

*Marriage in England—Divorce in Scotland.*

—A testator in England gave and devised real and personal estate, situate in England, to his great-niece for life, with remainder, as to the personalty, to her children, and as to the realty, to her first and other sons lawfully begotten, with remainders over. The great-niece, in 1830, married in England, but never lived with her husband, and a decree of divorce *a vinculo*, on the ground of the husband's adultery, was pronounced by the Court of Session in Scotland, the husband having been induced, with the wife's connivance, to go to Scotland, to bring himself within the jurisdiction of the Scotch Courts. The great-niece, in 1846, married in Scotland an Englishman domiciled there, and had by him two daughters and a son, all born in Scotland, during her first husband's lifetime. Upon petition by these three children claiming as children, the son claiming also as eldest son lawfully begotten, two funds representing portions of the testator's real and personal estate, which had been paid into Court:—*Held*, that the English marriage being indissoluble, the decree of divorce pronounced by the Court of Session must be treated as a nullity; that the second marriage in Scotland was invalid, and therefore that the children, whatever might be their *status* in Scotland, must in England be treated as illegitimate; and could not, upon the construction of an English will by an English court, be held to come within the term "children" or "eldest son lawfully begotten," as used in such will, and were not entitled to the funds in Court.

The circumstances under which the questions arose were of a somewhat remarkable character. In 1828, *Elizabeth Hickson*, (the grand-niece referred to above,) being then a girl of about sixteen, was induced by fraud, without the knowledge of her family, to consent to a marriage with a farmer named *Buxton*. The marriage was solemnized at Manchester on the 10th of June in that year; but on the same day her friends interfered and got possession of her, and separated her from her husband, and they never lived together for a single day. *Buxton* was indicted for his conduct in bringing about the marriage, and convicted and sentenced to three years' imprisonment.

Steps were taken to procure an Act of Parliament to dissolve the marriage, but without success. After many attempts to recover possession of his wife, *Buxton*, in 1838, was induced, in consideration of an annuity during the joint lives of himself and his wife, to consent to a deed of separation, which was accordingly executed in December, 1838. No question was raised as to the validity of this marriage with *Buxton*. In 1844, one *Shaw*, who was then a student of *Gray's Inn* preparing for the bar, fell in love with *Elizabeth Hickson*, or Mrs. *Buxton*. His addresses were favourably received, but the existing marriage with *Buxton* was a bar to their wishes. In order to remove that impediment the parties devised the scheme of procuring a dissolution of the marriage with *Buxton*, by a sentence of the Court of Session in Scotland, on the ground of adultery committed by *Buxton*; and in order to give that Court jurisdiction, *Buxton* was prevailed upon by pecuniary inducements to go and remain in Scotland for forty days, and thereupon Mrs. *Buxton* raised an action against him in the Court of Session, for a divorce on the ground of adultery, which there was no doubt he had committed. The suit was carried on with all due solemnity, and it ended in a sentence of divorce *a vinculo* being pronounced by the Court on the 20th of March, 1846. On the 17th of June, 1846, a marriage was solemnized at Edinburgh between John Shaw and Elizabeth Buxton, who thenceforth resided in Scotland as man and wife. Vice-Chancellor Kindersley remarked, that the English marriage was indissoluble, (the Divorce Court not being in existence at the time of these transactions,) and if the validity of the marriage with *Shaw* were to be recognized by English Courts, the consequence would necessarily follow, that an English Court of justice must hold that Elizabeth Hickson had two husbands simultaneously, *Buxton* and *Shaw*. *Wilson's Trusts*, Eq. 247.

*Trade Mark—Measure of Damage—Onus probandi*.—On an inquiry whether any and what damage has accrued to the plaintiffs from an unlawful use by the defendant of their trade mark, the onus lies on the plaintiffs of proving some special damage by loss of custom or otherwise; and it will not be intended,