not appropriate the complainer's ideas. As to the question how the hours of the trains at the different stations were filled in after the selection of stations was made, it is clear the result would have been the same whether the times were taken from the companies' tables or from the complainer's book. The compositors, it may be, were entitled to fill in the columns in the way most convenient for them, but I hold it proved that they took the lines from the railway companies' tables, and that very little use was made of the complainer's book. There being no motive for literary piracy, and nothing taken in which the complainer can prove he had any exclusive right, I am against presuming in face of his sworn testimoney that the respondent here ran the risk of an action by using the complainer's tables instead of going to the sources open to both parties.

LORD KINNEAR—The question between the parties is only one of fact. The complainer's compilation is no doubt a useful one, but all the matter it contains was already in the possession of the public, and its compiler cannot complain merely because information similar to what he furnishes is to be found in the defender's publication. At the same time he is entitled to say that the defender must not take advantage of his time-table, but must go to the independent sources open to both. He must not copy the work which the complainer has made his own and has published. The real question then is, whether the defender's work is a mere copy of that of the complainer, or whether he has gone direct to the railway companies' tables and constructed by his own industry and intelligence from information contained in these public sources.

I agree with your Lordships on the facts. Had I read the Lord Ordinary's opinion as meaning that the defender was not a credible witness, I should have had great difficulty in reversing his Lordship's judgment, but I do not so understand his opinion. I think that he would have come to the same conclusion as your Lordships had he not thought that after a comparison of the two time-tables he could not give effect to the sworn testimony of the defender. We are therefore in an equally favourable position with the Lord Ordinary for judging of this matter. After comparing the publications we are to say whether the result is such as leads us to disbelieve the sworn testimony. I am of opinion that it does not.

The Court recalled the Lord Ordinary's interlocutor and refused the prayer of the note, with expenses.

Counsel for Complainer and Respondent—H. Johnston — Dewar. Agent—J. D. Turnbull, S.S.C.

Counsel for Respondent and Reclaimer—W. Campbell—Graham Stewart. Agent—Alexander Morison, S.S.C.

Saturday, July 8.

OUTER HOUSE.

[Lord Kyllachy.

HUNTER *v.* HUNTER.

Jurisdiction—Divorce—Husband and Wife—Domicile of Succession.

A husband, English by origin, married a Scotswoman in 1878, and from 1881 the spouses had their domicile in Scotland until after the commission of certain alleged acts of adultery by the wife in Edinburgh in 1892. In December of that year the husband went to live with his relations in England, while his wife remained in occupation of a house in Edinburgh, of which he continued to be tenant till Whitsunday 1893.

In April 1893 he raised an action of divorce for adultery, and at the proof in June he stated that he had then no intention of returning to Scotland.

Held that as he had not in fact changed his residence nor evinced any intention of doing so at the date of the action, the Scottish Court had jurisdiction to entertain the action.

The circumstances sufficiently appear from the Lord Ordinary's judgment.

"*Opinion.*—In this case I have come to the conclusion that the pursuer is entitled to decree of divorce.

"A question was raised as to jurisdiction, and I had some argument on the point whether anything short of a domicile of succession is a sufficient domicile to found jurisdiction in divorce.

"It was contended for the defender that there is now no such thing recognised in law as a matrimonial domicile, that is to say, a domicile distinct from the husband's domicile of succession, and accordingly that although adultery has been committed in Scotland and the spouses have had their domicile in Scotland until after the adultery, and until before the raising of the action of divorce, it is yet fatal to the jurisdiction of the Scottish Courts if the husband has at the date of the action left Scotland, and done so in such circumstances as to make it no longer his domicile of succession.

"I have not found it necessary to come to a conclusion on the interesting and perhaps somewhat difficult question thus raised. I shall only say that I am not satisfied that the doctrine can be stated so broadly as it was put in argument.

"As the facts of the present case stand I am prepared to hold that at the date of this action the husband, who is here the pursuer, had his domicile of succession in Scotland. His domicile of origin was no doubt English, but he had married a Scotswoman, and on his marriage, which took place in 1878, he had come to Scotland and settled there. From that time his only home was in Edinburgh, where he rented and furnished a house, and indeed it was not disputed that up to December 1892 he was for all

purposes a domiciled Scotsman. That being so, what I have to consider is whether it involves the loss of his Scotch domicile, and the revival of his domicile of origin, that on the discovery of his wife's misconduct, and some months before the raising of the divorce, he left Edinburgh for London to live with his relatives, and has now, as he frankly says in the witness-box, no intention of returning to Scotland.

"I confess this would be carrying very far the doctrine that a domicile of choice is lost by a change of residence *animo non revertendi*. There are two circumstances which in the present case appear to exclude the application of that doctrine. The one is that it cannot be here affirmed that the pursuer had at the date of the action in any proper sense changed his residence. He still had a house in Edinburgh, in which his wife continued to live, and of which he continued to be tenant up to Whitsunday.

"That is the first consideration. The other is this, that it nowhere appears what the pursuer's intentions were at the date of the action in April last. He says, no doubt now, that he has no intention of returning to Scotland, and it is also true that his furniture has been sold off. But at the date of the action his intentions may have been different, or they may not have been formed one way or the other.

"I confess I do not consider that I am bound in a case like this to draw inferences, more or less doubtful, in order to defeat the jurisdiction. On the whole I do not think at present that either *animo* or *facto* the pursuer had changed his domicile at the date of the action."

Counsel for Pursuer—Strachan—Greenlees. Agent—William Geddes, Solicitor.

Counsel for Defender — Craigie — Abel. Agent—D. R. Grubb, Solicitor.

Thursday, July 20.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

WHITEHEAD *v.* BLAIK AND OTHERS.

Reparation—Personal Injury resulting in Death—Title to Sue—Parent and Child.

Held (*rev.* judgment of Lord Kincairney) that a mother had no title to sue an action of damages for the death of her son where the father was alive and had not renounced his right.

Mrs Christina Whitehead, residing at Limekilns near Dunfermline, in the county of Fife, brought an action of damages against Hugh Blaik and others, the registered owners of the steamship "Sicilian," for the death of her son who had been first mate of that vessel, and whose death the pursuer alleged had been caused through the fault of the defenders or those for whom they were responsible. The action bore to be brought "with consent and concurrence of her husband Thomas Whitehead, seaman, residing at Limekilns aforesaid, and at present furth of Scotland on a voyage to Bermuda."

The pursuer averred that her husband had given his consent to the action before he left the country.

The defender pleaded—"(1) No title to sue."

On 23rd March 1893 the Lord Ordinary (KINCAIRNEY) before further answer allowed the pursuer a proof of her husband's consent to the action.

"*Opinion.*—This is a very novel action. It is an action of damages by a married woman for the death of her son. The defenders object to her title to sue, and I was informed from the bar that no example of such an action could be found in our books, and I have not been able to discover any such action, or any action by a father and mother conjointly for the death of their child, or any action by a child for the death of a mother.

"There is very high authority for saying that actions of this kind, which are to a certain extent anomalous, should not be allowed unless supported by precedent, and that the title to sue such actions should not be extended. I have not been able to see, however, that the plea to title can be sustained. I think that the pursuer's title to sue may be deduced from principles which are established and admitted, and that the absence of previous instances may be accounted for.

"It is settled that actions of this nature may be sued where the pursuer and the deceased stood in the relation of husband and wife, or parent and child. There is no case in which the title of a wife to sue for damages on account of the death of a husband, or of a father for the death of a son, or of a son for the death of a father, has been denied. I think there can be no doubt as to the title of a husband to sue an action of damages for the death of his wife, although I am not aware of any such case prior to the case of *Bern* v. *The Montrose Asylum* [30 S.L.R. 748], where the title of a husband to sue for damages on account of the death of his lunatic wife was not disputed. The title in any of these cases does not depend on any allegation or presumption of patrimonial loss. The action will be sustained although it is averred, assumed, or admitted that there has been no such loss—*Black* v. *Caddell*, 9th February 1804, M. 13,905; *Brown*, 26th February 1818, F.C. In *Stone* v. *Aberdeen Marine Insurance Company*, 14th March 1849, 11 D. 1041, an action of damages was sustained by an adult son for the death of his father, who was old, infirm, and on the poor's roll. The case of *Bern* above mentioned furnishes a similar example.

"Our law gives this right when the relation is that of parent and child. There is no statement of the law which limits it to the case of father and child. The right of a mother to sue an action for the death of a child is founded on exactly the same grounds as is the right of a father to sue such an action. There could be no question as to the right of a widow to sue on