

Wednesday, May 18.

SECOND DIVISION.

[Lord Adam, Ordinary.]

MURRAY v. BISHOP AND OTHERS.

*Proof—Writ or Oath—Loan.*

This was an action of multiplepounding raised at the instance of Mrs Mackay or Murray, as executrix-nominate of her husband the Rev. James Murray, minister of Reay, in Sutherland, under a mutual disposition and settlement executed by the spouses. The defenders who lodged claims were Mrs Bishop (who under the said deed was to succeed to the fee of their whole heritable and moveable estate on the wife's death) and the trustees of a marriage-contract executed by the spouses in 1860. In this marriage-contract the pursuer conveyed to the trustees, *inter alia*, her whole right to the proceeds of certain farms in which she had a joint right with her sister Miss Johanna Mackay. The estate so conveyed was to be held in trust for the sole use of the pursuer, and was to be exclusive of her husband's *jus mariti*. In 1865 Miss Mackay, the pursuer's sister, took a lease of the farms in her own name, and granted a bond for £1000 in favour of the marriage-contract trustees, in part payment of the value of the pursuer's share in the stock, &c., which had been valued at £1212, 17s. 7d. The Rev. Mr Murray being at that time in poor circumstances, applied to the trustees to be allowed to receive payment from Miss Mackay of the balance of the said sum payable by her. The trustees consented, and Miss Mackay accordingly paid over the sum of £210 to him in three sums of £180, £50, and £10, for which they received three acknowledgments, the first being signed by the two spouses, the second and third only by Mrs Murray.

The marriage-contract trustees in demanding repayment of the £210 pleaded that they had advanced the money to the Rev. James Murray on loan and on condition of repayment. Mrs Bishop claimed that the executry estate should suffer no such diminution.

The Lord Ordinary (ADAM) found that the trustees had failed to prove by competent evidence the alleged loan, and repelled their claim accordingly.

On their presenting a reclaiming-note the Lords adhered to the Lord Ordinary's interlocutor.

Counsel for Reclaimers—J. A. Reid. Agent—Alexander Morison, S.S.C.

Counsel for Respondents—Scott. Agent—John Walls, S.S.C.

Friday, May 20.

SECOND DIVISION.

[Sheriff Court of Lanarkshire.]

WOOD v. NELMES & COMPANY.

*Lease—Sub-Lease—Rent.*

In this action, which was raised in the Sheriff Court of Lanarkshire, the pursuer sought to obtain payment of a sum of money due as the rent

of certain premises belonging to him which had been occupied by the defenders under an assignation by a certain William Bowes of his right to the said premises, as constituted by a lease from the pursuer by which assignees and sub-tenants were excluded. It was admitted that neither rent nor sub-rent had been paid for the period sued for, but from the evidence it appeared that there had been a tacit recognition of the defenders as tenants by the pursuer. The defenders pleaded that they were not tenants under the pursuer, and therefore not liable.

The Sheriff (CLARK), affirming the Sheriff-Substitute (SPENS), decerned against the defenders for the sum sued for, and on appeal the Lords adhered.

Counsel for Appellant—Brand. Agent—W. Elliot Armstrong, S.S.C.

Counsel for Respondent—Hon. H. Moncreiff. Agents—Carment, Wedderburn, & Watson, W.S.

Friday, May 20.

SECOND DIVISION.

[Lord Adam, Ordinary.]

MARSHALL v. MARSHALL.

*Husband and Wife—Divorce—Lenocinium.*

A man who married a prostitute, shortly afterwards, in the presence of witnesses, bade her obtain her living by returning to her old life and getting some one to make her his mistress, and then deserted her. The woman being left in poor circumstances, obtained an interim award of £50 from the Lord Ordinary, having previously refused as insufficient an alimentary allowance of £50 per annum from her husband's relatives. She subsequently committed adultery on various occasions in the house of an old associate who kept a brothel. *Held* (rev. Lord Ordinary), in an action of divorce raised by the husband, that his language, coupled with the fact of his having left her exposed to old temptations, was sufficient to bar him from divorce on the head of *lenocinium*.

This was an action of divorce raised by Harry Marshall, formerly coffee-planter, Ceylon, latterly residing in the Island of Skye, against his wife, residing in Edinburgh, on the ground of adultery. The pleas urged in defence were generally a denial of the pursuer's statements, and *separatim lenocinium*, in respect of the pursuer's conduct towards his wife.

In the proof, which was taken before the Lord Ordinary, the following facts appeared:—The parties were married on the 9th of October in London, the defender having been for some years previous a prostitute plying her trade in Edinburgh. They then sailed for Ceylon, where the pursuer had coffee estates, and remained there till March 1880, when he was ordered home with health impaired from the effects of drink. After a short stay in London they returned to Edinburgh, where they lived in lodgings. Their life was now a very unhappy one, as the pursuer began to tire of his wife, and said that he was