in the ensuing vacation, and remit to the Lord Ordinary to proceed as accords."

Counsel for the Pursuer—A. M. Mackay. Agents—St Clair Swanson & Manson, W.S.

Wednesday, March 12.

FIRST DIVISION.

BARKWORTH *v.* BARKWORTH.

Jurisdiction—Husband and Wife—Expenses—Parent and Child—Petition by Wife for Access to Children.

A wife from whom the Lord Ordinary had granted her husband decree of divorce on the ground of desertion presented a petition to the Court for access to her children, who were in minority. Before the petition was heard the Court had, on a reclaiming note by the wife, recalled the decree of divorce, holding that there was no jurisdiction. Thereafter the petition for access was heard.

Held (1) that it followed from the former decision that neither had the Court jurisdiction to regulate family arrangements about the children; and (2) that the wife was entitled to her expenses because she was entitled to bring the petition at the time she did.

On 26th September 1912 Mrs Fanny Susannah Copeland or Barkworth, *petitioner*, presented a petition for access to the children of the marriage (who were all in minority) between her and John Edward Barkworth, *respondent*, for whom answers were lodged.

The petitioner and respondent were married on 15th February 1894. On 25th October 1911 the respondent raised an action of divorce against the petitioner on the ground of desertion, and on 9th July 1912 the Lord Ordinary (DEWAR) granted decree. On 15th August 1912 the petitioner presented a reclaiming note, and on 4th February 1913 the Court recalled the interlocutor on the ground of no jurisdiction.

Thereafter this petition was heard on 18th February when various authorities were cited for the petitioner and respondent on the question of access, but no authorities were cited on the question of jurisdiction.

At advising—

LORD PRESIDENT—This is a petition at the instance of a married lady, and the prayer of the petition is that the Court should give certain orders as to allowing her access to her children.

When the petition was brought affairs were in this position—An action for divorce for desertion had been brought by the husband against the wife, and on 5th July 1912 the Lord Ordinary, who had previously repelled a plea of no jurisdiction which had been tabled by the defender, pronounced decree of divorce. This petition was boxed upon the 26th September 1912. A reclaiming note was taken against the decree of divorce, and when that reclaiming note came up here in the month of February the interlocutor of the Lord Ordinary was recalled upon the ground that there was no jurisdiction in the matter, the Division holding that the domicile of the husband was not Scotch but was English.

That fact seems to me to alter entirely the position of affairs when this petition was presented, because we have this petition now at the instance of a lady who has successfully pled in the action of divorce that the marriage is not liable to be dissolved by the Scots Court because of want of jurisdiction over the spouses. I think that that fact necessitates as a corollary the domicile of this petition, for I think it is impossible that we should have no jurisdiction to settle the question of the marriage and at the same time have a jurisdiction to deal with the family arrangements about the children.

The parties to this petition are at this present moment married people. If the wife does not choose to live with the husband that is her own matter, but I am quite clear that if she wants any redress upon the question of the children she must apply for it in the Court where the domicile of the spouses is, namely, the Court of England. The only fact in regard to the husband is that he has got a house and lives in Scotland. The children themselves are in England for a large part of the year because the boys are at school there. I need scarcely say that if there was any order of the English Court upon the matter we should give the assistance of this Court to see that it was carried out in Scotland, but as matters stand I think the petition falls to be dismissed.

I think the petitioner here is entitled to her expenses. I do not go upon any question of the conduct of the parties, because that would be deciding upon a fact as to which I know nothing, but I think that in the position in which the wife was, namely, a wife divorced for desertion and the husband not seeing eye to eye with her as to what access should be given to her children, she was entitled to bring the petition at the time she did.

LORD JOHNSTON — I agree with your Lordship.

LORD MACKENZIE—I also agree.

LORD KINNEAR was absent.

The Court dismissed the petition and found the petitioner entitled to expenses.

Counsel for the Petitioner—Horne, K.C. —MacRobert. Agents—Bell, Bannerman, & Finlay, W.S.

Counsel for the Respondent — Wilson, K.C. — Lord Kinross. Agents — Gillespie & Paterson, W.S.

Thursday, March 13.

SECOND DIVISION.

SINGLE BILLS.)

M'EWEN AND OTHERS *v.* STEEDMAN & M'ALISTER.

(Reported *ante*, 1912 S.C. 156, 49 S.L.R. 136.)

Expenses—Interdict—Nuisance—Remedial Measures—Remit to Ascertain Effect—Expenses of Remit.

In an action of interdict against the continuance of a nuisance caused by the working of a gas engine which was alleged to affect injuriously an adjoining tenement, the Court held that the nuisance was proved, but allowed the defenders an opportunity of executing remedial works. The defenders lodged a note stating that they had executed remedial works which had resulted in the removal of the nuisance. The pursuers, although they were advised by an expert of their own that the nuisance was removed, maintained that it had in no way abated, in respect of a statement to that effect made to them by the factor and tenants of the tenement, and the Court remitted to a man of skill who reported that the nuisance had been removed.

The Court in *dismissing* the petition for interdict found the defenders entitled to the expenses of the remit.

Mrs Mary Gibb or M'Ewen, wife of Charles M'Ewen, hosier, Hillhead, Glasgow, and others, *pursuers*, brought an action of interdict against Steedman & M'Alister, cork manufacturers, Glasgow, *defenders*, with regard to a nuisance resulting from vibration caused by the working of a gas engine belonging to the defenders which the pursuers alleged injuriously affected an adjoining tenement belonging to them.

On 22nd November 1911 the Second Division of the Court found in fact that the nuisance was proved, and found in law that the pursuers were entitled to be protected against its continuance, but allowed the defenders an opportunity of taking such remedial steps as they might be advised for its removal. Thereupon the defenders executed remedial works, and the pursuers' law agents entered into correspondence with the defenders' law agents thereanent, in the course of which, on 30th January 1912, the pursuers' law agents wrote to the defenders' law agents admitting that an expert who had visited the tenement on the pursuers' behalf had "found little or nothing to complain of," but stating that the factor of the tenement had informed them that "the vibration continues just as before," and stating further that all the tenants of the tenement had signed a memorandum to the effect that "the vibration is in no way abated." On February 15, 1911, the defenders presented a note to the Court in which they averred that they had executed remedial works which had resulted in the removal of the vibration, and moved the Court to find that the remedial works were satisfactory, and that in respect thereof it was unnecessary to grant interdict. The pursuers' counsel opposed the motion and maintained that the nuisance had in no way abated. On February 21, 1912, the Court remitted to Professor Hudson Beare, Edinburgh, to examine the remedial works and to report.

On March 12, 1913, Professor Hudson Beare reported that the remedial works were effectual, and on the same date the defenders lodged a note to the Lord Justice-Clerk craving his Lordship to move the Court to hold the defenders' remedial works satisfactory, and in respect thereof and of Professor Hudson Beare's report thereon to find it unnecessary to grant interdict, and to find the defenders entitled to the expenses of the remit, and of the procedure in regard thereto incurred by them since 22nd November 1911.

On March 13, 1913, the Court, which consisted of the LORD JUSTICE-CLERK, LORDS DUNDAS, SALVESEN, and GUTHRIE, after hearing counsel in the Single Bills on the question of expenses, when counsel for the pursuers referred to *Dodd v. Hilson*, February 25, 1874, 1 R. 527, without delivering opinions pronounced this interlocutor—

"Hold the defenders' remedial works satisfactory in terms of the report by Professor Hudson Beare: Find it unnecessary to grant interdict: Dismiss the crave of the petition, and decern: Find the pursuers entitled to additional expenses up to 21st February 1912, and the defenders entitled to expenses since that date, including the expense of and incident to the said report, and remit the accounts," &c.

Counsel for the Pursuers—Sandeman, K.C.—Hon. W. Watson. Agents—Cumming & Duff, S.S.C.

Counsel for the Defenders—Wilson, K.C. —Paton. Agents—Graham, Miller, & Brodie, W.S.

Friday, March 14.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

M'FEETRIDGE *v.* STEWARTS & LLOYDS, LIMITED.

Foreign—Contract—Minor—Capacity to Contract—Lex loci contractus or Lex domicilii.

An Irishman under twenty-one years of age, whose father was in Ireland, took a situation as a labourer in Scotland, and having been injured in the course of his employment, agreed, without his father's consent, to accept compensation. *Held* that his capacity to enter into the contract fell to be determined by the *lex loci contractus*.