



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 93

F127-25

OPINION OF LADY TAIT

In the cause

NS

Pursuer

against

PSC

Defender

**Pursuer: Clark KC; SKO Family Law Specialists
Defender: Party**

25 September 2026

Introduction

[1] The issue for determination is the defender's motion for a discretionary sist of the present divorce action in terms of the Domicile and Matrimonial Proceedings Act 1973 ("the 1973 Act") or in terms of his plea of *forum non conveniens*. The sist is sought pending determination of proceedings in the Superior Court of California, El Dorado County which proceedings were filed on or around 21 July 2026 and served on the pursuer on or around 11 August 2026. The proceedings in California are for legal separation albeit the defender's stated intention is to amend those proceedings to divorce proceedings at some point after 27 November 2026 (when he will satisfy the jurisdiction requirements for divorce). Having

heard submissions, I delivered the following oral decision which has been appended to the interlocutor.

[2] It is not disputed that the parties married at Las Vegas in the United States (“the US”) on 30 January 2006. They separated on 4 December 2024. There are three children of the marriage, aged 13, 11 and 8. The children were born in the US and hold American citizenship. The defender is a dual UK and US citizen who returned to reside in the US on or around 27 May 2026. The pursuer is a German national who resides and practises as a medical consultant in Scotland.

[3] It has been determined after proof in related proceedings (F6/25) that the parties and their children resided at various addresses in California until 18 July 2024 from which date they relocated to reside in Scotland. The defender and the parties’ two sons arrived in Scotland on 18 July 2024. The pursuer and the parties’ daughter arrived on 9 September 2024. Following contested proceedings, the defender and the children returned to reside in California on 27 May 2026.

[4] The pursuer raised an action for divorce in the Court of Session (F94/25) on 7 August 2025 which was dismissed on the pursuer’s motion on 25 November 2025, the defender having disputed his habitual residence in Scotland (on which jurisdiction was based). The pursuer subsequently raised the present divorce action which was served on 14 November 2025. By interlocutor dated 18 March 2026, the court appointed a 4-day diet of proof to commence on 13 October 2026. By interlocutor dated 7 August 2026, the court assigned today’s hearing on the defender’s motion to sist pending determination of proceedings in California.

[5] The defender raised divorce proceedings in the Superior Court of California on or about 3 June 2025 which proceedings he dismissed on 10 October 2025.

The Law

[6] The defender's motion to sist proceeds either in reliance on his plea of *forum non conveniens* or under paragraph 9 of schedule 3 to the Domicile and Matrimonial Proceedings Act 1973. There is no dispute that the motion can properly be made under the 1973 Act and that in determining such a motion, the court should adopt the same approach as that adopted at common law in cases of *forum non conveniens*. The pursuer challenged the applicability of *forum non conveniens* where the present Scottish proceedings are for divorce and the Californian proceedings are for legal separation, that is they do not relate to the same dispute. I have not heard detailed argument in relation to that point and it is unnecessary to determine it here given the presentation of submissions under the 1973 Act with reliance on the common law authorities.

[7] Paragraph 9 of Schedule 3 of the 1973 Act provides:

(1) Where before the beginning of the proof in any consistorial action which is continuing in the Court of Session or in a sheriff court, it appears to the court concerned—

(a) that any other proceedings in respect of the marriage in question or capable of affecting its validity are continuing in another jurisdiction, and

(b) that the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for those other proceedings to be disposed of before further steps are taken in the action in the said court, the court may then if it thinks fit sist that action.

(2) In considering the balance of fairness and convenience for the purposes of sub-paragraph (1)(b) above, the court shall have regard to all factors appearing to be

relevant, including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted, or not being sisted.

[8] As noted above, when considering a discretionary sist, the court should adopt the same approach as that adopted at common law in cases of *forum non conveniens* where there is a *lis alibi pendens* (*de Dampierre v de Dampierre* 1988 AC 92).

“Consequently the respondent in the divorce proceedings will have to show that there is another available forum which, *prima facie*, is clearly more appropriate for the trial of the action. If he succeeds in this a sist will be granted, unless there are circumstances by reason of which justice requires that a stay should nevertheless not be granted.” (Anton, *Private International Law*, 3rd Ed, para 16.16)

[9] In *Mitchell v Mitchell* 1992 SC 372 at pages 380 to 381, it was held that the initial approach should be to consider the overall connection of the marriage with the jurisdictions in question and if that connection was *prima facie* with Scotland, the Lord Ordinary would have been entitled to grant the sist only if he took the view that there were nevertheless other circumstances by reason of which justice required a sist should be granted. No substantial weight should be attached to the fact that the Scottish action was commenced first, both actions being still in their initial stages. Further, the court should not as a general rule be deterred from granting a stay of proceedings simply because the plaintiff in this country will be deprived of a legitimate personal or juridical advantage, provided the court is satisfied that substantial justice will be done in the appropriate forum overseas (*de Dampierre* above at page 110).

[10] Submissions were framed in terms of the two-stage test in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 at page 475:

“(a) The basic principle is that a stay will only be granted on the ground of *forum non conveniens* where the court is satisfied that there is some other available forum, having competent jurisdiction, which is the appropriate forum for the trial of the action, i.e. in which the case may be tried more suitably for the interests of all the parties and the ends of justice.

(b) ... in general the burden of proof rests on the defendant to persuade the court to exercise its discretion to grant a stay.... Furthermore, if the court is satisfied that there is another available forum which is *prima facie* the appropriate forum for the trial of the action, the burden will then shift to the plaintiff to show that there are special circumstances by reason of which justice requires that the trial should nevertheless take place in this country."

Submissions for the defender

[11] Each party lodged extensive and helpful written submissions which it is unnecessary to rehearse given their common ground in relation to how the court should approach the motion. I address the disputed matters in my decision below.

[12] The defender now admits that this court has jurisdiction based on the pursuer's habitual residence in Scotland for one year immediately preceding the raising of the action. He addresses the following questions: (i) whether California is an available forum of competent jurisdiction; (ii) whether it is clearly the more appropriate forum for this matrimonial and financial dispute; and (iii) whether there is any real risk that substantial justice would not be obtainable there, such that the Scottish action should nevertheless continue. He submits that California satisfies the first two questions where there are live competing proceedings in California; the marriage has subsisted for almost its entire duration in California; the parties' three children were born and reside in California with the defender; and the vast majority of the matrimonial property is situated in California. Further, he submits that there is no basis for an affirmative answer to the third question. In relation to substantial justice in the practical sense, the court must consider whether California is not only formally available but is a forum in which the parties can realistically obtain a fair determination of the issues in dispute. Matters such as access to legal

representation, litigation cost, funding, delay, procedural capacity, and the ability of the court to make effective orders may be relevant, provided they are supported by evidence.

[13] The balance of fairness and convenience favours allowing the Californian proceedings. The defender and children are resident there; the principal estate, documents, institutions, and enforcement issues are concentrated there; and California is the forum in which the divorce and associated financial matters can be addressed directly. The Scottish connection remains material, only with regard to the pursuer's present residence and employment. These do not outweigh the overall Californian connection.

[14] The defender recognises that a judgment of legal separation requires the consent of both parties under California Family Code section 2345. He anticipated the pursuer's reliance on *In re Marriage of Patel* (2025) 117 Cal.App.5th 262. However, the court should not proceed on an assumption that a final judgment of legal separation will be ultimately sought. The existing Californian process provides the procedural route to a dissolution action once the residence requirements are met. The defender's reliance is therefore upon the competent Californian proceedings already commenced, the statutory amendment route asserted under section 2321, and his stated and documented intention to use it, rather than upon the prospect of a contested final judgment of legal separation.

[15] The relevant question is whether California is a real and available forum capable of determining the divorce and associated financial issues, not whether every procedural step has already been completed at the date of this hearing. The fact that the action is at an earlier procedural stage, or that an amendment to dissolution remains necessary, does not, in itself, render California unavailable. As observed in addressing the equivalent concern in *Adun v Adun* [2026] CSOH 23 at [65]: "In the event that the defender is unsuccessful, it

would be open to the pursuer to recall any sist in the present action." The same safeguard is available here.

[16] The pursuer, as respondent in the California proceedings, could move to quash those proceedings under California Rules of Court, rule 5.63(b)(2), on the ground that another action is pending elsewhere between the same parties for the same cause. No such motion has been filed. Such a possibility is not, however, a reason for this court to decline a sist. If the California court were to conclude that the Scottish action, sisted or otherwise, disentitled the California proceedings from continuing, that would itself be a determination that California is not, after all, an available forum for this dispute. In that event, the sist could be recalled and the Scottish action allowed to proceed. That is precisely the safeguard a sist, as distinct from dismissal, is designed to provide.

[17] The principal matrimonial assets are situated in, connected with, or administered from California. The location of those assets is important not simply as a matter of convenience. Questions of title, valuation, disclosure, management, sale, transfer, corporate records, bank records, trust documentation and enforcement are likely to arise. So far as those matters concern Californian real property, a Californian company, Californian accounts, and a Californian trust, California is the jurisdiction in which the relevant records, institutions, and persons administering those assets are located. The defender has maintained substantial personal and economic connections with California throughout the parties' period in Scotland. The defender relies upon: (a) the assessment of his United States treaty residence for tax purposes by his United Kingdom accountants (7/21); (b) his continuing California voter registration and voting record (7/22); and (c) his continuing property, financial, family, and professional connections with California (7/16; 7/21; 7/22). (d) his residence in South Lake Tahoe, being the address shown in his tax returns and

California voter-registration and voting records (7/21; 7/22). These matters are advanced as facts demonstrating the practical reality and continuity of the defender and his family's Californian connection.

[18] The defender recognises the connections with Scotland. The pursuer is presently resident and employed here; she commenced this action in a court which has jurisdiction; the action has progressed procedurally; and Scottish solicitors and counsel have already been instructed. Those factors are material. They do not, however, displace the substantially stronger connection of the parties' family life, current residence of the children, and principal disputed estate with California. There are heritable properties in London and Brighton. Those properties are in England, not Scotland. Their existence means that neither Scotland nor California has an exclusive connection with every asset. The relevant comparison is nevertheless between the overall centre of gravity of the dispute. The California court can address directly the substantial body of Californian assets and issues, whereas a Scottish determination would require the Court to manage a financial dispute whose principal assets, documents, and enforcement consequences lie abroad in not just one, but two other jurisdictions. The Court should consider the practical consequences of determining rights concerning Californian assets in Scotland, including the potential need for recognition or enforcement proceedings in California, against the ability of the Californian court to deal directly with assets within its jurisdiction.

[19] Taken together, the long Californian residence of the family; the children's present residence there; the defender's present residence and care responsibilities there; the location and administration of the principal estate; the Californian proceedings already commenced; and the practical issues of documentation and enforcement, establish California as clearly the more appropriate forum.

[20] The financial consequences of divorce differ materially between Scotland and California. California is a community-property jurisdiction: Family Code section 760. The defender relies on the declaration of Brandon R. Blevans, California Certified Family Law Specialist (7/13, paragraph 10), and on Family Code section 4336, for the proposition that, in a marriage exceeding years, the California court retains jurisdiction indefinitely in relation to spousal support, without the presumptive durational limitation applicable to shorter marriages. Scottish financial provision is governed by sections 8 and 9 of the Family Law (Scotland) Act 1985 and its own statutory principles. The defender does not submit that the Court should select California simply because its substantive law may produce a different financial outcome. The relevance of the legal and financial differences is evidential. If established, they form part of the factual context in which the court may assess whether the pursuer's selection of Scotland was connected with a perceived financial or procedural advantage, rather than with Scotland being the forum most closely connected to the marriage and the disputed estate. The defender relies on that matter together with, and not separately from, the following circumstances: (a) the parties' long residence and continuing connections in California; (b) the location and administration of the principal matrimonial estate; (c) the timing and course of the parties' relocation to Scotland and subsequent separation; (d) the timing of the Scottish divorce proceedings and the California proceedings; and (e) the practical consequences for each party of litigating in Scotland or California. The defender does not ask the court to make any finding of dishonesty, bad faith, or improper motive merely from the difference between the legal systems. The submission is that the difference in available outcomes, if proved, is one circumstance capable of bearing on motive and on the overall interests of justice assessment.

[21] The defender is a party litigant resident in California and has the sole day-to-day care of three children. Continuing to prepare for and conduct a four-day Scottish proof, while the pursuer is represented by specialist Edinburgh solicitors and senior counsel, creates substantial additional burdens of cost, time and childcare for the defender. Those circumstances are relevant to practical justice and to the comparative suitability of the available forums.

[22] The defender recognises that expanded Defences were lodged on 8 April 2026 and that the present motion was enrolled on 30 July 2026. This timing does not demonstrate delay, acquiescence, or a lack of urgency in respect of the forum plea. Between October 2025 and May 2026, the Defender was a party litigant conducting F6/25 while caring for the children in Scotland. During the same period, he was also required to defend proceedings in Edinburgh Sheriff Court concerning a claim for legal expenses arising from F6/25. His available time and resources were necessarily directed towards those proceedings. The material circumstances changed following Lord Braid's Opinion of 22 May 2026. The children relocated to California on 27 May 2026. The defender commenced the California proceedings on 21 July 2026 and enrolled the present motion shortly thereafter. The timing of the plea must be assessed in that factual context.

[23] The defender is resident in California with the children. He has no regular earned income, receives no child maintenance and remains a party litigant. He is required to prepare for and participate in a four-day Scottish proof against a pursuer with a specialist legal team. The burden of conducting that proof from California is not confined to the inconvenience of a time difference or remote attendance. It includes the practical demands of preparing evidence, managing productions, participating in procedural hearings,

responding to applications, arranging any necessary evidence from California, and doing so while carrying the sole responsibility for three children.

[24] The recovery already sought in this action relates substantially to Californian property, a Californian LLC, Californian bank accounts, and related financial material. Those documents are held by Californian institutions, entities, or persons. The need for Scottish commission and diligence in respect of material located in California is relevant to comparative suitability. A California court can deal directly with records, assets, institutions, and persons within its jurisdiction. It is not submitted that Scottish procedure is incapable of addressing foreign evidence; the submission is that the California court is the more practical forum for doing so.

[25] The question of substantial justice is not confined to the formal existence of a Californian court with jurisdiction. The court must consider whether both parties can realistically obtain a fair determination there. The Defender's position is that there is no basis for concluding that the pursuer would be denied substantial justice in California. California provides mechanisms capable of addressing a disparity in the parties' access to representation. The defender relies on California Family Code section 2030 and the declaration of Brandon R. Blevans, California Certified Family Law Specialist (7/13). Section 2030 requires the California court, where the statutory conditions are met, to consider whether there is a disparity in access to funds and ability to pay and to make an appropriate order for attorney's fees and costs so that each party has access to legal representation. The practical circumstances support California as the forum in which the parties can more fairly and effectively litigate the divorce and associated financial issues.

[26] In conclusion, the defender's circumstances, the location of the children and principal estate, the Californian evidence and enforcement issues, and the availability of a

Californian process capable of addressing representation and financial issues all support the conclusion that California is the more suitable forum in the interests of the parties and the ends of justice.

Submissions for the pursuer

[27] The pursuer has been seeking to advance divorce proceedings in the Court of Session against the defender since August 2025. The instant proceedings are at an advanced stage, having been signeted and served upon the defender on 14 November 2025. The defender does not have jurisdiction for divorce proceedings in California and will not satisfy the six-month residency requirement until 27 November 2026 at the earliest.

[28] The terms of paragraph 9(1)(a) of schedule 3 of the 1973 Act may include proceedings for divorce and for separation. If so, the failure of the Californian proceedings to seek divorce when that is what the pursuer seeks, bears upon the exercise of the court's discretion and in favour of refusal of a discretionary sist. It is material to the balance of fairness and convenience that the pursuer would be deprived of the timeous remedy sought by her. It is material to whether a discretionary sist would cause injustice to the pursuer.

[29] The California Family Code at section 2345 provides that the court in California may not render a judgment of legal separation "without the consent of both parties". Thus, the defender's application for legal separation is forlorn and absent cogent foundation. The pursuer does not consent to legal separation. She is able to seek dismissal of the proceedings for legal separation. She will do so. The court will be compelled to dismiss the proceedings. In the event of dismissal, there would be no pending proceedings in California. No further proceedings could be initiated in California prior to 27 November 2026.

[30] If the defender were able to amend the existing separation proceedings to divorce proceedings after 27 November 2026, the pursuer's legal expert Steven Yoda advises that service of the amended proceedings will be required (6/222). Determination of disputed proceedings can extend beyond two years. Accordingly, it is likely that divorce proceedings in California would not conclude until 2028/2029. In the produced petition for legal separation, there is no specification of the community or quasi-community property. It is stated that the petitioner (present defender) is uncertain as to the exact nature and extent of the parties' separate property assets and debts; and will provide additional information to the respondent by way of "preliminary declaration of disclosure". This is suggestive of further disclosure and procedure being required in the process militating against a prompt resolution.

[31] The pursuer will be able to challenge the jurisdiction of the Californian court by moving to "quash" the proceedings because "another action is pending between the same parties for the same cause" in terms of Californian Rules of Court rule 5.63, subd (b)(2). She will be able to move to quash the Californian proceedings by challenging their jurisdiction over her personally in terms of Californian Code Civil Procedure para 418.10 subd (a)(1). She can also move to stay or dismiss the proceedings on the grounds of "inconvenient forum" in terms of Californian Code Civil Procedure para 418.10 subd (a)(2).

[32] Paragraph 9(2) of schedule 3 to the 1973 Act directs that in considering the balance of fairness and convenience, the court shall have regard to all matters appearing to be relevant "including the convenience of witnesses and any delay or expense which may result from the proceedings being sisted". It is submitted that there is an imperative for resolution of the divorce proceedings when balancing the issues of fairness, convenience, delay and

expense, all as required within paragraph 9(2). The pursuer is concerned about the following matters:

- (i) alleged financial irregularities in the defender's management of matrimonial funds;
- (ii) failure by the defender to account to her for the application of matrimonial funds and income;
- (iii) access to matrimonial accounts which are under the control of the defender, having been denied such access;
- (iv) dissipation of matrimonial funds by the defender, all to the pursuer's financial detriment; and
- (v) the parties continue to be connected financially as they continue to share federal tax status; continue to have a joint liability for unsecured debts as provided for by the California Family Code section 2623; and retain rights to pension interests.

[33] The matters favouring exercise of the court's discretion in refusal of the defender's motions are multifarious and compelling. They command particular weight in the balance of fairness between the parties. They include:

- (i) legal separation would deny the pursuer an expeditious divorce from the defender. She is entitled to regulation of her status *quoad* divorce. In circumstances where the divorce proceedings in Scotland include domestic abuse averments a delay in the grant of divorce would be highly prejudicial to the pursuer and contrary to the interests of justice.
- (ii) the proceedings for legal separation in California are forlorn and absent cogent foundation. The pursuer will move for dismissal of the proceedings. She is

entitled to dismissal in terms of California Family Code section 2345 as confirmed by the appellate decision on *In re the Marriage of Patel* (2025)117 Cal App 5th 262.

(iii) in the event of dismissal of the proceedings for legal separation, the defender will be unable to initiate divorce proceedings until after 27 November 2026. In the event the defender is able to amend the legal separation proceedings to proceedings for divorce after 27 November 2026, the amended proceedings will require to be served upon the pursuer. The proceedings are likely to be highly conflictual and unlikely to conclude until 2028.

(iv) the pursuer has sought to pursue divorce since August 2025 in Scotland at considerable expense. The proceedings are at an advanced stage. Proof is scheduled to proceed on 13 October 2026 and the three following days. The pursuer has lodged 8 inventories with 222 productions. She is in the later stages of preparing for proof. She is entitled to resolution of these proceedings without delay.

(v) the pursuer is indebted to family to the extent of approximately £600,000 in respect of legal expenses. She continues to incur debt to fund the present proceedings. In the event that proceedings advance in California, she will incur substantial additional expense. There would be duplication of the efforts undertaken in the Scottish proceedings. The pursuer has no funds for the instruction of legal representation. She would be reliant upon borrowing further funds. In the absence of the ability to fund legal representation in California the pursuer would suffer substantial prejudice. She resides in Scotland. She has no presence in California. There is concern about alleged significant financial irregularities by the defender in the application of matrimonial funds for his own purposes. Reference is made to the

schedule produced at 6/183. Enquiry into the alleged misapplication of matrimonial funds by way of proof is urgently required in the interests of justice.

(vi) the defender has retained all matrimonial income such as from rental income from matrimonial property since separation, all to the financial detriment of the pursuer. The defender has obstructed the pursuer's access to matrimonial funds and information regarding matrimonial accounts since separation, to her financial detriment. He has failed to account to the pursuer for said income. Enquiry into the retention by the defender of said matrimonial income by way of proof is urgently required in the interests of justice.

(vii) the defender has refused to fund the repayment of the mortgage over the jointly held Brighton property since November 2025. A mortgage holiday was secured by the pursuer which expires in November 2026. Thereafter that pursuer anticipates having the burden of funding the mortgage to her financial detriment. It is imperative that the pursuer's remedy for sale of the heritable property is resolved as a matter of urgency.

[34] In conclusion and having regard to the whole circumstances, including the balance of fairness between the parties, the uncertainty around the current proceedings in California, together with the issues of delay and expense, the defender's motions should be refused it being in the interests of justice that the proof proceeds on 13 October 2026.

Decision

[35] This may be considered an atypical motion to sist proceedings, albeit competent. It is atypical in respect that the motion was enrolled in late July 2026 at an advanced stage of the action, proceedings having been served on the defender on 14 November 2025 with a proof

fixed for October 2026. Today's hearing was fixed for the earliest date taking into account the court diary; allowing for preparation and the instruction of expert reports; and in an attempt to preserve the four-day proof diet assigned for 13 October 2026 pending determination of the motion. The motion is also atypical in respect that there are no competing divorce proceedings. The defender cannot currently found jurisdiction for divorce in California. Rather there are proceedings for legal separation in California which may fall to be dismissed prior to 27 November 2027 for lack of the pursuer's consent. On that date (if not dismissed), the defender can seek to convert the proceedings into divorce or dissolution proceedings. On the pursuer's submission, contested proceedings are unlikely to conclude until 2028 (based on advice that contested proceedings take on average between 12 and 18 months). The proceedings are not without uncertainty given the various preliminary challenges which the pursuer would be entitled to make as set out above.

[36] I am satisfied that the Californian proceedings for legal separation fall within paragraph 9(1)(a) of schedule 3 of the 1973 Act as "other proceedings in respect of the marriage" and that they are continuing. However, I am not satisfied that the balance of fairness (including convenience) between the parties is such that it is appropriate for the Californian proceedings to be disposed of before further steps are taken in the present action. In other words, I am not satisfied that (i) the available forum of California is more appropriate than Scotland and (ii) that it would not be contrary to the interests of justice for the case to be tried there.

[37] I have had regard to all factors appearing to be relevant including the convenience of witnesses and any delay or expense which may result from the suit. It is unarguable that the family's overall connection is greater to California than Scotland given the parties' residence there following marriage until July 2024; the birth of the children and their residence there

until 2024; and the defender's and children's American citizenship and presence in California. Two heritable properties are in California and two are in England. None are in Scotland. Moveable assets appear to be distributed between the US and UK. The pursuer currently works and resides in Scotland albeit the defender contends that she will attempt to return to the US.

[38] The children's presence in the US is less significant as any divorce proceedings will not be concerned with their care arrangements, those having been determined in related proceedings. Any issues relating to the economic burden of caring for the children can be determined in the present proceedings.

[39] Notwithstanding the greater overall connection to California, the very late stage at which it is sought to sist this action, if granted, would result in considerable unfairness and potential prejudice to the pursuer. She would lose the timely and expected determination of divorce and financial provision in the coming months and certainly within 2026. That is a reasonable expectation for an action raised in November 2025 and in which a proof was fixed in March 2026. In contrast divorce proceedings in California cannot progress until end November 2026 with the earliest anticipated completion of defended proceedings in 2027 or 2028 (not disputed by the defender in respect of contested proceedings). A sist would accordingly result in delay. It would inevitably result in duplication of process and considerable further expense for both parties. The defender has engaged in the present proceedings and there has been a number of opposed motion hearings. There has been an extensive disclosure procedure. The pursuer has submitted in detail, as set out above, the prejudice to her of any delay. While only allegations, it is submitted that there has been a failure to account for matrimonial property and the income therefrom and that there may

have been alienation or dissipation of assets. The defender disputes the allegations. This court cannot determine the allegations today but can take into account the claimed urgency.

[40] In contrast, the defender asks the court to weigh in the balance of fairness and convenience, his unrepresented status in Scotland; the inconvenience of conducting proceedings from overseas; his child caring responsibilities; anticipated difficulties of disclosure, adjudication and enforcement in respect of overseas assets; and the fact that he has been hindered in bringing the present motion sooner due to competing proceedings which have demanded attention and prevented his return to the US. Other than emphasising the potential for further enforcement proceedings outwith Scotland, the defender does not address the delay, duplication of process and expense nor the obvious benefits for the entire family of the earliest determination. While not entirely clear, the defender appears to have instructed legal assistance as required in the US (in terms of Mr Blevans' report). Otherwise, he has represented himself in a related Court of Session action, in a Sheriff Court action and in the present proceedings, including detailed and able submissions for today's hearing.

[41] The defender raises forum shopping as a factor in the court's overall assessment of the interests of justice. He raises what are submitted to be materially different financial consequences between Scotland and California. As the defender rightly highlights under reference to *de Dampierre* above at para 110, the court should not ordinarily refuse a sist merely because a Scottish pursuer may lose a legitimate personal or juridical advantage, provided substantial justice will be done in the appropriate foreign forum. The corollary of that must be that the court should not grant a sist where a party may gain such an advantage in circumstances where substantial justice will not be done or where the balance of fairness dictates otherwise. The defender acknowledges that in determining substantial

justice, access to legal representation, litigation cost, funding, delay, procedural capacity and the ability of the court to make effective orders may be relevant.

[42] As I acknowledge above the assets are outwith Scotland. From the perspective of the Californian court, two significant assets (heritable properties in London and Brighton) are outwith its jurisdiction. Determination in respect of foreign assets is not uncommon for this court. No doubt any difficulty around disclosure or recovery of documents for American assets falls on the pursuer and her Scottish representatives. The defender is in the US and will be able to access and assist in disclosure of Californian documents in the Scottish process. I do not understand that he is prejudiced in such procedures.

[43] Accordingly, while the greater connection of the marriage is with the US, the balance of fairness (including convenience) at the very late and advanced stage in these proceedings is such that it is not appropriate to await disposal of nascent and uncertain Californian proceedings before further steps are taken in this action. Again, I note the unusual timing of the present motion. I shall refuse the defender's motion for a sist. I reserve meantime the question of expenses.