS.

Process—Interlocutor—Expenses.

In order to entitle a party to have expenses taxed as between agent and client the interlocutor awarding expenses must expressly bear that expenses are to be taxed as between agent and client; and it is too late to obtain an award of expenses, to be taxed as between agent and client, after the Court has pronounced a final interlocutor dealing with expenses, but not expressly giving expenses as between agent and client.

In an action of multiplepoinding, exoneration, and discharge, brought by the trustees under the trust-disposition and settlement of the late Mr Joseph Fletcher of Kelton House, Dumfriesshire, the Court, on a reclaiming-note from the judgment of Lord M'Laren, pronounced an interlocutor disposing of the questions raised on the construction of Mr Fletcher's trust-settlement, and containing this finding of expenses—"Find all parties entitled to expenses out of the trust-estate; allow the accounts thereof to be given in, and remit to the Auditor to tax the same and to report."

On 5th July 1888 the Auditor issued this interim report—"With the view of carrying out the remit contained in the interlocutor of Court of 9th March last, the Auditor has examined the accounts of expenses incurred by the parties in this case, and met the agents and received explanations from them, but before reporting he humbly requests the direction of the Court as to the principle of taxation. Reference is made to the subjoined note.

"*Note.*—At the meeting held this day for audit of the accounts it was maintained by the agent for Mr John Fletcher and others that the intention of the Court was that I should tax them as between agent and client. The finding for expenses is in these terms—'Find all parties entitled to expenses out of the trust-estate; allow accounts thereof to be given in, and remit to the Auditor to tax the same and to report.' An examination of the record and of the judgment of the Lord Ordinary and shorthand notes of the advising in the Inner House leads me to think that it may have been the intention of the Court to give the parties their expenses as between agent and client, but to prevent mistake on my part, and trouble to the Court and parties, I think it well to ask the Court to favour me with a direction on the subject. At the close of the advising counsel for the claimants said—'Your Lordships will allow the expenses of the parties to come out of the trust-estate;' and Lord Rutherfurd Clark (who had delivered the judgment of the Court) replied—'I think that is most reasonable. You can arrange what interlocutor should be pronounced giving effect to these views.'"

At the hearing on the report Mr John Fletcher, one of the parties (with whom Mrs Fletcher, the widow of the truster, on this point concurred), argued that the intention of the Court when they decided the case was to give expenses as between agent and client, and that, in any event, it was equitable that that should be done, and was still within the power of the Court.

The trustees (acting in the interest of the children, *nati et nascituri* of Mr John Fletcher) objected that the interlocutor could not be construed to mean an award of expenses as between agent and client, and that it was final.

At advising—

LORD YOUNG—I have no doubt about the matter; we have determined it by our interlocutor. The question whether a party should have expenses in the ordinary way as between party and party, or whether the matter should be dealt with as between agent and client, is a question for the determination of the Court at the time the case is decided. In the one case the Court simply allows expenses; in the other case the interlocutor expressly bears that expenses are to be taxed as between agent and client. Here our interlocutor does not expressly bear that expenses are to be taxed as between agent and client. We are really asked therefore to alter our interlocutor, and I am not inclined to do that.

LORD RUTHERFURD CLARK—I entirely agree. It never occurred to me that in pronouncing our interlocutor as we did we were allowing expenses as between agent and client.

The LORD JUSTICE-CLERK concurred.

Counsel for the Trustees—Sir C. Pearson—C. N. Johnston. Agent—Knight Watson, S.S.C.

Counsel for Mr John Fletcher—D.-F. Mackintosh,—Gillespie. Agents—Mitchell & Baxter, W.S.

Counsel for Mrs Fletcher—R. Johnstone—Goudy. Agents—Scott & Glover, W.S.

Saturday, July 7.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

MACALLAN *v.* ALEXANDER.

Aliment—Liability of Son-in-Law to Aliment his Mother-in-Law—Married Women's Property (Scotland) Act, 1877 (40 and 41 Vict. cap. 29), sec. 4.

Held that a husband who had married subsequent to the Married Women's Property Act, 1877, and who had not been *lucratus* by the marriage, was not liable to aliment his mother-in-law.

The Married Women's Property Act, 1877, provides by sec. 4—"In any marriage which takes place after the commencement of this Act the liability of the husband for the antenuptial debts of his wife shall be limited to the value of any property which he shall have received from, through, or in right of his wife at or before or subsequent to the marriage." . . .

Mrs Ann Angus or Macallan, a widow, residing in Gerrard Street, Aberdeen, raised an action in the Sheriff Court at Aberdeen against William

Alexander, Holborn Street, Aberdeen, her son-in-law, praying that he should be ordained to pay her aliment at the rate of two shillings per week from 28th September 1887. She stated that she could earn two or three shillings per week, but that she had two young children entirely dependent upon her.

The defender stated that he was married on 15th December 1882 to the pursuer's daughter, that he was not *lucratus* by the marriage, that he had a wife and three children to support, and that his wages were nineteen shillings per week.

These statements were admitted by the pursuer.

She pleaded that the defender being her son-in-law was bound to contribute to her maintenance as she was in indigent circumstances.

The defender pleaded, that as he was married subsequent to the passing of the Married Women's Property Acts, 1877 and 1881, and was not *lucratus* by the marriage, he was not bound to aliment his mother-in-law.

On 31st December 1887 the Sheriff-Substitute (Brown) sustained the 1st plea-in-law for the defender, and assoilzied him from the conclusions of the action.

The pursuer appealed, and on 9th March 1888 the Sheriff (Guthrie Smith) dismissed the appeal, and affirmed the interlocutor of the Sheriff-Substitute.

The pursuer appealed to the Court of Session, and argued that the Married Women's Property Act, 1877, did not relieve the defender of the liability he was under at common law—*Moir* v. *Reid*, July 13, 1868, 4 Macph. 1060; *Foulis* v. *Fairbairn*, July 20, 1887, 14 R. 1088; 40 and 41 Vict. cap. 29, sec. 4; 44 and 45 Vict. cap. 21, sec. 1, sub-sec. 3; Stair, i. iii., 5.

Counsel for the respondent was not called upon, but reference was made to the case of *Wishart & Dalziel* v. *City of Glasgow Bank*, March 14, 1879, 6 R. 823.

At advising—

Lord President—I agree with the Sheriff-Substitute and the Sheriff that this clause of the statute is conclusive of the present question.

By the judgment of this Court in the cases of *Moir* and *Foulis* we held that the husband of a woman who is in law liable to support her parents became liable for this burden, and for this reason, that he became responsible for his wife's antenuptial debts of all kinds, and among these antenuptial debts was the obligation to support her parents.

The liability to contribute arose not from contract but from natural obligation. It was, as Lord Shand pointed out, very much the same as if the wife had prior to her marriage undertaken a cautionary obligation upon which, however, she had not been sued till after her marriage. The debt nevertheless remained an antenuptial one.

This case in some respects resembles the case of *Wishart*, 8 R. 74, which we decided some time ago, where a party held certain shares in a bank upon which during his lifetime no calls were made. His executors were, however, called upon to make heavy payments, and we held that the debt was one which was due and resting-owing from the deceased although it was not enforced till after his death.

The clause of the statute upon which the judgment of the Sheriffs is founded is this—[*His Lordship here read the clause of the statute above quoted.*] For the reasons I have stated, namely, that this is an antenuptial debt of the wife's, and that the respondent got nothing at or by his marriage, I am for adhering to the Sheriff's interlocutor.

Lord Shand and Lord Adam concurred.

Lord Mure was absent.

The Court refused the appeal.

Counsel for the Appellant—J. P. Grant. Agent—J. D. Turnbull, S.S.C.

Counsel for the Respondent—Craigie. Agents—Lyle & Wallace, Solicitors.

Saturday, July 7.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

NICOLSON v. MACANDREW & COMPANY.

Reparation — Master and Servant — Employers Liability Act 1880 (43 *and* 44 *Vict. cap.* 42)—*Statutory and Common Law Liability.*

In an action of damages for personal injuries at common law, and also under the Employers Liability Act 1880, the pursuer averred that he was in the employment of a firm of masons, and that the defenders were the principal contractors for the work; that in order to get a tool which a fellow-workman had, he ascended a ladder, and that in returning he stepped on to a scaffolding erected for the joiners' use, which gave way and caused the accident.

Held that the action was irrelevant (1) under the Employers Liability Act, because the relation of master and servant in the sense of the statute did not exist between the pursuer and defender; and (2) at common law, because the pursuer had not relevantly averred either that he required to go upon the scaffolding for the purpose of his work; or that its use by workmen, other than the joiners, was either known to or approved of by the defenders.

This was an action of damages for personal injuries, brought in the Sheriff Court at Aberdeen, at common law and under the Employers Liability Act, 1880, by John Nicolson against D. Macandrew & Company, builders, Aberdeen.

The pursuer averred—(Cond. 1) "The pursuer is a crofter and labourer presently residing in Skye. For about two months prior to Monday the 10th day of October 1887 he was in the employment of Messrs Gauld & M'Kenzie, masons, as a labourer at the Government Prison Works, Peterhead. The defenders were the principal contractors for the work in which the pursuer then laboured, and themselves executed part thereof. The pursuer was subject to the control of the defenders, and his labour was in their service. His wages were paid by one in