

The
Scottish Law Reporter.

WINTER SESSION, 1884-85.

In order to secure regularity of publication, it is occasionally necessary to insert the Reports of Cases slightly out of the order of dates on which they have been decided.

COURT OF SESSION.

Friday, July 4.

OUTER HOUSE.

[Lord M'Laren.

ARNOTT v. ARNOTT'S TRUSTEES.

Domicile—Revival of Domicile of Origin—Succession.

A person whose domicile of origin was in Scotland, had practised his profession in England, and acquired a domicile there. After his retirement from his profession he lived in various places in England and Scotland, and died in Scotland without having taken up any permanent residence. *Held* (per Lord M'Laren, Ordinary) that as the acquired domicile had been lost, and as no domicile of choice had been shown, the domicile of origin became operative, and therefore that his estate fell to be distributed as that of a domiciled Scotsman.

The late George Arnott, doctor of medicine, late of Cheltenham, died at Kirkconnel Hall, in the county of Dumfries, on 15th May 1883, survived by his wife and one son, Archibald James Arnott. By his last will and testament, dated 24th July 1882, and recorded in the Sheriff Court books of Dumfries 25th July 1883, he appointed his wife and two of his nephews to be his trustees and executors. By this will Dr Arnott directed that £100 should be paid to his wife as soon as practicable after his decease, and he also directed that all his property should be converted into money and invested in certain securities. From the income arising from these securities the trustees were directed to pay a certain sum annually to his wife,

and another sum annually to his son. The testator also made certain provisions for any children that might be born to his son, and appointed that, subject to these trusts, the residue of his property should be equally divided among his four nephews, viz. Napoleon Arnott, John Arnott, James Arnott, and Archibald Arnott of Kirkconnel Hall. Mrs Arnott and her son Archibald James Arnott, on the footing that Dr Arnott was at his death a domiciled Scotsman, repudiated Dr Arnott's settlement and claimed their legal rights. The residuary legatees, however, refused to acquiesce in this repudiation, and maintained that Dr Arnott was a domiciled Englishman, and his estate was divisible under English law. Dr Arnott's trustees brought a multipoleinding to have this and other disputed points settled.

Mrs Arnott pleaded—"As the widow of the deceased George Arnott, the claimant is entitled to (1) a sum for mournings suitable to the position and wealth of the deceased; (2) suitable alimony till the next term after her husband's death; and (3) to her *jus relictae*."

Archibald Arnott pleaded—"The claimant is entitled to be ranked and preferred to one-third of the free residue of his father's personal estate in name of legitim."

The residuary legatees stated that Dr Arnott had lived in England for the greater part of his life, and that his residence at Kirkconnel Hall was due to the fact that he thought he might be of advantage to his nephews and nieces who resided there, and was not intended by him to be permanent.

They pleaded—" (1) The late Dr George Arnott having died a domiciled Englishman, his widow and son are not entitled to *jus relictae* and legitim."

The Lord Ordinary (M'LAREN) allowed a proof of the parties' averments, and thereafter issued an interlocutor by which he found that Dr Arnott had died a domiciled Scotsman. The facts established are fully explained in the following

"Note.—This is a competition in which claims of legitim and *ius relictæ* have been made, and the question for consideration is, whether the deceased Dr Arnott died domiciled in Scotland, so that his estate should be subject to these claims according to the law of Scotland. In such cases it not unfrequently happens that the question of the domicile of the intestate predecessor involves the consideration of many conflicting elements of evidence extending over a long period of time. But in the view I take of this case there is no conflict of evidence, and the question is one of principle, which admits of being stated in few words.

"Dr Arnott was born in Scotland, and was of Scotch extraction. Scotland was therefore indisputably his domicile of origin. It appears to me to be as little open to dispute that during his residence at Cheltenham in the capacity of a practising physician Dr Arnott's domicile was in England. Dr Arnott, immediately after his graduation at the University of Edinburgh, engaged in practice, first at Ruthin in Wales, next at Lancaster, and finally at Cheltenham, where he continued in practice until 1870. During the whole of this period, extending from the year 1833 until 1870, there is nothing whatever to connect him with Scotland except the circumstances of his birth, parentage, and education to which I have referred. But in 1873 Dr Arnott retired from practice, and broke up his establishment at Cheltenham. For some years thereafter he resided at different places in England and Scotland, and the choice of his residence from time to time appears to have been determined by considerations of comfort, convenience, and health, rather than by the intention of forming any permanent connection with any particular spot of Her Majesty's dominions, or any particular locality. From 1870 to 1873 he resided at a country house in Worcestershire; from 1873 to 1877 he resided at Milkbank, Dumfriesshire; and from 1877 to 1880 he resided in a furnished house at Cheltenham. There can be little doubt that during the last-mentioned period Dr Arnott's choice of a residence was influenced by attachment to the place and the society which was associated in his mind with the useful and interesting professional pursuits in which he had been engaged during a considerable part of an active life. If his term of life had ended during this period, it is easy to see that a case of ambiguous domicile would have arisen. The train of circumstances which constituted his English domicile had come to an end with his retirement from practice, and it is not so clear that his return to Cheltenham under circumstances that present no clear indication of permanence would amount to a revival or continuation of the domicile of choice. But it is not necessary that I should express a definite opinion as to the domicile of Dr Arnott during the period from 1877 to 1880. In 1880 Dr Arnott again broke up his establishment at Cheltenham, and came to live with his sister-in-law at Kirkconnel Hall, Dumfriesshire, under a family arrangement by which he had the use of certain apartments and contributed to the household expenditure.

Dr Arnott's wife was in infirm health when he went with her to Kirkconnel Hall, and he evidently did not contemplate that during their joint lives they should ever occupy a house of their own. Dr Arnott died at Kirkconnel Hall in May 1883 survived by his wife. If during his residence there he had any domicile of choice, it was at Kirkconnel Hall, and therefore in Scotland. He had no other home, no residence of any kind elsewhere, no business ties, no connection with Cheltenham except that the securities on which his money was invested were in the keeping of a banking firm at Cheltenham, who were his financial agents during his residence there, and with whom he was naturally content that the securities should remain, having no immediate motive for withdrawing them.

"If Dr Arnott's residence at Kirkconnel Hall was not of such a character as would constitute in legal effect an acquired domicile, then the only alternative conclusion which I could deduce from the facts is that at the time of his death Dr Arnott had no domicile of choice. In that case his domicile will be determined by the convenient and equitable rule of general jurisprudence, that an intestate who has not fixed his domicile anywhere is subject as regards the administration of his estate to the local laws of his domicile of origin. Whether we hold that the domicile of origin revives whenever the acquired domicile is abandoned, or whether, in accordance with what appears to me the more correct opinion, we are to hold that the domicile of origin is inherent through life, its effect being only suspended during the continuance of a domicile fixed elsewhere, there can be no doubt as to the generality of the rule, that the domicile of origin governs the succession unless it is for the time being displaced by the voluntary act of the deceased. In the present case, and during the last three years of Dr Arnott's life, I see no evidence of intention on his part to acquire a domicile, or to continue a domicile previously acquired elsewhere than in Scotland. I therefore sustain the claim of Mr Archibald James Arnott for his legitim, and the claim of Mrs Arnott for her *ius relictæ*. If there is any question as to the mode of division of the estate, or as to the sum to which these parties are respectively entitled, the case may be enrolled for further procedure."

Counsel for Mrs Arnott and Archibald Arnott—Jameson. Agents—J. & J. Galletly, S.S.C.

Counsel for James Arnott and Others (Dr Arnott's Residuary Legatees)—Low. Agents—W. & J. Cook, W.S.