

parties to the action. Lopes, L.J., at page 339, says: "At what time must it be determined whether a person is a 'proper party' to an action? Clearly, I think, at the time when the writ is issued. The words, 'an action properly brought against some other person,' evidently point to that. If both these parties were within the jurisdiction, it could not be contended that they were not both 'proper parties' to the action. As one of these is out of the jurisdiction, I see no reason why the rule should not apply."

"RIGHT OF BURIAL," WHAT INCLUDED IN—ERECTIONS ON GRAVE.

In *McGough v. The Lancaster Burial Board*, 21 Q. B. D. 323, the plaintiff had purchased from the defendants "the exclusive right of burial" in a grave space in their burial ground, and they granted him the right to erect a gravestone on the grave. He afterwards placed upon the grave a wreath, and to protect it a glass shade covered with a wire frame. It was the general rule of the defendants, never to allow the placing of such glass shades on the graves in their burial ground, and they accordingly removed the glass shade and wire frame without the consent of the plaintiff. By their Act of Incorporation the defendants were empowered to sell the exclusive right of burial, the right of constructing a vault or place of burial, and also the right of erecting any monument, gravestone, tablet or monumental inscription in such burial ground; and it was held by the Court of Appeal (Lord Esher, M.R., and Lindley and Bowen, L.JJ.) that the plaintiff had only acquired such rights as under the Act the defendants were empowered to sell, and that such rights did not include a right to place the glass shade and wire covering on the grave, and that under a provision in the Act which vested the general management, regulation and control of the burial-ground in the defendants, they were entitled to remove the shade and wire frame.

DIVORCE—ADULTERY OF HUSBAND AND WIFE—CRUELTY—COSTS.

*Otway v. Otway*, 13 P. D. 142, is deserving of notice for the principles it lays down in regard to the granting of judicial separation. A petition was filed by the wife for divorce, and a cross-petition by the husband,—the wife, in addition to adultery, alleged cruelty as a ground. Both parties were found guilty of adultery, and the husband was also found guilty of cruelty of an aggravated kind. While refusing to decree a divorce, Butt, J., the judge of first instance, granted the wife a judicial separation on the ground of cruelty, but the Court of Appeal (Cotton, Fry and Lopes L.JJ.) held that the wife, having been found guilty of adultery, had debarred herself from obtaining any relief, and the decree for judicial separation was therefore reversed. The marriage having taken place in 1879, the court held that, notwithstanding the wife's adultery, she was entitled to costs, both in the court below and of the Appeal, but they expressly guard themselves against being bound to come to the same conclusion in a case where the marriage has taken place since 1882. As to this point, Cotton, L.J., says at p. 156: "If a case comes before us where a woman has been married after the Act of 1882, it will be a very serious question for consideration how far we ought to follow the old rule, or what decision we ought to give."