

has been brought here, but as it has been brought here, I think your Lordships can do nothing with it but dismiss it also, with costs.

Agents for Watt—William Officer, S.S.C., and William M. Hacon, London.

Agents for Sheriff Thomson—Millar, Allardice, & Robson, W.S., and Simson & Wakeford, Westminster.

Agents for Sheriff-Clerks—Tods, Murray, & Jamieson, W.S., and Burchells, Westminster.

COURT OF SESSION.

Thursday, June 9.

SECOND DIVISION.

RULE v. BAXTER.

Poors-Roll—Remit. Circumstances in which held that application for remit to poors-roll ought to be refused.

The litigation in this case began in 1861 by an action at the instance of Baxter against Rule in the Sheriff-Court of Lanark, for payment of the sum of £175, 3s. 3d., decerned for in a reference between the parties as to the sale and purchase of certain quantities of wood. The Sheriff decided against Rule in 1863. During that year Rule advocated, but failed to proceed, whereupon, on 2d June 1863, Baxter obtained decree of protestation. Thereafter, on 15th May 1865, Rule raised an action of reduction of the adverse award in the reference, and of the judgments in the Sheriff-Court. In this action, after a proof had been led on commission, the Lord Ordinary pronounced judgment, giving effect to certain of the reductive conclusions. No interlocutor was subsequently pronounced except one of wakening on 20th November 1868. In July 1869 a remit was made to the reporters on *probabilis causa*, but no steps therein taken till March 1870, when, on the case coming before the reporters, it was found to be asleep under the remit, and accordingly dismissed. A new certificate having been obtained, the motion for a remit was now renewed, whereupon

BRAND, for Baxter, opposed the remit, on the ground (1) that in the circumstances the applicant ought not to be indulged in further litigation; (2) that the certificate was disconform to the A. S.; and (3) that as the applicant was in receipt of 13s. per week, he was not entitled to the benefit of the poors-roll. The following authorities were referred to on the last point; *Duncan v. Morrison*, Jan. 16, 1863; *Inglis v. M'Phun*, Feb. 10, 1863; *Williamson v. Irvine*, Nov. 21, 1863; and *Sutherland*, Jan. 28, 1864.

SPEIRS in answer.

The Court held that in the whole circumstances they must refuse the application.

Agent for Pursuer—J. Barclay, S.S.C.

Agent for Defender—R. Denholm, S.S.C.

Saturday, June 11.

FIRST DIVISION.

BRODIE v. BRODIE.

Husband and Wife—Divorce—Process—Adultery—Recrimination—Sisting. In an action at the instance of the husband decree of divorce on

the ground of adultery was pronounced; and against this, judgment the wife reclaimed. Previous to the decree by the Lord Ordinary being pronounced she brought an action on the same ground against her husband; but the Lord Ordinary sisted the process in it *hoc statu* because of the reclaiming note against his interlocutor in the first action, but gave leave to the wife to reclaim against this latter interlocutor. *Held*, the proper course was to have sisted the process furthest advanced, so as to let both actions be considered at the same time.

Observed, it is settled law that recrimination is no bar to divorce; and (*dub.* Lord Ardmillan) decree of divorce might be pronounced against both parties.

On 22d October 1869 the pursuer raised an action of divorce against his wife on the ground of adultery; and on 13th January 1870 she raised an action of divorce against him on the ground of acts of adultery, which she said were committed anterior to those that he alleged she had committed. On 5th February the Lord Ordinary (ORMIDALE) pronounced decree of divorce in the action at the husband's instance. The wife reclaimed, and the note was boxed to the Court on the 26th February. The record in the action at the wife's instance was closed on the 19th February; and when the wife asked a proof of her averments, the husband replied the action was incompetent in respect of the dissolution of the marriage by the decree of the 5th February. On 25th May the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, in respect of the dependence of a reclaiming note against the Lord Ordinary's judgment of divorce in the action at the instance of the defender against the pursuer, sists the present process *hoc statu*; and, on the motion of the pursuer, grants leave to her to reclaim against this interlocutor.

"*Note.*—The Lord Ordinary was moved by the pursuer to allow her a proof in the present case, and to proceed as if the marriage in question had not been already dissolved. The Lord Ordinary did not think that this would be a correct course; but he has, in the meantime, sisted the present process, and the pursuer may again move in it in the event of the judgment in the other case being recalled. The Lord Ordinary has also granted leave to the pursuer to reclaim against the present interlocutor, in order that she may, if so advised, have both cases before the Inner-House at the same time."

Mrs Brodie reclaimed.

SCOTT for her.

FRASER in answer.

At advising—

LORD PRESIDENT—Sisting is a question for the discretion of the Court. Recrimination is not a good defence for a wife to plead in an action against her. That was first expressly decided by the case of *Lockhart* in 1799. But that case also decided that she may raise a counter action. I cannot therefore consent to put the wife out of Court as the Lord Ordinary has done. What I think he should have done was to sist the action that was in advance of the other. And as we have the power, I think we should sist the process in the husband's action, so as to have both suits ripe for decision at the same time, and then we shall have it in our power to grant decrees against