

First Division.

[LORD ARDWALL, ORDINARY.

October 23, 1906.

CLOSED RECORD

IN CAUSA

SIR JOHN ALEXANDER MILLER, BARONET,

AGAINST

DAME ADA MARY WALKER OR MILLER.

J. & F. ANDERSON, W.S., Pursuer's Agents.

A. P. PURVES & AITKEN, W.S., Defender's Agents.

Mr Ross, Clerk.

*JMA*

23rd October 1906.—LORD ARDWALL.—*Act Pitman, Alt. Chree.*—The Lord Ordinary closes the record on the summons, defences and answers, Nos. 1, 5 and 8 of process: Allows the defender a proof of her averments in support of her first plea in law, and to the pursuer a conjunct probation: Appoints the same to proceed before the Lord Ordinary on Tuesday, the 20th day of November next, at ten o'clock forenoon, and grants diligence for citing witnesses and havers.

ANDREW JAMESON.

CLOSED RECORD

IN ACTION AT THE INSTANCE OF

SIR JOHN ALEXANDER MILLER of Barneyhill, in the County of East Lothian, Baronet, presently residing at Heywood, Westbury, Wiltshire—*Pursuer* ;

AGAINST—

DAME ADA MARY WALKER or MILLER, Wife of the said Sir JOHN ALEXANDER MILLER,—*Defender.*

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(8)

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## CLOSED RECORD.

### I.—SUMMONS.

No. 1 of pro.

EDWARD THE SEVENTH, &c.—Whereas it is humbly meant and shewn to us by our lovite, Sir John Alexander Miller of Barneyhill, in the county of East Lothian, Baronet, presently residing at Heywood, Westbury, Wiltshire,—*Pursuer*; against Dame Ada Mary Walker or Miller, wife of the pursuer, and whose last address known to the pursuer is Whitehall Hotel, Hampton Court.—*Defender*; in terms of the condescence and note of plea in law hereunto annexed: Therefore the Lords of our Council and Session ought and should find facts, circumstances and qualifications proven relevant to infer that the defender, the said Dame Ada Mary Walker or Miller, has been guilty of adultery with Maximilian John de Bathe, sometime a lieutenant in the Eighth (the King's Royal Irish) Hussars, but whose present address is to the pursuer unknown, and therefore find her guilty of adultery with him accordingly: And our said Lords ought and should divorce and separate the defender from the pursuer, and from his society, fellowship and company, and find and declare the defender to have forfeited all the rights and privileges of a lawful wife, and that the pursuer is entitled to live single, or to marry any free woman as if he had never been married to the defender, or as if she were naturally dead: And also that the defender, the said Dame Ada Mary Walker or Miller, has lost and amitted all goods, gear, money and others whatsoever which were anyways contracted or agreed to be paid to the defender in respect of the said marriage, or whatever she had right to claim in virtue thereof.—OUR WILL IS HEREFOR, &c.

Summons signeted 30th June 1906.

W. M. HENDERSON, W.S.

No. 1 of pro.

II.—CONDESCENDENCE for PURSUER ;

AND

No. 5 of pro.

ANSWERS thereto for DEFENDER.

*Cond.* 1. The pursuer is the younger son of the late Sir William Miller of Manderston, in the county of Berwick, Baronet, who died on 10th October 1887. He was born at Manderston House on 27th September 1867. His domicile of origin was Scotch, and he still is a domiciled Scotchman.

*Answer* 1. Admitted that the pursuer is the younger son of the late Sir William Miller, and that he was born at Manderston House on the date mentioned. *Quoad ultra* denied. Reference is made to defender's statement of facts. The pursuer's mother was English. Shortly after his father's death she returned to England, and has ever since resided there.

*Cond.* 2. The pursuer was married to the defender at the Register Office, Strand, by licence, on 6th July 1901. There are no children of the marriage.

*Answer* 2. Admitted.

*Cond.* 3. The pursuer and the defender lived happily together until the defender made the acquaintance of the said Maximilian John de Bathe. The said Maximilian John de Bathe was a visitor at the pursuer's house, and in consequence of what he observed, the pursuer remonstrated with the defender, and told her the said Maximilian John de Bathe must not again visit them.

*Answer* 3. Admitted that the said Maximilian John de Bathe, who was a friend of the pursuer's, visited at his house. *Quoad ultra* denied.

*Cond.* 4. The pursuer and the defender went to Nice about 17th March 1906. When residing there the pursuer ascertained that the said Maximilian John de Bathe was also

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there, and was continuing his attention to the defender. The pursuer again remonstrated with the defender as to this intimacy. On or about 21st April 1906 the pursuer returned to England. After he had left Nice the defender also returned to this country in the company, as the pursuer believes, of the said Maximilian John de Bathe. The pursuer and defender have not lived together since 21st April 1906. The statements in answer as to the pursuer's conduct are denied.

*Answer 4.* Admitted that the pursuer and the defender went to Cimiez, and that the pursuer returned to England about the dates mentioned. Admitted that the pursuer and the defender have not lived together since 21st April 1906. Explained that this was in consequence of the pursuer's dissolute conduct, and of the adulterous relations which he maintained with other women. *Quoad ultra* denied. The defender will adopt divorce proceedings against the pursuer on its being determined where he is domiciled.

*Cond. 5.* The pursuer has ascertained and now avers that the defender and the said Maximilian John de Bathe have lived together at various times and places as man and wife. In particular, they lived at the Oatlands Park Hotel, Weybridge, and they occupied the same room from 9th to 24th May 1906. After leaving Weybridge, and for some time in the month of June 1906, they lived at Whitehall Hotel, Hampton Court, under the name of 'Mr and Mrs de Bathe,' and they occupied the same room. They were living at said address during the week ending June 23rd, and returned there on June 25th. The defender and the said Maximilian John de Bathe committed adultery at the said Oatlands Park Hotel and the said Whitehall Hotel, Hampton Court, on or about the dates above mentioued, and on other occasions and at different places, the particulars whereof are unknown to the pursuer.

*Answer 5.* Denied.

No. 5 of pro.

III.—STATEMENT of FACTS for the DEFENDER ;

AND

No. 8 of pro.

ANSWERS thereto for PURSUER.

*Statement 1.* In 1889, within a year of his attaining majority, the pursuer married his first wife, and went to live with her at Little Green, near Chichester, in the county of Sussex, which he made his home for several years. For a considerable part of that time he also owned a house at 31 Cadogan Square, London, where he resided from time to time. In or about the year 1891 he purchased a house in Newmarket, which still belongs to him, and where he has been in the habit of living from time to time.

*Answer 1.* Admitted. Explained that the pursuer was tenant of Little Green from 1st September 1889 to 1st July 1892, and that his visits to Newmarket have only been for racing, in which he takes an interest.

*Statement 2.* Thereafter, in or about the year 1892, the pursuer took a lease for eight years of Bifrons, near Canterbury, which for several years was his usual residence. He took a great interest in the affairs of the county of Kent, became a member of the Kent County Club, was made a J.P. for the county, and acted as such. Thereafter, in 1902, after looking at a number of other places in England, he took a lease of Heywood House, Westbury, Wiltshire, for eight years, and he has ever since made it his home, living there continuously, unless when absent for the purposes of racing or shooting. He still lives there. He spent a large sum of money at Heywood on improvements, including roads, drainage, kennels, dairy, &c., and in forming a cricket ground for the local club. He also took a keen interest in local affairs at Heywood. Since his marriage to the defender he at no time expressed any desire to return to Scotland, but frequently said that he wished to live a country life in England.

*Answer 2.* Admitted that the pursuer took a lease of Bifrons

in 1892, and that he remained tenant thereof until June 1901, and that he took a lease of Heywood in 1902. Admitted further that he is a Justice of the Peace for the county of Kent. *Quoad ultra* denied. Explained that Little Green, Bifrons and Heywood are furnished houses in which the pursuer at times resided when not in London, travelling, visiting or racing. Explained further that the pursuer is a Deputy-Lieutenant and Justice of the Peace for the county of Haddington or East Lothian, and is a member of the New Club, Edinburgh.

*Statement 3.* In 1891 the pursuer had conveyed to him by his father's trustees the small estate of Barneyhill, in the county of East Lothian. Said estate consists of one farm, which has all along been let to a tenant. There is a house on said estate, but the pursuer has never lived there, but has let it.

*Answer 3.* Admitted that Barneyhill, to which the pursuer succeeded under his father's will, was conveyed to him in 1891, and that since the pursuer succeeded thereto the farm and the house have always been let. Explained that the house is more than adequate to the size of the estate, which extends to about 168 acres, and that the present rent for the house and the farm is £815 per annum. Further explained that the house and farm were first let together under the lease now current, which commenced in 1898. *Quoad ultra* denied.

*Statement 4.* Ever since the year 1889 the pursuer has regularly lived and had his home in England. He has all along been, and he still is, a member of numerous clubs in England. He has never during all these years had a home in Scotland, and has only made occasional short visits to Scotland for purposes of sport, at which times he has not had a house, but has lived in a hotel. He has had no Scotch friends or associates, and no Scotch sympathies or tastes, and has had no interest in or connection with Scotland, except his ownership of Barneyhill, where, as already stated, he never lived. He has deliberately abandoned his domicile of origin in Scotland, and has acquired a domicile in England.

*Answer 4.* Admitted that pursuer is a member of various

clubs in England. *Quoad ultra* denied. Explained that the pursuer's domicile of origin was Scotch, and that he has not abandoned that domicile or acquired a domicile elsewhere. Explained further that the pursuer from his birth has continued his connection with Scotland, and that his business affairs have always been entrusted by him to Edinburgh agents. In June 1901 he was divorced by his first wife in the Scotch Courts and according to Scotch law, on account of the relations then existing between the defender and himself. The marriage-contracts entered into by the pursuer on the occasion of both his marriages are in Scotch form, and the trustees named by him are Scotch. Since 1901 the pursuer has been tenant of the shootings on the estate of Lincluden, in the stewartry of Kirkcudbright, at a rent of £500 per annum. He is entitled to the liferent of the estate of Manderston, in Berwickshire, subject to the prior liferent of Lady Miller, the widow of his late brother.

No. 1 of pro.

IV.—PLEAS in LAW for PURSUER.

1. The defender having been guilty of adultery, decree of divorce should be pronounced as concluded for.
2. The pursuer being domiciled in Scotland, is entitled to decree as concluded for.
3. The defences are irrelevant.

In respect whereof,

W. M. HENDERSON.

No. 5 of pro.

V.—PLEAS in LAW for DEFENDER.

- 1 No jurisdiction.



2. The pursuer's averments, so far as material, being unfounded in fact, the defender is entitled to absolvitor.

In respect whereof, &c.

WILLIAM CHREE.

VI.—INTERLOCUTORS.

No. 2 of pro.

16th October 1906.—Lord Ardwall.—*Act. Pitman, Alt. Chree.*  
—The Lord Ordinary continues the adjustment of the record for a week, and appoints the pursuer to answer the defender's statement of facts within five days.      ANDREW JAMESON.

23rd October 1906.—Lord Ardwall.—*Act. Pitman, Alt. Chree.*  
—The Lord Ordinary closes the record on the summons, defences and answers, Nos. 1, 5 and 8 of process: Allows the defender a proof of her averments in support of her first plea in law, and to the pursuer a conjunct probation: Appoints the same to proceed before the Lord Ordinary, on Tuesday the 20th day of November next, at ten o'clock forenoon, and grants diligence for citing witnesses and havers.      ANDREW JAMESON.

Lord Andrewall

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Proof

In Divorce

Miller v. Miller.

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I N D E X .

Sir John Alexander Miller, Bart. . . . .	1.
William Spence Harris . . . . .	3.
Walter Wells . . . . .	5.
Ada Race . . . . .	6.
Alfred Charles Gibbs . . . . .	7.
Charles V. Richards . . . . .	8.



LORD ARWALL.)

P R O O F

In Divorce

MILLER v. MILLER.

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SATURDAY, December 15th, 1906.

(W. Lindsay, Shorthand Writer.)

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The Dean of Faculty, K.C. and Mr Pitman for  
Pursuer.

No appearance for Defender.

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SIR JOHN ALEXANDER MILLER, Bart. (39).

EXAMINED: I am the pursuer. I was married  
to the defender at the Registrar's Office in the  
Strand by license on 6th July 1901. No. 74 is  
an extract certificate of the marriage. After  
the/

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the marriage I and Lady Miller lived together as husband and wife. There are no children of the marriage. We lived happily together until comparatively recently. Trouble arose between us owing to the attentions which a gentleman named Max<sup>1</sup>imilian de Bathe paid to my wife. He was an acquaintance, and used to call at our house. He also stayed with me and Lady Miller at our residence. We had a place called Heywood, Westbury, at one time. I remonstrated with my wife as to this gentleman's attentions, but he went on paying attentions and she said there was nothing in it. She fell into bad health, and it was arranged she should go to Nice about March 1906. I went with her. I ascertained that Mr de Bathe was there. He did not present himself to me, but I heard he was there through my valet. I suspected that he was calling on my wife and seeing her. I remonstrated with her and asked her to give this man up. She said she would think over it. The result was that there was a quarrel between us. I returned to London and consulted my solicitors. I was advised to have a contract of separation. I had no evidence at that time that she had been unfaithful. There were negotiations between my solicitors and hers as to the adjustment of the terms/

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terms of a contract of separation. On 8th May 1906 I wrote a letter to my wife asking for a reconciliation. I kept a copy of that letter at the time, and No. 105 is that copy. I was averse to the scheme of the separation, and was anxious for the sake of the family that she and I should come together again. I sent that letter to her. I did not know her address and I sent it to her solicitors in London. I received a formal acknowledgment, No. 106 of Process. Lady Miller never replied to my letter. My solicitors got a letter from her solicitors to the effect that she declined to return. While the separation was in course of adjustment I discovered that Mr de Bathe and she were living together as man and wife. I broke off the negotiations and gave instructions for the raising of this action of divorce. From the time I left her at Nice in April 1906 she and I have never lived together. Since our separation I have seen Lady Miller and Mr de Bathe driving together in London. No. 93 is a photograph of Lady Miller. No. 94 is a photograph of Mr de Bathe.

WILLIAM SPECKE HARRIS.

EXAMINED: I am a law agent in Edinburgh and principal/

principal clerk to J. & F. Anderson, W.S., agents for the pursuer. I have had charge of the proceedings in the present action. Following on the withdrawal by the defender of her plea of no jurisdiction, my firm wrote a letter of which No. 101 is a copy, to Lady Miller's agents, enquiring what course they proposed to follow in regard to the proof.. We received in reply a letter, No. 95, from Messrs Purves & Aitken, to the effect that she would not be present or be represented by counsel at the proof. I had one or two interviews with Mr Aitken, Lady Miller's agent, with the view of securing that she and Mr de Bathe should be present at the proof for identification. Mr Aitken informed me that he did not know Lady Miller's address, and even if he did know it he would not be at liberty to communicate it. He undertook to communicate with her London agents. I suggested that if she was unwilling to disclose her address she might give an appointment in the office of the London agent, where a subpoena could be served requiring her to appear for identification. He informed me that she would decline to give any such appointment, and he said he thought she was abroad. I instructed a Messenger-at-Arms to serve a citation edictally upon both Lady Miller and Mr de Bathe, and sent copies of the/

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the citation to Lady Miller , to Purves & Aitken, and also to Chesters & Co., solicitors, Bedford Row, London, her London agents. I gave intimation of these citations to Mr Aitken on 8th December 1906, and in reply I received a letter, No. 97, acknowledging receipt of the formal citation of Lady Miller. I have seen a letter, No. 98, which Messrs Chesters & Co. sent to Mr Gardner, the Messenger-at-Arms, acknowledging the receipt of the citation and stating that their client Lady Miller was abroad, but they would inform her of the citation. We were unable to find that Mr de Bathe had either any permanent address or any recognised agent. There is in Process a correspondence, No. 103, between the pursuer's London solicitors and Lady Miller's solicitors, in which the pursuer's solicitors ask for an opportunity of serving a subpoena <sup>on</sup> ~~to~~ Lady Miller and Mr de Bathe. The result is that we have been unable to secure the attendance of either of them at the trial.

WALKER WELLS (48).

EXAMINED: I am now and have been for eight years manager of the Whitehall Hotel, Hampton Court/



Court, Middlesex. I remember a lady and gentleman coming to the hotel on the evening of 24th May 1906. I let to them a bedroom with a large bed, numbered 22. (Shewn No. 93.) I recognise that as a photograph of the lady. (Shewn No. 94.) I recognise that as a photograph of the gentleman. They gave the names of Captain and Mrs de Bathe. They stayed in the hotel from 24th May till 9th July 1906, and during that time they were living continuously in the hotel and continuously occupying that bedroom. When they went away the gentleman paid the bill, which was made out in name of Mr de Bathe. No. 100 is a correct copy of the bill, taken from our books.

ADA RACE (30).

EXAMINED: I was chamber-maid at the Whitehall Hotel, Hampton Court, between 24th May and 9th July 1906. I remember a lady and gentleman coming to stay in the hotel on 24th May. The manager gave them a room, numbered 22 - a large room with a single bed. No. 93 is a photograph of the lady, and No. 94 is a photograph of the gentleman. They occupied room 22 continuously until they left on 9th July. They went under the/

the names of Captain and Mrs de Bathe. It was part of my duty to attend to their room and take in breakfast to the lady and gentleman in the morning. I saw them every morning in bed together. They took their breakfast in bed. I noticed the initials on the lady's linen were A. M. I thought they were a newly married couple.

ALFRED CHARLES GIBBS (38).

EXAMINED: I entered the service of Sir John Miller in October 1901 as valet, and have been continuously in his service ever since. On the instructions of his London solicitors I went to Hampton Court on Monday 25th June 1906 along with a Mr Richards, enquiry agent, for the purpose of pointing out Lady Miller to Mr Richards. About seven o'clock that evening I saw Lady Miller coming towards the Whitehall Hotel accompanied by Mr de Bathe. I knew him quite well; he used to visit at Heywood. No. 93 is a photograph of Lady Miller, and No. 94 is a photograph of Mr de Bathe. I pointed them out to Mr Richards. They went into the hotel together. After a while Mr de Bathe came out alone and went to the Mitre Hotel. He remained there a few minutes and/

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and then came back to the Whitehall. I was at Nice with Sir John and Lady Miller in the spring of 1906. I saw Mr de Bathe at that time. Lady Miller asked me not to say that I had seen him. I thought it my duty to tell Sir John, and I did so. I spoke to Mr de Bathe once during the time he was there. He asked me how I was and I said I was very well, and that is all that passed between us.

CHARLES V. RICHARDS (20).

EXAMINED: I am an assistant with my father in his business of private enquiry agent in London. On 25th June this year I received instructions from my father to go to Hampton Court, and I arranged to meet the last witness Gibbs, Sir John Miller's valet. I met him there, and he pointed out to me a lady and gentleman whom he identified as Lady Miller and Mr de Bathe. No. 93 is a photograph of the lady and No. 94 is a photograph of the gentleman. They entered the Whitehall Hotel together. The gentleman came out shortly afterwards alone and went to the Mitre, and then went back to the Whitehall. I watched the hotel till 12:30 the following morning. I watched till the hotel/

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hotel was closed in for the night. During that time neither the lady nor the gentleman left the hotel. I watched the hotel again from 7:30 the following morning and I saw the lady and gentleman go out for a walk in the forenoon. They returned to the hotel. I watched them finally into the hotel that night and watched the hotel till midnight, when it closed. They remained in the hotel. On the 27th I watched up till nine o'clock at night. On 1st and 2nd July 1906 I watched and they remained in the hotel till after it was shut up for the night.

Pursuer's Counsel put in documents per  
inventory, and closed his proof.

7<sup>th</sup> Jan 1907

Certified

Andrew Jamieson