

think, to the guilty. I am aware that it has been in recent times otherwise decided. To that decision I must bow, and in that decision I must, in this Court, respectfully acquiesce. It would be incandid in me to do less,—it would be presumptuous in me to do more—than express my regret that the old law has been departed from.

The following interlocutor was pronounced:—

“*Edinburgh, 23d June 1871.*—The Lords having resumed consideration of the reclaiming note for Mrs Jane Ann Fraser or Walker against Lord Ormidale’s interlocutor of 28th July 1870, and heard counsel on the said reclaiming note, and also on the record and proof in the relative action of divorce reported by the Lord Ordinary, at the instance of the said Jane Ann Fraser or Walker against William Walker, her husband; recall the said interlocutor of 28th July 1870: Conjoin the said last mentioned action with this action, and in the conjoined actions, find facts, circumstances, and qualifications proved relevant to infer Jane Ann Fraser or Walker’s guilt of adultery with James Grant, mentioned in the record and proof: Find her guilty of adultery accordingly: Therefore divorce and separate the said Jane Ann Fraser or Walker, defender, from the pursuer William Walker, his society, fellowship, and company in all time coming; Find also facts, circumstances, and qualifications proved relevant to infer William Walker guilty of adultery with Jeanie Kay, Mary M’Phail, Agnes Flood or Flann, and Jane Gordon Mackay or Worth, all mentioned in the record and proof; find him guilty of adultery accordingly: Therefore divorce and separate the said William Walker, defender, from the pursuer Jane Ann Fraser or Walker, her society, fellowship, and company in all time coming: Declare the said William Walker and Jane Ann Fraser or Walker respectively free of the marriage solemnized and completed between them, and that each of them may marry any free person in the same manner as he or she might have done had they never been married to each other, and decern; reserving in the meantime the effect of the above findings and decrees on the patrimonial rights of the parties respectively: Find the said Jane Ann Fraser entitled to the expenses hitherto incurred by her in each of the said actions now conjoined; allow an account of said expenses to be given in, and remit the same to the auditor to tax and report: Remit to the Lord Ordinary to dispose of the remaining conclusions of the summons at the instance of the said Jane Ann Fraser against the said William Walker.”

Agents for Mr Walker—W. G. Roy, S.S.C., and Henry & Shiress, S.S.C.

Agents for Mrs Walker—J. B. Douglas & Smith, W.S.

Friday, June 23.

SECOND DIVISION.

TAYLOR v. TAYLOR AND SMITH.

Husband and Wife—Conjugal Rights Amendment Act 1861, § 16. Held that § 16 of the above Act had a retrospective effect.

This was an action at the instance of Mrs Taylor against the trustees under a trust-disposition, granted by her husband for behoof of his creditors, for declarator that the rents of certain lands which belonged to her in liferent and her children in fee did not exceed a reasonable provision for her sup-

port and maintenance, in terms of Section 16 of the Conjugal Rights (Scotland) Amendment Act 1861.

The property in question came into the possession of Mrs Taylor in 1842, under a deed in which neither the *jus mariti* nor right of administration of her husband were excluded.

She alleged (Conds. 7 and 9) that she continued therefrom, down till the time that her husband granted a trust-disposition in favour of his creditors, to uplift and receive the rents of the said subjects and to grant receipts therefor in her own name, and kept the funds distinct from those of her husband.

The defender pleaded—“2 The provisions of the Conjugal Rights Act have no application to the present case, in respect that—1st The pursuer succeeded to the liferent of the subjects in question before the statute came into operation. 2d The right to the rent of said subjects during their joint lives had vested *jure mariti* in the husband of the pursuer, and was in his lawful possession, within the meaning of the statute, before the present claim was made by the pursuer.”

The section in question is as follows:—“When a married woman succeeds to property or acquires right to it by donation, bequest, or any other means than by the exercise of her own industry, the husband, or his creditors, or any other person claiming under or through him, shall not be entitled to claim the same as falling within the *communis bonorum*, or under the *jus mariti* or husband’s right of administration, except on the condition of making therefrom a reasonable provision for the support and maintenance of the wife. . . . Provided always that no claim for such provision shall be competent to the wife if before it be made by her the husband, or his donee or assignee, shall have obtained complete and lawful possession of the property, or, in the case of a creditor of the husband, where he has, before such claim is made by the wife, attached the property by decree of adjudication or arrestment, and followed up the said arrestment by obtaining thereon decree of furthcoming, or has poinded or carried through and reported a sale thereof.”

The Lord Ordinary (MURE) pronounced this interlocutor:—

“2d March 1871.—The Lord Ordinary having heard parties’ procurators on the second plea in law for the defenders, and considered the closed record and productions—before answer, allows the pursuer a proof of her averments in articles 7 and 9 of the condescendence, and to the defenders a conjunct probation; and appoints the proof to be taken on a day to be afterwards fixed.

“*Note*—The claim made by the pursuer in this case appears to the Lord Ordinary to fall within the general policy and spirit of the provisions of the Conjugal Rights Amendment Act; and assuming the allegations relative to the manner in which the pursuer has been allowed to draw and administer the rents of the property in question, from 1842 to 1869, to be established, the Lord Ordinary, as at present advised, would entertain great doubts whether her claim to a reasonable provision under the 16th section of the Statute can be repelled simply because the deed under which the property was acquired came into operation before the passing of the Act.

“The main ground on which it appears to be laid down in *Dwarris on Statutes*, and other authorities relied on by the defenders, that Acts of Parliament are not to be construed as having any

retroactive effect, is the apprehension that such a construction might operate unjustly as between parties who have contracted with reference to a different law from that enacted by the Statute. But that difficulty appears to have been disregarded in the case of *Fowler*, 10th November 1829, 6 Bingham, p. 258; and in the case of *Reid*, 3d March 1863, the judgment in this Court seems to have proceeded upon the ground that as the Act was an amending and remedial one, it must be construed so as to carry out the main object intended, even if the effect be to some extent retrospective, unless the words of the Statute necessarily exclude that construction. Now, one leading object of the Conjugal Rights Act was to amend the law relative to the administration and disposal of property belonging to married women in the lifetime of their husbands. But if, in a case like the present, where it is alleged that the rents of a property belonging to a married woman have for a series of years, and for eight years after the date of the Conjugal Rights Act, been drawn and expended by her without any interference on the part of her husband, he or his creditors were now to be held entitled to claim the whole rents as falling under the *jus mariti*, the remedial operation of the 16th section of the Act would in all such cases be defeated; and this is a result which ought, in the opinion of the Lord Ordinary, to be avoided unless there is some very clear and imperative provision of the statute to that effect.

“But the operation of the 16th section of the Act is not, in express terms, limited to the case of married women succeeding to property ‘after the passing of the Act,’ as the remedy provided by the 12th section is, in the case of the widows of parties dying infert in property held burgage. There is a marked distinction between the sections in this respect; and as the words used in the 16th section are open to construction, the Lord Ordinary is at present disposed to think that the construction must be adopted which is most in consistency with the special object and spirit of the Act, and that the solution of the question here raised will mainly depend upon whether, at the time it was raised, the husband or his disponees had obtained that complete possession of the property which the proviso at the end of the 16th section requires in order to exclude the wife’s claim. The Lord Ordinary has therefore allowed a proof before answer on this point; and the proof has been limited to this, because he understood parties were agreed in wishing the question raised in the second plea in law disposed of before that relative to the amount of the provision claimed was entered upon.”

The defenders reclaimed

WATSON and ASHER for them.

The Court unanimously repelled the first branch of the defenders’ second plea above quoted, and *quoad ultra* sustained the interlocutor of the Lord Ordinary.

Their Lordships were unanimously of opinion that the statute, being a remedial one, should be construed liberally. The grievance under which women suffered in having their inheritance carried away to pay their husband’s debts was as serious in the case of successions which had opened prior to the passing of the Act as in those which opened afterwards. The whole spirit and intention of the Act showed that it was intended to have a retrospective effect.

Agents for the Pursuer—J. & A. Peddie, W.S.

Agent for the Defenders—James Webster, S.S.C.

Saturday, June 24.

FIRST DIVISION.

WEDDERBURN v. THE NORTH BRITISH RAILWAY COMPANY.

Railway—Statute—Railway Clauses Consolidation Act 1845, §§ 27, 28, and 30. There being two methods distinguished in sections 27, 28, and 30 of the Railway Clauses Consolidation Act, of taking lands by a railway company for purposes accessory to the making of their line, one of which was by temporary, the other by permanent occupation:—

Held (1) that the notice required by section 28, in the case of temporary occupation merely, did not require any specification of the purposes for which the land was intended to be used.

(2) That land might thus be taken for temporary occupation, for the purposes of the neighbouring part of the line—the words “that portion of the line” in section 27, bearing a liberal but reasonable construction.

And (3) that under the words “other buildings of a temporary nature” in section 27, a pier or landing stage on the shore of a tidal or navigable river was included, if intended to be used for the purposes of landing or embarking materials for the construction of any portion of the line.

This was a suspension and interdict brought by Mr Wedderburn of Birkhill, proprietor of the lands of Wormit, and John Blair, his tenant, against the North British Railway, seeking to have them, and all others acting in their names, interdicted and prohibited from entering upon and occupying the lands delineated and described in the map or plan delivered by the said railway company to the complainer. Mr Wedderburn, with the notice after mentioned, dated 22d May 1871, and coloured yellow in said plan, containing 9 acres and 857 decimal parts of an acre or thereby, belonging to the said complainer, and which said lands are situated in the parish of Forgan and county of Fife; and also from using the said lands for the erection of a pier for the unloading of barges, and of workshops, stores, and building-yards in connection with the construction of the railway bridge over the Firth of Tay, authorised by the North British Railway Tay Bridge and Railways Act, 1870.

The lands of Wormit lie on the south shore of the Tay, opposite and a little above the town of Dundee, having a sea boundary of about 1800 yards. The south end of the contemplated Tay Bridge is to rest upon these lands, and the line to proceed thence southward through them towards Leuchars, intersecting them for a distance of 150 yards. Land for the purpose of this line was taken by the company from the complainer, under their Tay Bridge Act, to the extent of an acre and a half. Thereafter the contractors for the Tay Bridge applied to the complainer for the use, for temporary purposes for three years, of certain ground in Wormit Bay. The negotiations connected with this application, however, came to nothing, and the company proceeded to exercise their compulsory powers under the Railway Clauses Consolidation Act. Accordingly they served upon the complainer a notice, dated the 22d day of May 1871,