

been given, the Court might have refused to allow the summons to go at the instance of both, but no such objection was stated, and decree was passed. If the combining of two pursuers in an action for their separate debts were a nullity, no doubt there might be a great deal to say for the incompetency of the whole diligence following on the decree; but there is no nullity whatever; there is only a technical incompetency in combining two pursuers in the same summons—only an incompetency in the forms of process—and therefore I am inclined to hold that after decree of pointing of the ground was pronounced it was too late to plead such incompetency. I am therefore of opinion that no ground has been presented for suspension here.

LORD CRAIGHILL was absent.

The Court recalled the interlocutor of the Lord Ordinary, repelled the reasons of suspension and interdict, and found the warrant of sale complained of orderly proceeded.

Counsel for Respondents (Reclaimers)—Mackintosh—Omond. Agent—Wm. Donaldson, Solicitor.

Counsel for Complainer (Respondent)—Nevay—T. Rutherford Clark. Agent—Robert Broatch, L.A.

Tuesday, October 28.

## OUTER HOUSE.

[Lord M'Laren.

### FRÖBEL v. FRÖBEL AND LIDDELL.

*Husband and Wife—Divorce—Process—Expenses against Wife having Separate Estate.*

This was an action by Ernst William George Otto Fröbel against his wife, concluding for divorce on the ground of adultery with the co-defender Liddell. No appearance was made for the defender or co-defender. The summons concluded against the defender and co-defender, conjunctly and severally, for the expenses of process. The facts averred in the condensation were proved, and the Lord Ordinary granted decree of divorce. The pursuer moved the Lord Ordinary to find the defender and co-defender jointly and severally liable in expenses as concluded for. He stated that the defender had separate estate. He referred to *Milne v. Milne*, L.R., 2 P. & D. 204; Fraser on Husband and Wife, vol. ii. p. 1231.

The Lord Ordinary, "in respect it is stated that the said Bessie Reid Kerr or Fröbel has separate funds of her own, and Robert Liddell, the other defender, having failed to appear," found "both these defenders liable, conjunctly and severally, in expenses, as the same shall be taxed," &c.

Counsel for Pursuer—Sym. Agent—J. P. Bannerman, W.S.

Wednesday, October 29.

## FIRST DIVISION.

ROBERTSON v. WILSON.

*Process—Appeal—Competency—Cessio—Debtors Scotland Act 1880 (43 and 44 Vict. cap. 34)—Search Warrant.*

Where, in a process of *cessio* at the instance of a creditor under the Debtors (Scotland) Act 1880, the first delivrance issued by the Sheriff, finding that there was *prima facie* evidence of notour bankruptcy, appointing the creditor to follow out the procedure required by the Act, and the debtor to appear for public examination, contained also a warrant to open lockfast places and to search the dwelling-house and person of the debtor, the Court held that this special warrant did not take the case out of the rule of *Adam & Sons v. Kinnes*, February 27, 1883, ante, vol. xx. p. 436, and 10 R. 670, and therefore that the delivrance could not competently be appealed to the Court of Session.

Counsel for Appellant—Low. Agent—J. Barton, S.S.C.

Counsel for Respondent—Lang. Agent—D. H. Wilson, S.S.C.

Wednesday, October 29.

## FIRST DIVISION.

WATSON v. THE BOARD OF TRADE.

*Ship—Loss of Ship—Master—Duties of Master—Shipping Casualties Investigations Act 1879 (42 and 43 Vict. cap. 72)—The Shipping Casualties (Appeal and Rehearing) Rules.*

Circumstances in which the Court, acting upon the advice of nautical assessors, found that the sailing ship "Vicksburg" was not lost through improper or unseamanlike navigation on the part of the master, but owing to violent weather and to abnormally overpowering tides, of which the sailing directions for the course which he was taking contained no special warning, and restored to the master his certificate, which had been suspended by the delivrance of the Inferior Court.

The Shipping Casualties Investigations Act 1879 (42 and 43 Vict. cap. 72), section 2, sub-section 1, provides—"Where an investigation into the conduct of a master . . . or into a shipping casualty has been held under the Merchant Shipping Act 1864, or any Act amending the same;" . . . and sub-section 2—"Where in any such investigation a decision has been given with respect to the . . . suspension of a certificate of a master . . . an appeal shall lie from the decision to . . . (b) If the decision is given in Scotland, either Division of the Court of Session."

The Shipping Casualties (Appeal and Rehearing) Rules 1880, by rule 6, sub-section (d), provide—"The court of appeal shall be assisted by not less than two assessors, to be selected in the