

The Court discharged the rule.

Counsel for the Pursuer—Salvesen—Dewar, Agent—Thomas M'Naught, S.S.C.  
Counsel for the Defender—C. S. Dickson—G. W. Burnet, Agents—Beveridge, Sutherland, & Smith, S.S.C.

Saturday, November 15.

## SECOND DIVISION.

[Lord Trayner, Ordinary.]

FERGUSON v. BUCHANAN AND OTHERS.

*Process—Jurisdiction—Domicile—Forum non conveniens—Lis alibi pendens.*

A Scotsman who had lived since 1874 in England died leaving a will made in English form, in which he declared his domicile to be England. His executor obtained probate in England, and raised an administration suit there, in which a receiver was appointed and inquiry was directed, *inter alia*, as to the deceased's domicile. Shortly afterwards a daughter of the deceased brought an action in the Court of Session for declarator that the deceased's domicile was Scotland. The Court *dismissed* the action, holding that *prima facie* the Chancery suit was the proper and competent procedure in the circumstances.

Thomas Buchanan was the son of Scottish parents, and was born in 1829 at Killearn, where he was brought up and educated. He was engaged in business in Scotland from 1849 until 1866, when he went to Belfast, where he carried on business for some years. In 1873 his wife obtained decree of divorce against him on the ground of desertion. In 1874 he went to Manchester, and he lived in lodgings there until shortly before his death, which occurred in Glasgow in September 1889. He was survived by a daughter—Jane Forsyth Buchanan or Ferguson—who was born in 1866. While in Manchester he was agent for his brothers' firm of John Buchanan & Brothers. Upon 14th May 1889 Thomas Buchanan executed a will in the English form, by which he bequeathed various sums to his brothers and nephews, and the residue of about £5000 to the children of his brother Alexander. The will and testament contained the following clause—"I have, as will be observed, omitted to leave my daughter Jane any legacy, share of residue, or other interest under this my will. This I have done purposely, as it is my intention and wish that she shall not receive any benefit under the same. And I declare my domicile to be England, and that I have no intention of abandoning such domicile."

The testator's brother Robert Buchanan, as executor, obtained probate in England, and was proceeding to administer the estate there when the deceased's

daughter obtained interdict in the Sheriff Court at Glasgow against the distribution of the estate. The executor accordingly raised an administration suit in the Chancery Division of the High Court of Justice in England, in which on 16th December 1889 Mr Justice Chitty ordered, *inter alia*—" (6) An inquiry whether the testator was at the time of his decease domiciled in England, and if it shall be found that the testator was not domiciled in England, where was his domicile. And in the event of its being found that the testator was domiciled in Scotland, (7) an inquiry whether the personal estate of the testator is subject to payment of any and what portion thereof to any child or children of the testator living at the time of his death notwithstanding the provisions of his said will."

Upon 23d December 1889 the deceased's daughter brought an action of reduction of her father's will, and declarator that at the date of his death he was a domiciled Scotsman, and that the pursuer as his lawful child was entitled to claim at least her legitim out of the moveable estate belonging to him at the time of his death.

The defenders pleaded—(1) *Forum non conveniens*. (2) *Lis alibi pendens*.

Issues were adjusted by the Lord Ordinary for the trial of the cause, two of which related to the reductive conclusions of the summons, and the third to the question of domicile.

Upon 17th October 1889 the pursuer abandoned by minute the reductive conclusions of the summons on the ground that a will prior to that of 14th May 1889 had been discovered which prevented her taking any benefit even if that will was reduced, and the case was remitted to the Outer House.

Upon 5th November 1890 the Lord Ordinary (TRAYNER) repelled the first and second pleas-in-law for the defenders, and allowed a proof as to the domicile of the late Thomas Buchanan.

The defenders reclaimed.

At advising—

LORD JUSTICE-CLERK—It appears that before this action was raised proceedings had been taken in the Chancery Court in England to have the estate of the deceased administered there. Then the pursuer raised an action of reduction of the deceased's will in the Court of Session, but she afterwards abandoned it because a previous will of the late Mr Buchanan was discovered which would have prevented her taking any benefit even if she had succeeded in reducing the deed which she impugned. Now, in this position of affairs the proceedings went on in England, and an order for a receiver was made. Notwithstanding that, we are asked to allow this action to go on upon the conclusions other than the reductive ones, which have been abandoned. I think that that would be a very inconvenient course to pursue, and I do not think that there is any injustice in the matter, because I do not doubt that the pursuer would be en-

titled to raise in the Chancery suit every point which she could have raised in this action.

The only question that has caused me difficulty is whether we should dismiss this action or sist it until the result of the Chancery proceedings is known, but I have come to be of opinion that our proper course is to dismiss it, and that will not prevent the pursuer raising a competent action in this Court afterwards.

LORD YOUNG—I am of the same opinion. The estate in question is the estate of a gentleman who went to Manchester in the year 1874, who lived there for a long time afterwards (although he died in Glasgow), and who left a will disposing of his estate drawn up in the English form and executed in England. No doubt this estate consisted of a sum of money placed to his credit in the books of a Glasgow commercial firm; but that does not matter; it is the estate of this gentleman in Manchester. In December last an administration suit was begun in the Court of Chancery in England, and a receiver was appointed upon 16th December 1888. In this suit Mr Justice Chitty directed, *inter alia*, that an inquiry should be taken as to the testator's domicile. Upon the 23rd December 1888 the pursuer brought this action, which originally contained reductive conclusions, but which has now been reduced to a declarator on the very question of domicile which was to be the subject of inquiry in England. I am of opinion that it is not fitting that we should entertain this action to the extent of allowing it to proceed for inquiry into this question.

I cannot doubt the competency of the Chancery suit; *prima facie* it is the proper and competent way of dealing with the estate of this gentleman who died at Manchester after living there a number of years, and who left a will drawn in the English form. I think that in these circumstances for us to entertain an action having for its sole purpose to ascertain what was really the domicile of this deceased gentleman would be an improper proceeding. I am therefore of opinion with your Lordship that this case should be dismissed, and with expenses.

LORD RUTHERFURD CLARK concurred.

The Court dismissed the action.

Counsel for the Reclaimers—Asher, Q.C.—A. S. D. Thomson. Agents—Simpson & Marwick, S.S.C.

Counsel for the Respondent—Guthrie Smith—Salvesen. Agents—Gill & Pringle, W.S.

Tuesday, November 18.

## SECOND DIVISION.

[Lord Kinnear, Ordinary.]

### RAMSAY v. MACLAY & COMPANY.

#### Reparation—Slander—Issue.

A pursuer raised an action for slander, stating that his firm had formerly collected accounts for the defenders, and had collected and credited to them the account of a certain customer, but that thereafter the defenders had written to him this letter:—"Mr Robert Ramsay, Dunfermline.—Dear Sir—We are surprised at having had no reply to ours of the 3rd inst., regarding the a/cs of Wilson, Saline, which you collected and have not accounted for. It seems to us you do not realise the seriousness of your position in the matter, but should we be forced to insist on Mrs Wilson paying us the accounts she has already paid to you, and which is quite within our right, as she holds no receipt from us, and those she had from you are no legal discharge of a/cs due to MacLay & Co., she threatens to place the affair in the hands of her law-agent, and you may find yourself in an awkward situation, as he will in all probability report to the fiscal. If you wish to save yourself from unpleasant consequences you will let us hear from you without delay."

The pursuer stated that by this letter the defenders falsely, calumniously, and maliciously represented that he without defenders' authority had collected money due to them, dishonestly appropriated it, and been guilty of breach of trust and embezzlement.

Held (*aff.* Lord Kinnear) that the innuendo was admissible, and that the pursuer was entitled to an issue "whether the letter was of and concerning the pursuer, and falsely and calumniously represents that he had dishonestly appropriated moneys belonging to the defenders," to his loss, injury, and damage.

Lord Young *dissented*, holding (1) the letter was not slanderous; (2) that in any view the pursuer must take an issue of malice.

Robert Ramsay, bottler, Dunfermline, raised an action of damages for alleged slander against MacLay & Company, brewers, Alloa. The pursuer averred he was a partner of Ramsay Brothers, bottlers, that he and his brother were formerly the sole partners of Ramsay Brothers and also of MacLay & Company, that in 1888 they had assumed into the latter firm A. Fraser and J. Drummond, and that the firm of MacLay & Company was so carried on till April 1889; that Ramsay Brothers acted as agents for MacLay & Company, obtaining orders and discharging accounts in their name for that firm.

The pursuer further averred that on 4th April 1889 an agreement had been made by