

by the pursuer as agent for the said petitioner, and upon a caveat presented for the respondent in that petition, the Sheriff-Substitute, after hearing parties' procurators, pronounced his judgment that the prayer for interim interdict should be refused; find that, when the Sheriff was proceeding to have his judgment to that effect written out, the pursuer, at his own hand, took possession of the petition, then in *manibus curiæ*; and notwithstanding the intimation of the Sheriff-Substitute that he desired the petition to remain with the clerk in order that the interlocutor might be written upon it, carried off the petition, and prevented the interlocutor from being written thereon; and thereafter, as it appeared, destroyed the said petition in his own place of business: Find that the conduct of the pursuer in so acting was illegal and culpable, and amounted to a contempt of the Sheriff's jurisdiction and authority: Find that, in these circumstances, when the said petition had been so carried away, it was competent to the Sheriff, within whose cognisance and in whose presence the pursuer's proceedings took place, to have issued a summary order or warrant ordering the pursuer to restore the petition of which he so took possession, and failing his immediately restoring the same, for his immediate imprisonment till that order was implemented; but find that the conduct of the Sheriff-clerk-depute, in obtaining and carrying into execution a warrant in form of an ordinary process caption, without any notice or special warning to the pursuer that such was to be issued or executed, was an inappropriate and irregular proceeding: Find, at the same time, that as no further action can be taken on the said process caption or warrant, it is unnecessary to reduce or set aside the same: And further, find that, as it was the pursuer's own illegal and culpable conduct and contempt of the Sheriff's authority which led to the necessity of a proceeding or warrant against him, and as he was in any view liable to be proceeded against in a summary manner, the pursuer is not entitled to damages as against either the principal Sheriff-clerk or against the Sheriff-clerk-depute, for the error in point of form committed by the Sheriff-clerk-depute in the discharge of his official duty: Therefore, in the whole circumstances, dismiss the action, and decern, and to that extent adhere to the interlocutor of the Lord Ordinary; but find no expenses due to either party."

Agent for Pursuer—William Officer, S.S.C.

Agents for Defenders—Tods, Murray & Jamieson, W.S.

Saturday, October 28.

TAYLOR v. TAYLOR, ETC.

*Conjugal Rights Act, 1861, § 16—Provision to Wife.*

Held that the above section applies to property acquired by a wife before the passing of the Act. Circumstances in which £50 held a reasonable provision.

This was an action by "Agnes Monro or Taylor, wife of Robert Taylor, farmer, residing at Wholeflats, near Polmont, against the said Robert Taylor, and against Adam Smith and John Gair, both writers in Falkirk, trustees under a disposition granted in their favour by the said Robert Taylor, on or about the 31st December 1869, for behoof of his creditors," concluding for declarator that the

rents of certain properties did not exceed a reasonable provision for her, under section 16 of the Conjugal Rights (Scotland) Amendment Act, 1861, or for the Court to fix a reasonable amount.

The defenders stated, *inter alia*, the following plea:—"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 Lord Ordinary (MURK) ordered a proof before answer, and added the following note to his interlocutor:—"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 Dwaris 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 re-

spect; 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."

After a proof had been led, his Lordship pronounced an interlocutor in the following terms:—"Finds that, in the circumstances of the present case, an annuity of £50 will be a reasonable provision for the maintenance and support of the pursuer; and that the defenders are bound to make a provision of that amount for the pursuer, as the condition of their being entitled to claim the rents and proceeds of her estate as falling under the *ius mariti* of her husband: Therefore, and to that extent, repels the defences, and appoints the case to be enrolled, in order that parties may arrange as to the manner in which the annuity is to be secured; and reserves in the meantime all questions of expenses.

"*Note.*—In fixing the annuity in this case the Lord Ordinary has been guided by the rule which appears to have been laid down by the Second Division of the Court in the case of *Sommer*, 2d March, 1871, 8 Scot. Law Rep. p. 388, viz., that it is a provision to the wife alone which the statute authorises. And he does not think he would now be warranted, when fixing the amount of an annuity under the statute, in giving any material weight to the consideration that several of the pursuer's children are to some extent looking to her for support. He has, however, fixed the amount at a somewhat larger sum than that allowed in the case of *Sommer*. Because it is in evidence that it will require at least £40 a-year to enable the pursuer, alone, to live as she has been accustomed to do. And having regard to the position which she has occupied since her mother's death, when she succeeded to the liferent of the property in question, and the way in which she has all along been allowed to administer the whole of the rents on her own behalf, and that of her family, the Lord Ordinary does not think that she can now be expected to maintain herself, in ordinary comfort, on a smaller annuity than £50. But he has left it to the parties, in the first instance, to arrange how that annuity is to be secured."

Mrs Taylor reclaimed.

FRASER and BALFOUR for her.

SOLICITOR-GENERAL and ASHER for respondents.

The Court substantially adhered, and pronounced the following interlocutor:—

"*Edinburgh, 28th October 1871.*—The Lords having heard counsel on the reclaiming-note for Mrs Agnes Monro or Taylor, alter the interlocutor of the Lord Ordinary reclaimed against; find that the annual income falling under the husband's *ius mariti* from the pursuer's separate estate consists of the sum of £88, being the rents of the Kirkwynd property; and the sum of £12 annually, being the interest on the bond for £300. Find that the sum

of £50 annually is a reasonable allowance to be made for the support and maintenance of the pursuer out of the said income: Find that the pursuer is under no obligation to invest the sum of £300 in annuity with a view to provide such annual allowance: Find that the pursuer has drawn the said interest, amounting to £12, to this date: Find the defenders liable in the sum of £38 annually from the 4th day of May 1870 till the date of this judgment; and in the sum of £38 yearly during the lifetime of her husband, the pursuer herself continuing to uplift the interest on the £300: Find the pursuer entitled to expenses, subject to modification; and remit to the auditor to tax and report, and decern.

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

Agents for Respondents—Webster & Will, S.S.C.

Wednesday, November 1.

## FIRST DIVISION.

STEWART v. COCHRANE & CO.

*Agreement—Master and Servant—Dismissal. Held* that under a written agreement a manager of a bleach work was engaged for a year, with a break at the end of three months, and that his employers, not having availed themselves of the break, were not entitled subsequently to dismiss him before the end of the year without payment of the whole year's salary.

This was an appeal from the Sheriff-court of Renfrew.

In December 1869 the defenders, who are bleachers and finishers at Pollokshaws, entered into a contract with the pursuer by the following missive letters:—

"3d Dec. 1869.

"Gentlemen,—I hereby agree to come to you to take charge of your bleaching works at Riverbank, Pollokshaws, on the following conditions:—

"1st, I shall go on the 26th December to the Albyn Mills, So. York Street, and I remain there in the bleachg. department, for the purpose of acquainting myself thoroughly with the system on which your goods are bleached and finished. Whilst there my hours of attendance to be from 6 A.M. till 6 P.M., and I promise to acquaint myself thoroughly with each department of bleaching and finishing, so that I may be able to manage your works satisfactorily. When my month at the Albyn Mill is over, I shall go to Pollokshaws and start your works, and I bind myself to give you a good production from each department, and to finish your goods to your satisfaction.

"2d, In consideration of my so doing you are to pay me at the rate of £120 for the first three months, from the date of my going to Riverbank. If at the end of this time you are satisfied with me you are to give me an engagement to the end of 1870, and to pay me at the rate of One hundred and fifty pounds stg. for the remaining nine months; should you not be satisfied with me our arrangement to terminate at the end of the three months after I have started your works.

"Should you give me an engagement to the end of the year you are to pay me for the month I have spent at the Albyn Mill, but should I leave at the end of the three months, owing to your being dissatisfied with my management, nothing to be paid me for that month. — Waiting your acceptance, I am, &c.  
R. H. STEWART."