

the parties to the suit. It appears to me to depend on fundamental principles in the law of husband and wife, equally true in Scotland and in England. As regards the second point raised, as to the pursuer's delay in bringing this action, I should not be disposed to view favourably any action of damages for slander brought eighteen months after the alleged slander was uttered, but I do not know enough of the circumstances of the present case to enable me to form a clear opinion upon the validity of the plea of *mora* put forward by the defender. Our decision on the first point as to the competency of the action is sufficient for the disposal of the case.

LORD KINNEAR—I agree with your Lordships. I do not leave out of view that the appellant has told us that he does not desire in this action to recover money from his wife. At the same time in dealing with the competency we are bound to look at the action itself, and we find that the conclusion is for damages and nothing else. I agree that the law laid down by Lord Blackburn in the case cited to us is in accordance with our own law. It would be highly inexpedient and inconsistent with the principles of our law as well as that of England as Lord Blackburn explains it, to sustain this action.

LORD ADAM concurred.

The Court affirmed the judgment of the Sheriff.

Counsel for the Pursuer—Party.

Counsel for the Defender—Orr. Agents
Winchester & Nicolson, S.S.C.

Tuesday, January 27.

FIRST DIVISION.

JOHNSTON v. JOHNSTON.

Expenses—Husband and Wife—Interim Award—Husband Reclaiming—Motion in Inner House for Award to Cover Expenses in Outer House—Payment a Condition of Proceeding.

In a reclaiming-note at the instance of the pursuer in an action of divorce by a husband against his wife, the wife moved for an interim award of expenses, calculated at a sum which was more than sufficient to enable her to present her case in the Inner House, and was designed to meet a portion of the expenses incurred by her in the Outer House, which had exceeded an interim award made by the Lord Ordinary. She also moved that payment of the sum awarded should be made a condition-*precedent* to the reclaiming-note being heard. The Court, in making an award of expenses, limited the amount to the sum necessary for the conduct of the case in the Inner House, and refused in the meantime to make payment a condition of proceeding with the reclaiming-note.

In an action of divorce at the instance of John Johnston against his wife Mrs Maggie Wilson or Johnston, and another, the Lord Ordinary (STORMONTH DARLING) awarded Mrs Johnston £15 as interim expenses. After a proof he pronounced an interlocutor by which he assoilzied Mrs Johnston from the conclusions of the action, and found her entitled to expenses. Against this interlocutor Johnston reclaimed.

Mrs Johnston presented a note to the Lord President in which she prayed his Lordship to move the Court to decern against the pursuer, *ad interim*, for payment to her of the sum of £200, or such other sum as the Court might think fit, on account of her expenses in the case, and "to make payment of the sum so to be awarded a condition of the pursuer being allowed to proceed with his reclaiming-note in the cause."

In the note she averred that the proof had lasted for three days, and had entailed expenses amounting to £150, that she had no means of her own, and had received nothing from the pursuer except the £15 awarded by the Lord Ordinary. She argued that a substantial award of expenses should be given.

Counsel for the reclaimer argued that the expenses to be awarded should be only the amount necessary to enable the respondent to present her case in the Inner House. Interim award of expenses in the Outer House was a question for the Lord Ordinary.

LORD PRESIDENT—I think that the question in regard to the expenses already incurred in the Outer House should be dealt with by the Lord Ordinary in the Outer House. A motion for expenses might have been made by the defender then, and whatever the result of that motion might have been I do not think that either practice or expediency would induce us at this stage to make an award of Outer House expenses here. The question remains whether we should now make an award of expenses to enable the defender to present her case in the Inner House. She holds the judgment of the Lord Ordinary, and therefore she will not incur the expense of printing but only the expense of instructing counsel to support the Lord Ordinary's judgment. We think these expenses may be met by an award of £20. We do not propose at present to make the payment of this sum a condition-*precedent* to allowing the hearing on the reclaiming-note to proceed, but we expect that it will be at once paid, and if it is not paid we may afterwards consider whether payment should not be made a condition-*precedent* to our hearing the pursuer on his reclaiming-note.

LORD ADAM—I have always understood that the motion for expenses was made for the purpose of enabling the wife—whether she be pursuer or defender—to lay her case before the Court. That proceeded on the principle that the whole property was in the husband, and therefore that the wife had no means. I further

think that while a case of this kind is before the Lord Ordinary the control of the matter of expenses is altogether with him. The defender appears to have obtained an award of £15 from the Lord Ordinary. If that was not sufficient there was no reason why she should not have repeated her motion to the Lord Ordinary, and if he had thought right he would have granted a further award. That there is a reclaiming-note makes no difference in my view. The whole interlocutor of the Lord Ordinary is under review, and until that is disposed of we cannot touch the question of Outer House expenses. The only question, as I said before, is what award of expenses should be made now to enable the wife to conduct her cause before us. If she had had to print the proof then the sum to be awarded might have been different. But the whole of that expense falls on the unsuccessful party. All that the wife requires to do is to instruct counsel to state her case to the Court, and I agree that, that being so, an award of £20 is quite sufficient.

LORD M'LAREN concurred,

LORD KINNEAR—I concur with your Lordships, and would only add that I agree with all that Lord Adam has said with reference to the practice and the conditions under which a wife may have an award for her estimated expenses while a litigation is going on.

The Court awarded £20 of interim expenses.

Counsel for the Pursuer—Hunter—T. B. Morison. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender—Dundas, K.C.—Christie. Agents—R. & R. Denholm & Kerr, W.S.

Tuesday, January, 27.

FIRST DIVISION.

[Lord Low, Ordinary.]

SMITH v. HERITORS OF
PRESTONPANS.

Church—Parish—Obligations of Heritors—Minister's Water-Rates.

The heritors of a parish are not bound to relieve the minister of water rates imposed upon him by the local authority in consequence of the manse having been included in a special water-supply district.

On 2nd October 1899 a resolution was adopted by the Western District Committee of the County Council of Haddington, acting as the local authority within the Western District of Haddingtonshire under the Public Health (Scotland) Act 1897, to form into a special water supply district, under section 131 of the Public Health (Scotland) Act 1897, certain parts of the parishes of Prestonpans and Tranent.

On appeal this resolution was confirmed by the Sheriff.

Part of the subjects included in the said special water supply district was the manse, garden, glebe, and offices of Prestonpans. Rates were accordingly levied on the minister of Prestonpans, the Rev. G. S. Smith, who was entered in the valuation roll as liferent proprietor of the said subjects.

Mr Smith thereafter brought the present action against the heritors of the parish of Prestonpans. The conclusions of the action were—"Therefore it ought and should be found and declared by decree of the Lords of our Council and Session that the defenders as heritors foresaid are bound to supply the manse and offices of Prestonpans occupied by the pursuer with a proper supply of water suitable for drinking and domestic purposes, and that they are bound to free and relieve the pursuer of the public water rates and assessments levied upon him as owner and occupier of the said manse and offices; and the defenders ought and should be decerned and ordained by decree foresaid to make payment to the pursuer of the sum of 17s. 7d. sterling, being the amount paid by the pursuer in name of said rates and assessments, and also of such sum as he may pay at any future date in name of said rates and assessments."

In his condescendence the pursuer narrated the creation of the special water supply district, and explained the existing state of the manse water supply, pending the completion of the water supply by the local authority. Prior to 1889 the manse had been supplied by a well, but in that year the heritors had arranged with the Burgh Commissioners of Prestonpans for a supply of water from the burgh pipe to the manse, which is outside the burgh.

The pursuer pleaded—"(1) The defenders being bound to provide the pursuer with a suitable and sufficient supply of water for the manse and offices free of charge, decree ought to be pronounced in terms of the declaratory conclusions of the summons. (2) The defenders being in the circumstances liable to relieve the pursuer of water rates and assessments, decree ought to be pronounced in terms of the petitory conclusion of the summons.

The defenders pleaded—"(1) The pursuer has no title to sue the defenders for relief of assessments. (2) *Quoad ultra* the action is incompetent. (3) The pursuer's statements are irrelevant and insufficient to support the conclusions of the action. (4) The defenders not being bound in the circumstances to furnish the pursuer with any further or other supplies of water than the private supply which he has at present and the public supply which will shortly be available for him, should be assolizied from the declaratory conclusion relating to the supply of water. (5) The defenders not being bound to relieve the pursuer of assessments imposed on him under the Public Health Act, should also be assolizied from the other conclusions of the summons, with expenses."