

tained the action. The Lord President in rendering judgment observed:—

“It is evident that if we pronounce judgment in terms of all or any of these conclusions against the defenders there will arise immediately a conflict of jurisdiction between this Court and the Chancery Division of the High Court of Justice in England. This is a very serious matter, and we must therefore deliberately consider (1) what are the relations of the two Courts, and (2) what are the grounds on which the jurisdiction of each Court to deal with this trust estate is maintained. I. As to the relations of the two Courts, I hold that, in proper questions of jurisdiction such as the present, the *judicatories of Scotland and England are as independent of each other, within their respective territories, as if they were the judicatories of two foreign States.* I am anxious to formulate this rule, which is the necessary result of the Treaty of Union, with as much accuracy and precision as possible, because a loose and illogical statement of so important a constitutional doctrine is both dangerous and misleading. I have been, however, so much accustomed to regard it as an incontrovertible position that I was somewhat surprised to read in the Chancery proceedings which have been laid before us this passage in the judgment of so very learned and able a judge as the late Master of the Rolls: ‘I caught during the argument an expression to which I do not assent. Scotland was called a foreign country—a foreign jurisdiction. All that in my opinion is quite erroneous. Ever since the union of the kingdom of Great Britain, Scotland has been an integral part of Great Britain; it is not a foreign country.’ I sympathize with the learned judge so far that Scotland and England cannot with strict propriety be spoken of as being in the relation of foreign countries. But as the proposition with which he was dealing was, as he says, only ‘caught during the argument,’ he was probably misled by inaccuracy of expression; and the proposition itself, if expressed more precisely, might have commanded his serious attention. I do not say it would probably have altered his judgment on the case before him. But it might have enabled him to avoid what follows in the statement

of his opinion: ‘To talk of Scotland as a foreign country, and to say that the same rules apply, is, I think, a total error. It is not only an integral part of this kingdom, but *the judgment of this Court can be enforced in Scotland* in the same way that the judgment of a Scotch Court can be enforced in England. But there is more than that. In the case of a foreign country there is the difficulty of ascertaining the foreign law, and where questions of foreign law arise, it is certainly very inconvenient to try them by the sworn and unsworn testimony of advocates and experts as to what the law is. It is much more convenient, of course, to obtain the decision of the judges of the country on the law of their own country. Well now, what has the Legislature done? Recognizing that the Legislature has empowered the English Courts, where a question of Scotch law arises in the course of English litigation, to take the opinion of the Scotch Courts, which they are bound to give, and correlatively has empowered the Scotch Courts to take the opinion of the English Courts on a point of English law arising on Scotch litigation, there is therefore no difficulty at all in deciding a point of Scotch law in England, because they decide it not in England, but in Scotland, and so with regard to English law in Scotland, because that would be decided in Scotland; all those difficulties are therefore purely imaginary.’ Before advert- ing further to the reasons which seem to have led the learned judge to the conclusion that in questions of jurisdiction Scotland and England do not stand in the relation of foreign kingdoms, the Lord-President cited one very weighty authority, which is in terms contradictory of this proposition. In the appeal to the House of Lords from this Court regarding the guardianship of the present Marquis of Bute, Lord Campbell, as Chancellor, thus expressed himself:—‘I beg to begin by observing that, as to *judicial jurisdiction, Scotland and England, although politically under the same Crown, and under the supreme sway of one united Legislature, are to be considered as independent foreign countries, unconnected with each other.*’ The Master of the Rolls seems to have been misled into the opinion he expressed, in op-