

not alleged or proved that the 'Owl' sustained any injury: Find that in this state of the facts the owners of the 'Ariadne' are entitled to recover from the owners of the 'Owl' one-half of the damage sustained by the 'Ariadne.' Therefore decern against the defenders for payment to the pursuers of the sum of £2425, with interest, in terms of the conclusions of the summons: Find neither party entitled to expenses," &c.

Counsel for Pursuers (Respondents)—Robertson—Dickson. Agents—J. & J. Ross, W.S.

Counsel for Defenders (Reclaimers)—Lord Advocate (Balfour, Q.C.)—Mackintosh—Alison. Agents—Webster, Will, & Ritchie, S.S.C.

Thursday, November 17.

FIRST DIVISION.

CARRIGAN, APPLICANT.

Poor-Roll—Certificate—Where Kirk-Session in Abeyance—Act of Sederunt, 21st December 1842, secs. 2, 3, and 4.

Mrs Jemima Morgan or Carrigan was an applicant for the benefit of the poor-roll. She belonged to the Old Kirk Parish of Edinburgh, the kirk-session of which was at the date of her application in abeyance. She was in consequence unable to produce a certificate from "the minister and two of the elders of the parish," in terms of sections 2, 3, and 4 of the Act of Sederunt, 21st December 1842. She, however, produced a certificate by the minister and two of the elders of the High Kirk, which was the kirk in which the banns of marriage of parishioners of the Old Kirk were in use to be proclaimed. This certificate was in the usual form, but added that the statements in it were made on the authority of the Rev. Charles Wedderburn, minister of the Cowgate Free Kirk, at whose kirk the applicant worshipped. In the circumstances the Court dispensed with the Act of Sederunt, and remitted the applicant to the reporters on the *probabilis causa litigandi*.

Counsel for Applicant—Forbes. Agent—J. H. Jameson, W.S.

Thursday, November 17.

OUTER HOUSE.

[Lord Fraser.

FORBES v. FORBES.

Husband and Wife—Divorce—Desertion—Statute 1573, cap. 55—What is.

Held that an action of divorce by a wife against her husband is relevant, and decree of divorce pronounced where the wife had first left her husband without any reasonable excuse, but had subsequently begged leave to be allowed to return to cohabitation, the husband refusing to resume cohabitation, although an offer was made to allow her to

occupy a separate bedroom in his father's house, where her husband lived.

This was an undefended action of divorce on the ground of desertion by a wife against her husband. The parties were married on 2d June 1865, and lived together as man and wife until 3d July 1865, when the pursuer left her husband's house, alleging that her husband did not give her his confidence, nor allow her to perform the ordinary duties of a wife. Thereafter the pursuer made frequent attempts to return and live with her husband, which attempts he always repelled; and in particular she averred—" (Cond. 6) In the spring of 1867 the pursuer again went to the house of the defender's father, where the defender was residing, accompanied by Andrew Strachan, a friend of the pursuer, and again proposed to return to him. Mr Strachan stated in the presence and hearing of the defender and his father that he had come with the pursuer, who wished to offer herself back to live with defender, and that the pursuer and defender should let bygones be bygones. The defender, however, refused to speak to the pursuer. His father stated that there was a room and a bed for pursuer if she liked to sleep by herself. The pursuer, hoping that the defender would be reconciled, remained in the house for five days, occupying the said room. During that time the defender refused to sleep with her, or to occupy the same room with her, or to have any intercourse or connection with her. He never spoke to her, or sought her society, but, on the contrary, avoided her. The defender and his father and his friends treated the pursuer with the utmost coldness and disrespect, and avoided as much as they could having any social intercourse with her. The pursuer in consequence was forced to seek employment for herself, and she has for some years been engaged as a sick-nurse in a nursing institution in Glasgow. (Cond. 7) The defender has thus, since the year 1865, or at least for upwards of four years, wilfully and maliciously failed in his duty of adherence to the pursuer, and he has during the said period remained in malicious and obstinate desertion from her and her society. The pursuer has made various attempts, as above condescended on, to induce the defender to return to her society and company, and to adhere to her as his wife, but this the defender refuses to do. The present action has in consequence been rendered necessary."

She pleaded—"The defender having been guilty of wilful and malicious non-adherence to and desertion of the pursuer for at least the space of four years, the pursuer is entitled to decree as concluded for."

The action was undefended.

The Lord Ordinary held the libel relevant, and upon evidence led pronounced the following interlocutor and note:—"Finds that the pursuer Eliza Jane Neish or Forbes and the defender John Forbes are lawfully married persons: Finds the defender guilty of wilful and malicious non-adherence to and desertion of the pursuer, her society and fellowship, for upwards of four years prior to the date of raising the present action, and still continues in such non-adherence and desertion: Therefore divorces and separates the defender from the pursuer, her society, fellowship, and company in all time coming: Finds

and declares that the defender has forfeited all the rights and privileges of a lawful husband, and that the pursuer is entitled to live single or to marry any free man as if she had never been married to the defender, or as if he were naturally dead, and decerns, &c.

“*Note.*—In one respect this case presents a circumstance of novelty to which I will advert. The parties were in humble life, and it appeared that within a few weeks after the marriage a quarrel arose between them in consequence of the wife having upon a Saturday evening asked from her husband money to pay for the week’s provisions. This he refused, and on the Monday morning, in a fit of anger, the wife left her husband’s house. This conduct on her part was totally unjustifiable. A husband is entitled, if he pleases, to take the management of the household into his own hands; he may not have confidence in his wife’s judgment or prudence; and it is not cruelty or hardship of which the wife can complain that he does so. Therefore the pursuer, the wife, was utterly without excuse or defence when she left her husband’s house merely because he did not trust her with the purse. But then a fault may be atoned for, and the pursuer did certainly take all means within her power to do so. She went back to her husband repeatedly, and begged and beseeched him to forgive her, and to renew cohabitation; but all these entreaties on her part he sullenly rejected, and after such a repulse the wife ceases to be, and the husband becomes, the deserter.

“On one of these occasions the husband’s father told the wife that if she pleased she could come into his (the father’s) house, and there occupy a bedroom. This was said in presence of the husband, who uttered not a word. He then lived with his father, and had no house of his own. The wife—in the hope that her husband would come to a reconciliation with her—accepted the offer, and occupied the bedroom in the house of her husband’s father during a period of five days. These were very miserable days to the poor woman, for neither the husband nor any of his family spoke to her, and at the end of the five days she left the house.

“Now, I will take the case as if the house had been that of the husband himself, and that he had ordered his wife to occupy a room in it, with the intimation that he gave that he did not care for her, and did not want her, and would not cohabit with her by occupation of the same bedroom. I consider this to be non-adherence or desertion justifying divorce within the meaning of the Statute 1573. I am supported in this opinion by the judgment of the Consistorial Court in the case of *Graham v. Buguhanane*, February 27, 1567, and by the opinion of Sir George Mackenzie in his observations on the Statute 1573, cap. 55. Non-adherence is the conjugal wrong for which the Act of 1573 provided a remedy; and if there be non-adherence, according as adherence is understood among Christian nations, there is non-adherence or desertion within the meaning of the Act 1573 so as to justify divorce.

“I therefore grant divorce in this case.”

Counsel for Pursuer—Pearson. Agents—Henry & Scott, S.S.C.

Friday, November 18.

FIRST DIVISION.

[Sheriff of Renfrewshire.

D. & J. MACDONALD v. REID AND OTHERS.
Process — Arrestment — Corporation — Where Arrestment in Hands of Officer, whose Duties do not Relate to Corporation Funds — Police and Improvement (Scotland) Act (13 and 14 Vict. c. 33), secs. 51–58.

The Police and Improvement (Scotland) Act provided—“That all actions, suits, or proceedings in respect of any matter or thing relating to the execution of this Act to be brought by or against the commissioners shall be in the name of their clerk or treasurer or collector for the time being, as the party, pursuer or defender, representing the commissioners.” The duties of the clerk to the commissioners of police in a burgh were confined to “keeping the books and records of the commissioners and their committees;” he had no duty in relation to the funds belonging to the commissioners, which never passed into his hands, but were received by the collector, and thereafter managed by the treasurer. *Held* that an arrestment in the hands of the clerk was not effectual to attach any funds belonging to the commissioners.

This was an action of furthcoming for £37, 17s. 6d. against “James Reid, writer, Johnstone, clerk to the Commissioners of Police of the burgh of Johnstone, and as such on behalf of and representing the said commissioners, arrestee, and William Telford, merchant, Johnstone, common debtor.”

In defence the common debtor pleaded—“The arrestee neither held nor holds, nor has the control of, any funds belonging to the common debtor, either as an individual or in his capacity of clerk to the commissioners. An arrestment in the hands of a clerk to commissioners of police, acting under 13 and 14 Vict. cap. 33, does not, unless repeated or intimated by the arrester to the treasurer appointed and acting under that Act, attach any funds due to creditors of such commissioners.” The common debtor further stated that “The treasurer of the burgh on 30th April and 7th May 1881 paid to the common debtor two sums respectively, £8 and £15, to account of the above mentioned £34—said payments being *bona fide* made in ignorance of the arrestments in Mr Reid’s hands.”

The arrestee expressed his readiness to pay under decree of Court.

The provisions of the Police and Improvement (Scotland) Act (13 and 14 Vict. cap. 33), upon which the question depended, are quoted in the opinion of the Lord President, *infra*.

The Sheriff-Substitute (COWAN) pronounced the following interlocutor:—“Finds that the arrestment founded on in this case was used in the hands of ‘James Reid, writer, Johnstone, clerk to the Commissioners of Police of the burgh of Johnstone,’ and that the clerk to the commissioners of the said burgh, it was admitted in argument, does not hold any funds belonging to the commissioners, these being in the hands