

tion clause—what is its intended scope? If, on its fair reading, the parties have agreed to refer to the arbiter every dispute or difference about the meaning and effect of the contract, whensoever and wheresoever such dispute or difference may arise, then there is no rule or principle of law to defeat such agreement. In the present case, if the words of the contract on which the claim for damages turns had been technical words, or words descriptive of material, we should, I am pretty sure, have applauded the good sense of the parties in binding themselves in the contract to the construction to be adopted by an engineer; remitted to the arbiter to state the true meaning and effect of the contract on the matter in hand; and, taking his word for the soundness of his decision, have gone on to get damages assessed if he was in favour of the pursuer. And yet the warrant for so doing would have been the very words of reference now in question, which cannot have a different meaning when they result in getting the arbiter to decide on a question for which we think him less qualified.

On these grounds I should, had your Lordships not thought differently, have considered that we are bound to remit to the arbiter to decide as to the effect of the contract in regard to the time for giving possession of the works. I have stated my own view, because these questions about the effect of arbitration clauses perpetually recur. But so far as the interests of the parties to this suit are concerned, it is satisfactory that we are all agreed that (by whomsoever to be adjudged on) the claim is bad in law.

The Court adhered.

Counsel for the Pursuers—Salvesen—Clyde. Agent—J. Smith Clark, S.S.C.

Counsel for the Defenders—Vary Campbell—Dundas. Agents—Drummond & Reid, S.S.C.

Thursday, July 20.

FIRST DIVISION.

SOCIETY OF SOLICITORS IN THE
SUPREME COURTS OF SCOTLAND
v. OFFICER.

FACULTY OF PROCURATORS OF
GLASGOW v. LANG.

*Law Agent—Misconduct—Suspension—
Law Agents (Scotland) Act 1873 (36 and 37
Vict. c. 63), sec. 22.*

In May 1887 a divorce suit was pending in the English Courts at the instance of M., a domiciled Englishman, against his wife and a co-respondent C., which did not seem likely to result in decree in favour of the plaintiff. C. wishing to marry Mrs M., with whom he was then living in adultery at Ayr, consulted L., a procurator in Glasgow, as

to the possibility of having the law-suit dropped in England and an action instituted in Scotland. M. consented to this being done provided his whole expenses were paid by C. L., who throughout acted for the three parties, received an opinion of counsel upon an A B case that decree could only be obtained by a careful suppression of facts. He thereupon took an office in Glasgow for M., who never entered it, and only came to Glasgow over the end of two weeks. L., to avoid C. being recognised, also arranged that he and Mrs M. should live together in Glasgow under the name of Mr and Mrs R. for the purpose of establishing adultery against them there, and of there serving the summons upon Mrs M. The summons designed M. as a tea merchant in Glasgow, referred to C. under the name of R., and contained no allusion to England or the English suit. O., the Edinburgh agent, through whom the opinion in the A B case had been obtained, and with whose office L. communicated throughout the summer and autumn of 1887, became aware of the real facts of the case at least in November 1887, when he protested against adultery being arranged. Nevertheless he allowed the case to remain in his office, where the final summons, after four drafts, was prepared. The correspondence in connection with the case, although signed by him, was left to his principal clerk, and he handed over the summons for signature and calling to another agent, but he himself arranged for the pursuer going to the Parliament House to take the oath of calumny, and his clerk attended the proof, which resulted in decree in favour of the pursuer.

The Court held that both L. and O. had been guilty of misconduct as law-agents under the 22nd section of the Law Agents Act 1873, and suspended them from practising as law-agents for one year.

Decree of divorce was pronounced upon 10th March 1888 by Lord M'Laren in an undefended action at the instance of Norfolk Bernard Megone, tea merchant, West Nile Street, Glasgow, against Rosalie Barlow or Megone, his wife, who was found to have lived in adultery with "Joseph Richards" at 365 Sauchiehall Street, Glasgow, for some time from 6th December 1887 onwards. Counsel for the pursuer was Mr John Rhind, the Edinburgh agent was Mr William Officer, S.S.C., and the Glasgow agent was Mr John Stuart Lang, a member of the Society of Procurators, Glasgow. Richards, whose real name was Louis Clovis Bonaparte, and Mrs Megone went through a marriage ceremony on 30th March 1888, and in 1892 Richards raised an action in the High Court of Justice in England against Mrs Megone to have his marriage with her declared null, on the ground that at the date of the ceremony she was still Megone's wife.

Mr Justice Gorell Barnes pronounced decree of nullity, without the decree of divorce being reduced, on the ground that it was "clear that a fraud was perpetrated upon the Scotch Court, and that there was no jurisdiction in that Court to pronounce the decree it did." His Lordship, whose judgment is reported in *Times' Law Reports* for 1892, p. 759, proceeded upon the grounds—"(1) That the designation of the pursuer Megone in the divorce summons was inaccurate and misleading, in so far as it represented that he was a tea merchant in West Nile Street, Glasgow, having a domicile there, while, on the contrary, he was a domiciled Englishman at the time when the action was raised and when decree of divorce was pronounced, and the Court of Session had no jurisdiction to pronounce decree in the case; (2) that the name 'Joseph Richards' was not the name by which the defender's paramour was known, and that this name was adopted for the purpose of avoiding recognition; and (3) that the whole proceedings were collusive—Mr Officer's correspondent Mr Lang having acted for all the parties—pursuer, defender, and paramour, and pre-arranged the whole evidence in the case."

With reference to the correspondence passing between Mr Officer and Mr Lang, Mr Justice Gorell Barnes said—"Now, I refrain purposely from commenting on that and other letters by the solicitors in those Scotch proceedings. The documents speak sufficiently for themselves, and it is possible that the Scotch Courts may take steps for the purpose of inquiring into the manner in which this case was conducted."

Having considered that correspondence and investigated the circumstances of the case, the Society of Solicitors in the Supreme Courts of Scotland in March 1893 presented a petition to the First Division of the Court of Session against Mr Officer, under sec. 22 of the Law Agents (Scotland) Act 1873 (36 and 37 Vict. c. 63), which by sec. 22 provides that "Every enrolled law-agent shall be subject to the jurisdiction of the Court in any complaint which may be made against him for misconduct as a law-agent, and it shall be lawful for the Court, in either Division thereof, to deal summarily with any such complaint, and to do therein as shall be just." The petition set forth that in the opinion of the Society the documentary evidence showed that Mr Officer, if he did not know the circumstances narrated and founded on by Mr Justice Gorell Barnes in his judgment, had at any rate sufficient notice of them to have put him on his guard in dealing with the case, and that the petitioners deemed it to be their duty to bring the conduct of Mr Officer under the notice of the Court. They prayed the Court, "after such intimation and service as to your Lordships shall seem proper, and after such inquiry, if any, as may be necessary, to find that the said William Officer has been guilty of misconduct as a law-agent in the matter referred to, and thereupon to do herein as shall be just."

The Faculty of Procurators in Glasgow

presented a similar petition, founding upon the same Act of Parliament and the same section thereof, and concluding with the same prayer, with respect to the said John Stuart Lang, on the ground that there was a *prima facie* case of misconduct against him, inasmuch as along with Mr Officer he had been a party to obtaining a decree of divorce under the circumstances narrated and founded on by Mr Justice Gorell Barnes.

In his answers Mr Officer explained that from 21st July to 12th September 1887, the period during which Mr Lang gave instructions for the raising of the action of divorce, he was abroad, and that he was more or less away from business that year till 9th October; that the conduct of the case was throughout left to Mr John Veitch, who managed his Court business, and in whom he had perfect confidence. He summarised his position thus—"1. He never saw and had no knowledge of Mr Rhind's opinion' (referred to below) 'until after the decision in the English action. 2. He had no knowledge of Mr Lang's instructions in regard to the action, or the communications with him in regard either to the jurisdiction, the grounds of action, or the conduct or proceedings of any of the parties thereto. 3. He was in entire ignorance of all the communications between Lang, Clovis, and Megone, in regard to the case. 4. He had no meetings with any of the parties, and did not attend any of the consultations with counsel in connection with the action. 5. With the exception of two letters of 11th June and 3rd November 1887, he did not write any of the letters connected with the case. 6. He never saw any of the draft summonses, or any of the precognitions or documents in the action, and had no knowledge of the manner in which Megone was designed in the summons, nor did he know anything whatever of Clovis or his history, or any change of his name to 'Richards.' 7. He knew nothing of, and was not present at, any of the judicial proceedings in the action." He also added that the case was transferred to another agent before being brought into Court, and that the respondent's pecuniary interest in the matter was of the most trivial character. "He submitted that even assuming he had been put on his guard, and had failed to exercise the degree of caution and diligence which the Court was entitled to expect from a law-agent in the conduct of a case, that was not such personal misconduct as would alone justify an application like the present. At the same time he greatly regretted if there had been any laxity or remissness on his part in the conduct of his business with regard to this matter.

Mr Lang in his answers explained "that he commenced business for himself in the autumn of 1886, when he was twenty-four years of age; that the consultations regarding the action *Megone v. Megone* commenced in May 1887; that he had no previous experience of actions of divorce, and was not a practitioner before the Court where such actions are raised; that the conduct

of the case was necessarily left to the Edinburgh agent, who had large experience as a practitioner in the Court of Session; and that both he and the other respondent were acting in the matter under the advice of counsel. He further respectfully submitted that he had no intention or desire of practising any fraud or deception of any kind upon the Court, and that any error committed by him was due to his youth and inexperience, and he humbly and sincerely expressed his deep regret therefor.

Counsel were heard upon both petitions on 31st May 1893, when the Court allowed a proof in each case to be taken by Lord Kinnear.

It was agreed that the proof in the two petitions should be led at the same time.

The proof disclosed the following facts:—In May 1887 there was an action of divorce pending in the English Courts at the instance of Mr Megone, a domiciled Englishman, and a tea merchant in London, against his wife, in which Louis Clovis Bonaparte (a son of Prince Lucien Bonaparte by amorganatic marriage, and whose mother's name was Richards), was called as co-respondent. For some reason it appeared that divorce was not likely to be granted. Clovis, as he was commonly called, and Mrs Megone, with whom he was then living in Scotland, consulted Mr Lang as to the possibility of getting the English suit dropped and an action of divorce brought in Scotland, with the view of enabling them after the divorce to marry.

Mr Lang submitted this proposal in a letter to Megone dated 16th May 1887, in which he said—"I have to propose that you should immediately come to Scotland with the intention of founding a domicile here, and thus making yourself amenable to the jurisdiction of the Scottish Courts. My clients propose that after you have by a forty days' stay here, domiciled yourself, you should raise the action in the Scottish Courts. The respondent and the co-respondent being domiciled here, you should have no difficulty in getting decree, and by coming to this country for the express purpose of founding for yourself a jurisdiction to raise the action, it can be supposed that you did so because of the expense to yourself being so much less, and because the respondent being at present resident in this country, less expense would be incurred by you on her behalf. You do not require to remain here continuously during these forty days, so long as you make Scotland your headquarters; and should you put yourself in my hands, as Mrs Megone and Mr Clovis propose, the expenses of the action will be met by them. They will not defend, and we can arrange between us when you come north as to the proof you require to lead."

Upon 11th June 1887 Megone wrote to Lang—"If I go to Scotland, I should only be able to go down each Saturday and return to London by Sunday night train. It would be impossible for me to make a stay of any length, as I must be at business here all the week. I might keep on my room at a hotel in Glasgow or Edinburgh, making

Scotland my weekly headquarters. If this stay would be sufficient for the purpose of gaining domicile, let me hear from you and I will communicate further. Of course, if I undertake this, it is on the distinct understanding that all the expenses of the proceedings, travelling and hotel expenses, are paid by your clients as stated in your former letter."

Upon the same day Officer personally wrote to Lang, who had sent him a case for the opinion of counsel, giving the circumstances of Megone, his wife, and Clovis under the initials of A B and C—"I will obtain Mr Rhind's opinion as speedily as possible. From my own knowledge of the law on the subject, I am of opinion that your client A could not sue a divorcee in Scotland, unless he was to reside here not only for forty days, but have the intention, and prove that intention, to the satisfaction of the Court, of adopting this country as his permanent domicile."

And upon the same day Mr Rhind gave the following opinion—"The domicile must be a genuine and not merely a temporary one. . . . Forty days' residence will not found jurisdiction in a case of this kind. . . . Nor does Scotland, being the scene (or one of the scenes) of guilt, even when coupled with forty days' residence, found jurisdiction—*Stavert v. Stavert*. On the other hand, I have no doubt a divorce might be obtained in the Scotch Courts (the case being undefended) by a careful suppression of facts. The judge might not interfere on the question of jurisdiction—see *Watts v. Watts*, March 20, 1885, 12 Rettle 894. But should a divorce be obtained from a Scotch Court, I am clearly of opinion that it would not hold good in England, nor would it enable the memorialist safely or honourably to marry again. I think the memorialist should take proceedings in England."

Upon 13th June, before receiving this opinion, Lang wrote to Officer—"In the present instance I control the actions of A, B, and C, and, if thought advisable, all the parties would appear. If not, no appearance would be made by defender. From a letter I have just received from A, he cannot remain continuously in Scotland, but can make Glasgow or Edinburgh his headquarters, travelling to and from London several times, but always keeping on his rooms."

Upon 22nd June Lang had a meeting with Officer, at which, according to Lang, the opinion was discussed, and also the case in the concrete, but according to Officer the meeting was entirely with reference to other matters.

Upon June 29, Lang wrote to Megone—"I will take an office in this city for you as from the term of Whitsunday last, and in any proceedings you can be designed as of '_____ Street, Glasgow, and 6 Mincing Lane, London.' It will be necessary to keep the particulars in the background, so as not to arouse the Judge's suspicion, as, if it were aroused, he would make such inquiries as to spoil the whole case. But by carefully concealing the

particulars, it is not considered likely that a very strict investigation will be made."

An office was taken by Lang for Megone in West Nile Street, Glasgow, and his name put up on the door. This office he never entered, and he was only in Glasgow twice.

During August Lang was engaged in drafting the summons for the divorce, and wrote constantly to Officer, who at this time was abroad, and whose letters were being opened and answered by Veitch. Upon 25th August Lang wrote—"I now enclose draft summons for your revival. Will you kindly consider the matter with the following information? I suppose you recollect the opinion I obtained from Mr Rhind on the subject, and it is mainly on his advice that, with a careful suppression of facts, my client, who is a domiciled Englishman, could be successful. I have taken an office in this city for him, and should you think it necessary I can get a house address for him as well. Please revise the draft, always keeping in view that a careful suppression of facts is essential. . . . I may mention that I am acting for all the parties, and the case will be undefended."

No fewer than five different summonses were drafted altogether, the object being to state as few details as possible, and to avoid all reference to England and the lawsuit there. It was originally intended to serve the summons upon the defender in Ayr, where she was living, and to specify acts of adultery with Clovis there. He, however, wished to avoid a scandal in Ayr, where he was known, and to have acts of adultery alleged against him under the name of Richards, and it was accordingly suggested by Mr Lang that he and his paramour might live together in hotels in Glasgow or Edinburgh under the name of Mr and Mrs Richards.

Upon 8th September 1887 Lang wrote to Officer—"I have evidence of residence in the Central Station Hotel here" (Glasgow), "on the 3rd, so you can prepare the summons now to include that. Do you think I should have another case? If so, would you advise it to be in Glasgow, Edinburgh, or where? if not in Edinburgh, then I think you should keep out that word in the condescendence."

Upon 21st September 1887 Lang had a consultation with Mr Rhind, one of Mr Officer's clerks being present, and afterwards, according to his own evidence, saw Mr Officer, but this the latter denied. Thereafter Lang wrote to Megone and Clovis, stating that the consensus of opinion was against raising the action in Scotland on account of the strict way in which the Court had of late been looking into the question of jurisdiction in such cases.

There was a consultation between Lang and Officer upon 27th October as to this case, at which as Officer deposed, the difficulty of jurisdiction was discussed, and Lang advised to follow counsel's advice.

Upon 2nd November Lang wrote to

Officer—"Referring to our conversation a few days ago, the respondent in this action proposes to stay in Edinburgh with the co-respondent for a couple of days, and after that in a Glasgow hotel; in the latter place the summons could be served, alleging the acts committed in Edinburgh. Do you think that this evidence would be satisfactory? I should like to know soon, before allowing them to go. After that the pursuer could come up and be here when summons was served." To which Officer replied personally—"I have received your letter of yesterday, and have shown it to Mr Rhind, and talked over the matter with him. I could not be a party to the course which you suggest, for it would be manifestly collusive, and might lead us into serious trouble. What I think you should do, if you are to proceed with the case in Scotland, is to allow the summons, which has been already signeted, and in which the parties are designed as residing in Ayr, where the adultery was committed, to be proceeded with. It is possible that the judge in such an action might not raise any objection."

Upon 15th November Officer wrote to Lang—"I saw Mr Clovis the day you called for me, and I have since seen Mr Rhind on the subject. It is only to-day that I have got Mr Rhind's definite instructions. Mr Clovis was willing that an action should be raised, averring an adulterous intercourse having taken place at Ayr during the time the parties were resident there, and also in Edinburgh, where they are, I believe, residing now. Mr Rhind thinks that such an action might be raised with safety, and, if we thought fit, need not, at the proof, go into the course of living in Ayr. Of course the matter of jurisdiction still remains, and Mr Rhind's opinion is in no way changed regarding it. I think the pursuer should continue to make as continuous a residence in Glasgow as possible." This letter, according to Officer, though signed by him, was written by Veitch, and not read by him.

Upon 18th November Lang wrote to Megone—"I . . . have been endeavouring to get matters arranged here more to our satisfaction; and at present it is arranged that with more proof, which my Edinburgh correspondent is arranging, the action may be raised, and if the question of jurisdiction is raised by the Judge it may be smoothed over. Otherwise counsel is quite satisfied as to getting the matter put through and obtaining his divorce."

Upon 5th December Lang wrote to Officer that his clients (Richards and Mrs Megone) had gone to reside at 365 Sauchiehall Street, Glasgow, and upon 8th December a summons of divorce, prepared in Mr Officer's office, and signeted upon 7th December, was served upon Mrs Megone. In it she was alleged to have committed adultery with Joseph Richards in Ayr, and in said house in Glasgow, the pursuer being unable to aver any specific act of adultery except in said house.

The summons was signed by J. F. Edwards, L.A., to whom by letter of 12th December

Officer returned it with a request to have it called before Lord M'Laren as soon as possible *per* Mr Rhind.

With regard to handing the case over to Mr Edwards, Mr Officer deponed—"I directed the papers to be handed over to Mr Edwards, because it was a case that I did not care to have anything more to do with. I had no particular object in doing so. I knew Mr Edwards was a very honourable and careful man, who would see that every thing was carefully conducted. He was in a comparatively small way of business, and I was willing to do him a good turn. . . . *Cross.*—When I sent cases to Mr Edwards in this way I sometimes gave up the agency altogether. In this case I did not do so because Mr Veitch thought that Mr Lang was a desirable correspondent to retain, and that if Mr Edwards communicated with him directly it might end in Mr Lang employing Mr Edwards in place of me. (Q) You thought Mr Lang was a desirable correspondent to retain though you thought this case was not a desirable case to retain?—(A) I did. (Q) Why was it not a desirable case to retain?—(A) In the first place it was a very trifling case, from which little or nothing could be made, and from the changes that had taken place, and the suggestions made by Mr Lang I thought it had better go to a man who had more time on his hands to attend to it, and I also wished to send a little business in the way of Mr Edwards, as I have been in the habit of doing both before and since. (Q) Was it not because there was a manifest appearance of intention on the part of the parties and Mr Lang of acting collusively in the matter?—(A) It was not; such a suggestion never occurred to me."

The case was called upon 16th December, and 24th December was fixed for the pursuer taking the oath *de calumnia*.

Upon 23rd December, Lang wrote to Officer—"I have your letter of yesterday, and have wired pursuer to call at your office at a quarter to ten to morrow morning. Please let him have your personal attention and instructions."

As to what happened upon 24th December J. M. Gow, then a clerk in Mr Officer's office, deponed—"I recollect seeing Mr Megone on the morning of the day on which he was to take the oath of calumny. He did not come to the office till half-past ten. Mr Officer came in to me and said—'Here is Mr Megone; Mr Veitch is away to the Parliament House; you might take a cab and go up with him.' We took a cab and went up to the Parliament House. While we were in the cab Mr Megone asked me what the oath of calumny exactly meant. I hesitated to answer his question, and before I had replied he said, 'Is it not something I have to swear that all is true, and that there is no fraud about the matter?' I said 'Yes.' When we got to the Parliament House I saw Mr Veitch, and I put Mr Megone into his hands. (Q) Did Mr Officer at any time make a remark to you about the Megone case?—(A) There was one time, at the beginning of the case, when there was a doubt as to the jurisdiction, he re-

marked to me that he did not like the look of that case. I cannot tell more definitely when that was. It was on an occasion when I took in a letter for him to sign in regard to the case. (Q) When you say it was at the beginning of the case, was it in the autumn of 1887?—(A) It must have been."

Edwards took charge of Megone until he had taken the oath, which was in the following terms:—"Compeared the pursuer, who, being solemnly sworn and examined *de calumnia*, depones that he has just cause to insist in the present action of divorce against the defender, his wife, because he believes that she has been guilty of adultery, and that the facts stated in his libel, which has been read over to him, are true; depones that there has been no concert or collusion between him and the said defender, in raising this action, for the purpose of obtaining a divorce against her, nor does he know, believe, or suspect that there has been any concert or agreement between any other person on his behalf and the defender, or any other person on her behalf, with the view or for the purpose of obtaining such divorce: All which is truth, as the deponent shall answer to God."

Upon 22nd February 1888 Edwards' connection with the case came to an end, and upon 10th March 1888 proof was led and decree pronounced as stated above. Mr Rhind and Mr Veitch were present at the proof, but Mr Officer was not in the Parliament House until it was over. After obtaining decree of divorce Megone married again.

Argued for the S.S.C. Society—The evidence proved that Mr Officer had been guilty of misconduct as a law-agent. According to Mr Lang, Mr Officer knew all about the case upon 22nd June 1887, but in any case he was in no ignorance after 3rd November. He did undoubtedly protest at first against the pre-arrangement for adultery being committed, but he conspired to keep the Court in the dark as to the want of jurisdiction, and afterwards he allowed a summons to be drawn in his office founded solely upon adultery in Glasgow which had been arranged for, and containing a statement as to the pursuer's ignorance which was inconsistent with fact. He himself arranged for the pursuer taking the oath of calumny, which could not be taken without perjury, and he showed that he thought there was something not creditable in the case by handing it over to another agent.

Argued for the Faculty of Procurators—A case of grave misconduct was clearly established against Mr Lang, who indeed frankly confessed it.

Argued for Mr Officer—He had no hand in drafting the summonses. He was abroad while the earlier drafts were being prepared. He did not read up his correspondence upon his return, and after his return he left the case in the hands of Veitch, whom he trusted, and took no personal charge of the matter except when specially appealed to. The only letters proved to have been written by him personally were

those of 11th June and 3rd November, and in both he had protested against steps being taken which he thought tainted with collusion. He did not prevent the case going on on the ground of no jurisdiction, because he thought advice given by him was to be followed, and that Megone was to acquire a real and not a temporary and fictitious domicile. He had frequently employed Edwards in cases he had not time for, and Edwards would have carried this case through had he not taken ill before the proof. His only fault, if it was a fault, was in not looking more sharply after his Glasgow correspondent. With his numerous other professional engagements he had to rely, and was entitled to rely, upon such experienced assistants as Veitch. He could not personally supervise every trivial case that came to his office. As stated in his answers, he regretted if there had been any laxity on his part; there had not, he submitted, been misconduct in the sense of the Act. In all previous cases the Act complained of was one of crime.

Argued for Mr Lang—He admitted things had been done which he could not now justify, but he was then young and inexperienced. The change of name did not mislead the Court; it was done to save Clovis' reputation in Ayr, and Richards was a name he had some right to. Nor was the adultery arranged for; it had been going on for years, and was continuous. All that had been arranged was where the parties were to be living together when the summons was served upon the defender. The question of jurisdiction was not a simple one, nor was it clear when suppression of facts was justifiable, and when it amounted to misconduct. At the same time he confessed that he had acted wrongly, and regretted what he had done. He desired to refer to the admission in the petition against him that "since then, nearly six years ago, he had carried on business in Glasgow with credit, and so as to gain the confidence and goodwill of his professional brethren."

At advising—

LORD PRESIDENT—On 10th March 1888 a decree of divorce was pronounced in the Court of Session on a summons at the instance of "Norfolk Bernard Megone, tea merchant, West Nile Street, Glasgow."

That this decree was obtained by fraud and perjury is certain; and this was not disputed by any of the parties to the present application. The pursuer had sworn in Court that he was a tea merchant in Glasgow, whereas he was a tea merchant in London, and not a tea merchant in Glasgow, and had no Scotch domicile or any relation to Scotland, except that he had unjustifiably entered the Scotch Courts in the action in question. He had also sworn, in the oath of calumny, that there had been no concert or collusion between him and the defender in raising the action for the purpose of obtaining a divorce against her; and he further swore that he did not know, believe, or suspect that there

had been any concert or agreement between any other person on his behalf and the defender, or any other person on her behalf, with the view or for the purpose of obtaining such divorce. So directly was this the opposite of the truth, that the man who thus swore had come into the Scotch Courts on the invitation and at the expense of the paramour of his wife, and by virtue of a concert and agreement so definite that it fixed the rate he was to be allowed for travelling to Scotland week by week in order that he might pass himself off as a Scotchman; and that he left it to the discretion of the paramour's solicitor whether further acts of adultery should or should not be committed with his wife for the purposes of the suit.

On these facts I observe, first, that the Judge before whom the case was tried had, on the evidence before him, no option but to grant divorce; and second, that the main safeguard which the Court and the public have against the production of false cases of divorce lies in the honesty and honour of legal practitioners.

The serious and important question which we have to-day to decide is, whether in the case in question there was misconduct on the part of either or both of the two law-agents who conducted it? The legal societies to which they severally belong have only fulfilled an imperative duty to the honour of their own bodies and to the safety of the public when they presented the case to the Court under the present petitions. On the other hand, we, who have hitherto relied on the loyalty of the practitioners before us, are bound to place a favourable construction on conduct which may often have to be determined in difficult and equivocal circumstances, and it is in that spirit that I approach the decision of this case.

I take, first, the case of Mr Lang, because he had, unfortunately, the responsibility of initiating these untoward proceedings. Now, it appears that a divorce suit in the English Courts for the dissolution of Mr Megone's marriage had prospered so little there, and had incurred such suspicion, that it was abandoned. Then Mr Lang, who is a procurator in Glasgow, was consulted in order to see whether the Scottish Courts might not be resorted to with better result for the same end. Mr Lang was consulted, not by the theoretically injured husband, but by the paramour of the wife, with whom she was living, and who was throughout the proceedings his client and employer. It is enough to say of the husband that Mr Lang entered into communication with him, obtained his concurrence, the use of his name, and his obsequious observance of all the steps deemed necessary by his wife's paramour to deceive the Court so long as he was not involved in outlay for travelling expenses.

Now, when Mr Lang was thus consulted by Clovis, I am ready to believe that being a very young practitioner and quite inexperienced in divorce practice, he may have had rather vague ideas about jurisdiction. But he got an opinion from Mr John Rhind,

advocate, on an A B case, which had at least the merit of distinction; and it completely and categorically negated the possibility of this marriage being legally dissolved by a Scottish decree. Moreover, Mr Officer, through whom Mr Rhind's opinion was obtained, had in advance stated his own view of the situation, which was quite in accordance with Mr Rhind's and with the law.

What then did Mr Lang do? Mr Rhind's opinion had contained this sentence—"On the other hand, I have no doubt that a divorce might be obtained in the Scotch Courts (the case being undefended) by a careful suppression of facts." If these words were written as a warning, they were read as an advice; and they were the keynote of Mr Lang's subsequent conduct. He decided to go on and obtain a divorce by a careful suppression of facts. Few franker avowals have been written than Mr Lang's letter of 25th August 1887, in which he sets the action going by sending Mr Officer the draft summons for revival. "I suppose," he says, "you recollect the opinion I obtained from Mr Rhind on the subject, and it is mainly on his advice that, with a careful suppression of facts, my client, who is a domiciled Englishman, could be successful. I have taken an office in this city" (Glasgow) "for him; and should you think it necessary I can get a house address for him as well. Please revise the draft, always keeping in view that a careful suppression of facts is essential." With Megone the tone of his correspondence is the same. "It will be necessary," he says on 27th June 1887, "to keep the particulars in the background so as not to arouse the judge's suspicion, as if it were aroused he would make such inquiries as to spoil the whole case. But by carefully concealing the particulars it is not considered likely that a very strict investigation will be made."

From the time when the action was thus resolved on, Mr Lang devoted his attention to dressing up the case so as to look as like a Scotch case as possible, and as unlike the abortive English case as possible. He got Megone's name put up at a door in Glasgow which Megone never apparently entered, as a figment or semblance of a Scotch domicile. He deemed it legitimate to give his client Clovis the name of "Joseph Richards." Finding that this made it impossible to get the adultery at Ayr proved, where this fictitious name was of course unknown, it then occurred to him that it might be better to arrange for the parties going and committing adultery in Glasgow under the name of Mr and Mrs Richards; this was done; and positively the adultery on proof of which the divorce was granted (and as I have said necessarily granted) was this adultery resolved on for the exigencies of the concocted summons.

Now, I do not elaborate the case proved against Mr Lang, because in his answers and in his evidence he admits it, and it is in his favour that he does so without reserve. But what I wish to point out is that the region in which his offence is committed is not that of technicality, in which his own inexperience or the ill advice of older men

could avail him as a defence. He set afoot, and in spite of warning on at least two occasions, pressed on, what he knew to be a fraud; and this is not a question of knowledge of the law or of process but of right and wrong. If this is not a grave case of misconduct as a law-agent, I do not know what is.

The case of Mr Officer is more complicated if it could be held to depend on a number of the questions of detail which were disputed chiefly between his counsel and the counsel for Mr Lang. I am ready to give Mr Officer the benefit of any doubt as to the degree of minuteness with which he kept himself acquainted with the concoction of the case, or aloof from it. I go on the broader facts, and I begin at the beginning. He read Mr Lang's memorial, and he wrote the letter of 11th June 1887, in which he pronounced judgment against the proposed action on the ground that there was no jurisdiction. The agency was accepted nevertheless; the preparation of the case went on; and at latest on 3rd November Mr Officer personally saw what were Mr Lang's methods. Drawing the line at the proposal to arrange for the commission of adultery, Mr Officer said he could not be a party to it, and he recommended that they should go on with the summons as already signeted, in which the parties are designed as residing in Ayr when the adultery was committed. "It is possible," he added with manifest significance, "that the judge in such an action might not raise any objection."

Now, this protest was as far as it went commendable if it had been acted on, but it brings home to Mr Officer for the second time the knowledge that Mr Lang and his case required watching. Did he watch them? He took the significant step of giving the case over to Mr Edwards, and there can be no doubt that this was because he "did not like the look of the case"—an expression which (according to his clerk Gow) he used at the earlier stage when there was a doubt about the jurisdiction. Now, I think it is clear enough that the share assigned to Edwards was the nominal responsibility for the case, the real control remaining in Mr Officer's office; but so far as the intervention of Edwards counted for anything, it lessened Mr Officer's power to keep the case straight. The case was not kept straight, and instead of Mr Officer's good advice being followed the decree was obtained without any evidence of adultery at Ayr at all, and solely upon evidence of prearranged adultery in Glasgow, committed a month after his protest. The case on these lines was prepared and carried through in Mr Officer's office, he being in his ordinary attendance on business from November onwards.

Now, as I have said, I am quite willing to go some way in believing that Mr Officer did not read this or that letter, and even had not this or that conversation, but I do not believe that at least after the 3rd November he was ignorant of the main features of this ill-omened action of divorce. Nor am I the less disposed to adopt this

view because the recollection of the witness Gow supplies the very important fact that Mr Officer having been notified by Lang of the advent of Megone for the purpose of taking the oath of calumny, and having been pointedly requested to give his personal attention to it, he saw to Megone being conducted by one of his clerks to the Court where this act of perjury was committed.

In my opinion it is proved that Mr Officer lent himself as an instrument to this conspiracy against justice. I think that he covertly furthered it; but if I only believed that, knowing the fraudulent purpose of others, he stood aside or shut his eyes while in fact that design was being carried through in his own office, I should equally hold that he was guilty of misconduct as a law-agent in the sense of the Law Agents Act.

If these transactions had been recent it would have been difficult to avoid concluding that both these gentlemen's names be struck off the roll of law-agents. The interests of society require that the offence of an officer of the Court, for such is every law-agent, who deliberately joins in misleading the Court into a decree shall meet with exemplary punishment. But this offence is not recent, and in the case of Mr Lang his good conduct since those days is well attested. All things considered, we decide that both respondents be suspended from the exercise of their office of law-agents for one year.

This is the judgment of the Court.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR were present.

The Court suspended the respondents from exercising their office of law-agents for one year, and found them liable in the expenses of the respective petitions.

Counsel for S.S.C. Society—H. Johnston—Macfarlane. Agent—R. Addison Smith, S.S.C., Fiscal of the Society.

Counsel for Faculty of Procurators of Glasgow—Jameson—Dundas. Agents—Campbell & Smith, S.S.C.

Counsel for Officer—Comrie Thomson—Guthrie. Agents—Irons, Roberts, & Co., S.S.C.

Counsel for Lang—Dickson—Deas—Agents—W. & J. Burness, W.S.

Wednesday, July 19.

SECOND DIVISION.

[Sheriff of the Lothians.

WELSH v. DUNCAN.

Process—Appeal—Competency—Value of Cause—Landlord and Tenant.

The proprietor of a house raised an action in the Sheriff Court against the tenant for £17, 10s. In his condescendence the pursuer stated that he had let the house to the defender at an annual rent of £35, payable half-yearly, and that the first half-year's rent, viz., £17, 10s. had become due, and had not been paid by the defender. The defender alleged that he agreed to pay a rent of £35 per annum for the house provided he got a lease of the house for three years, and the pursuer executed certain alterations and repairs, but that these conditions had not been complied with, and therefore the rent claimed was not due. The Sheriff-Substitute having decreed against the defender for the sum sued for, and the defender having appealed against his interlocutor to the Court of Session, *held (dub.* Lord Rutherford Clark) that the appeal was incompetent.

John Welsh, proprietor of the house known as Hillhouse Stenhouse, raised an action in the Sheriff Court of the Lothians and Peebles at Edinburgh against George Duncan, praying the Court "to grant a decree against the above-named defender, ordaining him to pay to the pursuer the sum of £17, 10s. sterling, with interest thereon at the rate of five per centum per annum, from the 11th day of November 1892 till paid."

The pursuer averred—" (Cond. 2) The pursuer let the said dwelling-house and ground to the defender for the year from the term of Whitsunday 1892 to the term of Whitsunday 1893, at a rent of £35 sterling payable half-yearly at the usual terms, and the defender entered into possession in April 1892. . . . (Cond. 3) At the term of Martinmas 1892, a half-year's rent of said dwelling-house—viz., £17, 10s.—became due by the defender to the pursuer. The pursuer has repeatedly applied to the defender for payment of said rent; but he refuses, or at least delays, to make payment, and the said sum of £17, 10s. is still due and unpaid. The present action has thus been rendered necessary."

The defender lodged defences, in which he alleged that he had agreed to take a lease of the subjects for three years at a rental of £35 per annum on the condition that the pursuer carried out certain improvements and repairs on the subjects, including the following—the erection of a wash-house, with all modern conveniences, and the erection of a glass-house, and the removal of a wall in the garden. The defender also averred that the pursuer was due him the sum of £7, 17s. 6d. as his share