stream became so polluted as to be unfit for the pursuers' work. *Thirdly*, I agree with your Lordship that this is not at all an analogous case with a right-of-way case. There is no dedication to pollution. For twenty-eight years prior to 1869 the burn came down to the pursuers' works free from any substantial pollution. It is very doubtful if the defender is entitled to go back to 1841, and prove that before that period there existed a work which polluted the stream. But even if he be, there is no evidence at all satisfactory of the continuous pollution of the stream.

LORD KINLOCH concurred.

The following interlocutor was pronounced:—

"*Edinburgh*, 8*th March* 1872.—The Lords having resumed consideration of the cause, as to the report of Professor Crum Brown, and heard counsel, Finds that the experiments or operations of the defender, since the institution of this action, have not had the effect of preventing the water of the Carntyne Burn being polluted by the impurities or refuse discharged into it by the defender; adhere to the Lord Ordinary's interlocutor of 17th June 1871; repel the defences; and find and declare that the pursuers are entitled to have the water of the Carntyne Burn, as it flows by or through their property, transmitted to them in a state fit for the use of man and beast, and for the other primary uses of running water; and interdict and prohibit the defender from discharging into the said Carntyne Burn from his dye-work impure or noxious matter of any kind having the effect of polluting the said water in its progress by or through the pursuers' property, and rendering it unfit for the primary uses of running water, and decern: Find the pursuers entitled to expenses, subject to a deduction of £25 from the taxed amount thereof, in respect of the proceedings in which they were unsuccessful between the 17th June and the 2d November 1871; allow an account," &c.

Agents for Pursuers—Jardine, Stodart, & Frasers, W.S.

Agent for Defender—P. S. Malloch, S.S.C.

Friday, March 8.

JAMES WALLACE *v.* ROBERT WALLACE.

Contract—Family Arrangement.

Circumstances in which a father was held entitled to recover a sum of £500 from his son, in accordance with a somewhat peculiar family arrangement, although the action was solely laid on an alleged contract of sale between the pursuer and the defender.

This was an action at the instance of James Wallace, Rutherglen, against his son Robert Wallace. The conclusions of the summons were for payment—(1) of £500, more or less, as might be ascertained to be the value of the stock of drapery and other goods, said to have been made over by the pursuer to the defender on 8th September 1858, with interest thereon; (2) of £406, 3s. 3d., being rent at the rate of £25 per annum and interest thereon, for the shop occupied by the defender from 8th September 1858 to Whitsunday 1871.

The averments of the pursuer were as follows:—Previous to 1858 he had carried on business as a draper, and also as a spirit merchant, in certain premises belonging to him in Main Street, Rutherglen. In September of that year, being then about sixty-six years old, he entered into an arrangement with his son, the defender, by which the latter received possession of the shop as tenant, and took over from the pursuer the stock and goodwill of the business, which were of the value of £500, and granted a bill to the pursuer for that amount (now prescribed). The pursuer's only pleas were based respectively on the contracts of sale and location.

The Lord Ordinary (GIFFORD), after a proof, held that the pursuer had failed to prove either the contract of sale or of location, and therefore assoilzied the defender.

His Lordship's view of the facts is stated in his Note:—"The father, who was getting up in years, and who had been assisted by his son in business, agreed to make over the business to the son as his successor, but the whole to be carried on just as formerly, and from the proceeds of the business the expense of the maintenance of the father, his daughters, and his son, who were all living in family together, were to be defrayed as formerly. The father was proprietor of the shop, but no rent was to be charged to the son, because the common benefit of the business was to a large extent to be reaped by all, just as it had formerly been. In short, the son was to be colleague and successor to his father rather than purchaser from him."

The pursuer reclaimed.

SOLICITOR-GENERAL and CRICHTON for him.

FRASER and JAMESON for the defender.

The Court were not disposed to take so strict a view of the summons. It was not necessary for the pursuer's case that he should instruct an actual sale for a present price to the defender of the stock in trade. It was enough if he had proved a family arrangement, under which the stock and goodwill of the business was, for the purposes of that arrangement, estimated at £500.

The view which their Lordships took of the arrangement sufficiently appears from the interlocutor pronounced.

"*Edinburgh*, 8*th March* 1872.—Recal the said interlocutor reclaimed against: Find—(1*st*) That in or about September 1858 the pursuer, being then about sixty-six years of age, entered into an arrangement with his son, the defender, whereby the pursuer agreed to give up to the defender the goodwill and future profits of the business of draper and spirit dealer, then carried on by the pursuer in the premises belonging to him in Main Street of Rutherglen, and mentioned in the record, together with the stock in trade, and the occupancy rent free of the said premises, including that portion thereof in which the pursuer and his family then resided, on condition that the defender should become debtor to the pursuer in the sum of £500, and should maintain the pursuer and the family living in the said premises and assisting in the business; (2*d*) That no particular time, at the lapse of which the said sum of £500 should be payable, and the said free occupancy of the said premises should cease, was expressly mentioned or stipulated between the parties, but it sufficiently appears that the said sum was not to be payable, and that rent was not to be exigible, so long as the pursuer and the members of his family, for the time being, continued to live and to be maintained in common with the defender, in the premises foresaid, which they did till on or about July last 1871, when, in consequence of misunderstanding between them,

they separated, and the arrangements foresaid for the common residence and maintenance came to an end, and was held by all concerned to have come to an end, and the defender, as was admitted at the bar, declined to support, and now refuses to support, the pursuer any longer. In these circumstances, find that the said sum of £500 must be held to have become payable at or about the date when the parties separated as aforesaid, and that the defender's right to occupy the foresaid premises rent free must be held to have terminated at the next term after said separation, *videlicet* Martinmas 1871: Therefore decern against the defender for the said sum of £500, with interest from and after the 29th July 1871, being the date of citation in the present action, but without interest prior to that date; and *quoad ultra* assoilzie the defender from the conclusions of the action; reserving to the pursuer all claim competent to him for rent of the said premises from and after the said term of Martinmas 1871, and reserving, farther, all claims competent to the parties *hinc inde* against each other, so far as not inconsistent with the foregoing findings, and all defences competent thereagainst as accords, and decern: Find no expenses due to either party."

Agents for Pursuer—Webster & Will, S.S.C.
Agent for Defender—Lindsay Mackersy, W.S.

Friday, March 8.

MRS HALKETT INGLIS OR WILSON *v.* GEORGE JAMES WILSON.

Jurisdiction—Husband and Wife—Domicile — Lis alibi pendens.

Circumstances in which it was held that a husband had not lost his Scotch domicile of origin, and, though resident in England, was liable to a divorce suit in the Scotch Courts at his wife's instance.

Held, farther, that the wife's having pleaded to a divorce suit, at the husband's instance, in the English court, without taking the objection of want of jurisdiction, did not prevent her coming herself into the Scotch Courts, which had the proper jurisdiction over the parties.

Question, whether there could be a matrimonial domicile different from the absolute domicile of the parties.

This was an action of divorce on the ground of adultery at the instance of Mrs Inglis or Wilson, against her husband George James Wilson, ironmaster, Kinneil Ironworks, Linlithgow. The pursuer set forth that she and the defender were both born in Scotland, and both have their domicile there, although the defender was believed to be furth of Scotland at the date of raising the action. They were married in the parish of Cramond in the year 1861. They lived together till 1866, when they separated. The pursuer then specified various acts of adultery.

In his defence the defender stated that he was born in Glasgow in the year 1839. From 1851 till 1856 he was resident in England and Germany. In 1858 he accepted a commission in the Lancashire Militia Artillery, and served at Portsmouth and Dover. In 1859 he resigned his commission, and took up his residence in London. In 1861 he was married, and lived in Scotland in cohabitation with his wife until 1866. In November of that year facts came to his knowledge which caused him to cease cohabitation with his wife; and he then left Scotland, and took up his residence permanently in England, with his mother, first at Surbiton, in the county of Surrey, and subsequently at Anerly, in the same county. He had so resided in England from 1866 until now, and during that time had only visited Scotland three or four times, and only for very short periods, on no occasion exceeding a week. These visits had been altogether incidental, and had in no degree interfered with the continuity of his residence in England, which, since 1866, had been *animo remanendi*. He continued still to be resident in England, and had no intention of returning to Scotland again, and had acquired an English domicile, and lost his Scotch domicile. He had no heritable property in Scotland.

The defender farther stated that since 1866 the pursuer had resided continuously at Hastings, in the county of Sussex, in England. That since 1866 the pursuer had been subject to the jurisdiction of the English Court. On the 13th of April 1871, proceedings for dissolution of the marriage between the pursuer and defender, on the ground of adultery committed by the pursuer, were instituted by the defender in the English Court for Divorce and Matrimonial Causes against the pursuer and one Archibald Howell, the co-respondent. The pursuer had appeared, pleaded, and joined issue in that action. And the fact of her having appeared and pleaded, as above stated, had, of itself, according to the law of England, the effect of subjecting her to the jurisdiction of the said Court.

The defender therefore pleaded *inter alia*—(1) No jurisdiction; (2) *Lis alibi pendens*; and (3) *Forum non competens*.

It appeared that the defender, though a partner in the Kinneil Ironworks, took no active share in the business. And also that, in the action at his instance in the English Court for divorce against his wife, she had neglected to plead want of jurisdiction as a preliminary plea, or, in the English law terms, had entered appearance without protest, the consequence of which was, according to English practice, that she was obliged to go to trial on the merits, it being competent to the Court *ex proprio motu* to take up the plea of want of jurisdiction with the merits. The case in the English Court was still pending. Proof was led on the matters involved in the first three pleas of the defender, the import of which will sufficiently appear from the following interlocutor of the Lord Ordinary (ORMIDALE):—

"*Edinburgh*, 15*th February* 1872.—The Lord Ordinary having heard counsel for the parties on the defender's first three pleas in law, and having considered the argument and proceedings, including the proof, Repels said pleas, and appoints the case to be enrolled with the view to further procedure.

"*Note.*—The preliminary pleas now repelled are —1*st* No jurisdiction; 2*d*, *Lis alibi pendens;* and 3*d*, *Forum non competens*. As the Lord Ordinary has not felt much hesitation in repelling these pleas, and does not think that any of them are attended with difficulty, a very few observations will be sufficient in explanation of the grounds on which he has repelled them.

"1. In regard to the question of jurisdiction, it is true that the defender is at present, and has since November 1866, a period of about five years, been resident in England. But, on the other hand, it is unquestionable, and was not disputed, that both he and