

that the expense of the diligence should be allowed.

LORD ARDMILLAN—Whether the cost of a diligence should be allowed when no documents are recovered is a case where no general rule can be laid down. I agree with Lord Deas that every exertion was necessary here to recover the documents in question, and that, in the special circumstances of this case, the expenses of the unsuccessful diligence should be allowed. I do not agree with the Auditor that the fee to junior counsel for attending the advising should be deducted.

LORD KINLOCH—I am of the same opinion. I think the expense of diligences is a thing the Court ought very carefully to watch, because in my experience in the Outer-House, I have found that a great part of the unnecessary expense of cases arises from unnecessary diligences. I think it of great importance that both counsel should be present at advising, and that this should not be done without that suitable acknowledgment which usually accompanies services rendered in this Court.

LORD PRESIDENT—I sympathise in Lord Kinloch's observation with regard to the expense very often incurred in unnecessary diligences, and I was inclined at first to agree with the Auditor here. But the explanation given by your Lordships induces me to concur in the necessity of a diligence in this case.

Agent for Pursuers—J. Knox Crawford, S.S.C.
Agents for Defenders—H. & A. Inglis, W.S.

Saturday, July 18.

HART & SON V. IRVINE.

Jurisdiction—*Meditatio Fugæ*—*Caution de judicio sisti*. A foreign debtor, apprehended on a *meditatione fugæ* warrant, found caution *de judicio sisti*, and was liberated. He did not seek to have the proceedings set aside. *Held* that he could not decline the jurisdiction of the Scotch courts in an action by the creditors at whose instance he had been apprehended, he having consented to submit himself to the courts of this country on condition of being liberated.

Messrs Lemon, Hart & Son, wine merchants, London, raised this action against the Hon. Nicol Irvine, merchant, Accra, West Coast of Africa. While the defender was in Kirkwall in 1867, on a visit, the pursuers caused him to be apprehended on a *meditatione fugæ* warrant. On this warrant he was detained till he found caution *de judicio sisti*. The defender's first plea in law was want of jurisdiction on the part of the Court, on the ground that he had his domicile at Accra where there were law courts in which the action might have been brought, and that no jurisdiction had been competently founded against him in Scotland. The Lord Ordinary (BARCAPLE) repelled this plea, on the ground that the defender not having sought redress in any competent form against the proceedings in the application for his apprehension as *in meditatione fugæ*, and having found caution *de judicio sisti*, and thereby obtained his liberation, made it impossible for him to decline the jurisdiction of the Court.

The defender reclaimed.

YOUNG and FRASER, for him, stated that he had raised an action of reduction of the proceedings before the Sheriff-substitute at Kirkwall, whereby the *meditatione fugæ* warrant was obtained, and that

the summons therein had been served on the pursuers the previous night.

The DEAN of FACULTY and MONRO in reply.

At advising—

LORD PRESIDENT—The point does not admit of the smallest dispute. The ground of the Lord Ordinary's interlocutor is simply this, that in consideration of getting liberation from custody, the defender consented to submit himself to the courts of this country. That is the true meaning of the bond *de judicio sisti*. I cannot do better than refer to the case of *Muir v. Collett*, 23d November 1866, 5 Macph. 47, where the law relating to this was settled. If the proceedings in the petition to the Sheriff-substitute for obtaining the *meditatione fugæ* warrant were incompetent this raises a wider question. That would be a good ground for bringing an action of reduction of these proceedings; but it is not the case we have before us just now. The Lord Ordinary's interlocutor must be adhered to.

LORD DEAS—I concur. The interlocutor of the Sheriff-substitute was pronounced on the 26th October 1867, and caution *de judicio sisti* was found the same day. That interlocutor might have been brought under review of this court if the defender had wished, and the present proceedings would have been obviated. But that was not done, and no reduction was brought till last night. It is plain to my mind that the Lord Ordinary could do nothing but what he did; and that the bringing of the reduction within the last day or two makes no difference.

LORD ARDMILLAN—I also concur. In the absence of a reduction, the Lord Ordinary decided rightly.

Agents for Pursuers—Morton, Whitehead & Greig, W.S.

Agents for Defender—Scarth & Scott, W.S.

Saturday, July 18.

A. V. B.

Husband and Wife—Divorce—Contingency—48 Geo.

III., c. 151, sec. 9. A husband brought an action of divorce against his wife before one of the Lords Ordinary, and the wife subsequently raised an action of divorce against her husband before a different Lord Ordinary. *Held* that there was between these two actions a contingency in the sense of Stat. 48 Geo. III. c. 151, sec. 9, and an interlocutor remitting the second action *ob contingentiam* of the first affirmed.

This was an action of divorce at the instance of A against her husband B. The Lord Ordinary (ORMDALE), on the motion of the defender, remitted this case to Lord Barcaple, in terms of Statute 48 Geo. III., c. 151, sec. 9, *ob contingentiam* of an action of divorce at the defender's instance against his wife presently depending and previously brought before his Lordship.

The pursuer reclaimed.

YOUNG and TRAYNER, for her, maintained that there was no contingency here in the sense of the Statute. The acts of adultery on the part of the defender set forth in arts. 4, 5, 6, and 7 of the pursuer's condescence, were met by a simple denial on the part of the defender, and could not be shown to have any relation to the same subject as, or any connection or contingency with, the subject matter of the defender's action against the pursuer. Be-