

because they are in the burgh and not in the county; but the burgh has to make a contribution, and the amount of the contribution, as in a question with the contribution of the county, is got at by taking the proportion of the valuation of the burgh and the valuation of the county. It is therefore clear that in an indirect way the burgh have an interest in what the valuation of the county is, and that being so they have an interest in having whom they consider to be the best man appointed to settle what that valuation is. Accordingly, although I make these latter observations as showing that I am comforted by thinking it is not an inequitable conclusion that I have come to, I still put my judgment, in the nice position in which I find the matter, on a simple adherence to the Act of Parliament, and I am of opinion that we should answer the question put to us in the affirmative.

LORD M'LAREN—I concur for the reasons given by your Lordship. I am not satisfied that the appointment of an assessor to a salaried office is a question involving expenditure in the sense of the Local Government Act. It may be said that expenditure is a necessary result of the appointment of an assessor, but here the expenditure is the result of the performance of a statutory duty which is independent of the choice of the individual official.

LORD KINNEAR—I also think that this is a question of considerable difficulty upon the construction of the statute, but I have come to the same conclusion as your Lordships, and for the same reasons.

LORD PEARSON was absent.

The Court answered the question in the affirmative.

Counsel for the First Party—Leadbetter. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Second Party—Hunter, K.C.—T. B. Morison. Agent—James Ayton, S.S.C.

Counsel for the Third and Fourth Parties—Clyde, K.C.—Wilton. Agent—Alexander Bowie, S.S.C.

Thursday, May 17.

SECOND DIVISION.

PHEYSEY, PETITIONER.

Public Records—Nobile Officium—Transmission of Public Records for Production in English Court—Register of Marriages—Marriage Schedules.

The Court granted the prayer of a petition presented by an Englishman, who was suing an action of divorce in the High Court of Justice in England, for the purpose of having the Registrar-General authorised to exhibit in the suit certain volumes in his custody.

This was a petition presented on 16th May 1906 by Frederick Cecil Pheysey, distiller's clerk, residing at 3 Elms Road, Clapham, in the county of London.

The petitioner stated—"That the petitioner was, on 21st June 1901, married in Glasgow to Marguerite Horton Rutherford, then residing at 2 Ailsa Terrace, Hillhead, Glasgow. The petitioner was then a minor, being twenty years of age, and his said wife was two years his senior. The marriage took place by declaration before the Sheriff of Lanarkshire at Glasgow, upon a petition presented to him on behalf of and signed by both the contracting parties, who on same date also signed the register of marriages for the district of Blythswood, Glasgow. At the date of said marriage the petitioner was and has continued to be a domiciled Englishman. That on or about 11th January 1904 the petitioner's said wife, in the name and under the description of Marguerite Horton Rutherford, spinster, contracted a bigamous marriage with Henry Edward Cosgreave at St Mary's Church, Wednesbury, in the district of West Bromwich, and the petitioner's said wife and the said Henry Edward Cosgreave have since lived and cohabited as man and wife at 19 Egerton Gardens, West Ealing, in the county of Middlesex. That on or about 21st December 1905 the petitioner brought an action in the Probate, Divorce, and Admiralty Division of the High Court of Justice in England for a dissolution of his marriage with the said Marguerite Horton Rutherford, founding upon her adultery with the said Henry Edward Cosgreave. To said action the petitioner's said wife (calling herself Marguerite Horton Cosgreave) has filed an answer in which she, *inter alia*, stated she never was the wife of the petitioner. The said action is set down for trial, and it is anticipated will be reached in the course of the present month. That the said petition and relative declaration and warrant by the Sheriff, and the said principal marriage certificate or schedule, are in the custody at Edinburgh of the Registrar-General for Scotland, and being required to establish the petitioner's marriage, the present application is therefore made to your Lordships for authority to have the volumes containing the same, viz. (1) register of marriages for the district of Blythswood, Glasgow, for the year 1901, and (2) marriage schedules for the district of Blythswood, Glasgow, for the year 1901, exhibited before the said Division of the High Court of Justice in England, under the custody of an officer to be selected by the Registrar-General, and by whom the said volumes shall be restored to the custody of the Registrar-General. A copy of this petition has been duly intimated to the Registrar-General."

The petitioner prayed the Court "to grant warrant to and authorise the said Registrar-General, or any officer duly authorised by him, to convey the said volumes containing the said petition and relative declaration and warrant by the Sheriff, and the said marriage certificate or schedule, to London, and there to exhibit

the same in the said High Court of Justice—Probate, Divorce, and Admiralty Division—at the said trial," &c.

No appearance was made for the Registrar-General.

Counsel in moving that the prayer of the petition be granted referred to *Mackenzie, Petitioner*, February 8, 1902, 4 F. 559, 39 S.L.R. 390; *Earl of Euston, Petitioner*, December 5, 1883, 11 R. 235, 21 S.L.R. 170. [LORD LOW—Are there not in this case the same safeguards as in an application at the instance of the Crown?—(A) Yes.]

The Court (the Lord Justice-Clerk, Lord Stormonth Darling, and Lord Low, absent Lord Kyllachy) granted the prayer of the petition.

Counsel for the Petitioner—Horne. Agents—Webster, Will, & Company, S.S.C.

Tuesday, May 22.

SECOND DIVISION.

[Lord Ardwall, Ordinary.

MUIR & SON, LIMITED v. EDINBURGH AND LEITH CORPORATIONS GAS COMMISSIONERS.

Process—Proof in Outer House—Reclaiming Note—Further Proof Allowed by Inner House—Remit to Lord Ordinary—Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 62.

Section 62 of the Court of Session Act 1868 is as follows:—"The third section of the Act 29 and 30 Vict. cap. 112 [Evidence (Scotland) Act 1866] is hereby amended to the effect of providing that, notwithstanding the terms of said section, 'where proof shall be ordered by one of the Divisions of Court,' it shall no longer be competent to remit to one of the Lords Ordinary to take such proof, but it shall be taken before any one of the Judges of the said Division, whose place may for the time be supplied by one of the Lords Ordinary called in for that occasion."

During the debate on a reclaiming note presented by the defenders against an interlocutor of the Lord Ordinary in favour of the pursuers pronounced after proof, the pursuers obtained leave to amend their record and the defenders to answer the amendment. Thereafter, the defenders having moved to be allowed to lead additional proof, the pursuers contended that under the section set forth above it could only be taken by one of the Judges of the Division, a remit to the Lord Ordinary being incompetent.

The Court remitted to the Lord Ordinary to take further proof and to report.

Muir & Son, Limited, having brought an action of damages against the Edinburgh and Leith Gas Commissioners, the Lord

Ordinary (ARDWALL) after proof gave judgment in their favour.

The defenders reclaimed.

In the course of the hearing the pursuers obtained leave to amend their record and the defenders to answer the amendments. The defenders then moved the Court to allow them to lead additional proof. The Court indicated their opinion that the proof should be allowed, and proposed to remit the case to the Lord Ordinary.

Pursuer's counsel drew their Lordships' attention to section 62 of the Court of Session Act 1868, and to the case of *Rowatt, &c. v. Brown*, February 18, 1886, 13 R. 576, 23 S.L.R. 397, and contended that the additional proof could only be competently taken by a Judge of the Division, a remit to the Lord Ordinary being made expressly incompetent by section 62 of the Court of Session Act 1868, and being further inconvenient, as it might lead to a multiplication of processes, for if the Lord Ordinary revised his judgment after hearing further proof a new reclaiming note would be necessary.

The Court pronounced this interlocutor—

"The Lords allow the answers for the defenders to be received: Open up the record: Allow the minute of amendment and the answers to be added to the record and of new close it: On the motion of the defenders remit to the Lord Ordinary to allow them a further proof in respect of the said minute and answers, and the pursuers a conjunct probation, and to report—the proof to be taken by the said Lord Ordinary not earlier than 16th October next."

Counsel for the Pursuers—Guthrie, K.C.—Constable. Agents—Finlay & Wilson, S.S.C.

Counsel for the Defenders—Lord Advocate (Shaw, K.C.)—J. D. Millar. Agent—James M'G. Jack, S.S.C.

Tuesday, May 22.

FIRST DIVISION.

[Sheriff Court at Dumbarton.

M'GROARTY v. JOHN BROWN & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 1, sub-sec. (2) (c)—Serious and Wilful Misconduct—Drunk and Unfit to Work.

"Being drunk and unfit to work" is serious and wilful misconduct within the meaning of section 1 (2) (c) of the Workmen's Compensation Act 1897.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 1 (2) (c), enacts—"If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed."