jority of the Court, *in terminis*, because in regard to the pursuing of this reduction we have the two estates consolidated, and they are one. Alexander conveys them by the deathbed deed as one estate. He cannot convey them in any other way. Mr Dunn Pattison must therefore have a title to sue a reduction of that conveyance, but only to certain effects; and therefore we must make a special interlocutor.

Mr YOUNG—The finding upon that matter of the *dominium utile*—that is, that although the pursuer is *in titulo* to pursue a reduction with respect to the conveyance of the *plenum dominium*, yet it is only to the effect of preventing the alienation of the right to the *dominium directum*—would require to be with reference to the plea to that effect of the heir-at-law only, because the others have no title to state it.

LORD JUSTICE-CLERK—The heir-at-law's pleas don't very well come up to that.

Mr LEE—I think they do. Your Lordships previous interlocutor only dealt, as I understand, with the action as an action of reduction. Now, the action is not only an action of reduction, but of declarator specially applicable to the lands of Boquhanran, both *dominium utile* and *dominium directum*. The defences were held to be defences on the merits, and the plea was reserved.

LORD JUSTICE-CLERK—I see within the fourth subdivision of your first plea there is something that will do. The conclusion of declarator is, that you have good and undoubted right and title. That is far too high; you have merely a claim.

Mr YOUNG—I wish it to be quite under the notice of the Court that I am making no motion for reduction. It is matter of very serious consideration whether Mr Dunn Pattison will avail himself of his title to reduce after the finding of the Court to the effect now stated; and therefore the judgment will be given effect to in findings, if your Lordships please, at present.

LORD JUSTICE-CLERK—Then we had better not proceed farther than as regards the matter of title at present. That makes the interlocutor more simple. It had better bear that we resume consideration of these pleas which were reserved, and also of the defences stated for the heir-at-law, and repel the objection to Mr Pattison's title to sue a reduction of the deed, in so far as it conveys the *plenum dominium* of the lands of Boquhanran and others, but reserving the effect of that reduction in so far as it affects his right to the superiority of the said lands. If the result of your farther consideration were that you withdrew this reduction, then it would be very desirable that nothing should be done at present except the mere dealing with objections to title.

Mr YOUNG—That is really what I meant to suggest to the Court.

LORD JUSTICE-CLERK—Then I think we had better go no farther than that; repel the objections to the pursuer's title to sue a reduction of the deathbed deed in so far as it is a conveyance of the *plenum dominium* of the lands of Boquhanran, to the effect of making good his claim to the superiority of the said lands. I think that makes it safe for everybody.

Mr LEE—In regard to the declaratory conclusions, does your Lordship do anything at all?

LORD JUSTICE-CLERK—No; we cannot go any further unless we are to reduce.

Mr LEE—Then the interlocutor will be so expressed as to enable the heir-at-law still to get a judgment in his favour under the declaratory conclusions as regards the *dominium utile*.

LORD JUSTICE-CLERK—Unless Mr Dunn Pattison withdraws his reduction. He is not asking anything against you at present either under the reductive or declaratory conclusions.

Mr YOUNG—Mr Dunn Pattison was maintaining his right to reduce to the effect of getting the whole subject, the *plenum dominium*. His right to the whole was opposed by both sides; he has succeeded so far as the *dominium directum* is concerned, and he will consider what his farther course will be. I presume it will be the view of the Court to reserve all questions of expenses, so far as not already disposed of.

LORD JUSTICE-CLERK—Yes.

The following interlocutor was pronounced:—

"*Edinburgh, 20th July* 1866.—The Lords having resumed consideration of the cause and heard counsel for the parties on the pleas reserved by the interlocutor of 9th March 1866, and on the defences for the curator of the heir-at-law, repel the objections stated by the defenders to the pursuer's title to sue a reduction of the deathbed deed of Alexander Dunn as a conveyance of the *plenum dominium* of the lands of Boquhanran, the superiority and property of which were consolidated by the said Alexander Dunn during his lifetime, and sustain the title to sue such reduction, but only to the effect of enabling him to vindicate his claim as an heir of provision to the superiority of said lands under the disposition and settlement of William Dunn, reserving in the meantime all questions of expenses not hitherto disposed of.

"JOHN INGLIS, *I.P.D.*

Agents for Pursuer—Dundas & Wilson, C.S.

Agents for Dunn's Trustrees—A. G. R. & W. Ellis, W.S.

Agents for Curator for Heir-at-Law—Murray & Beith, W.S.

Agents for other Parties—John Ross, S.S.C., Webster & Sprott, S.S.C., and Maconochie & Hare, W.S.

OUTER HOUSE.

(Before Lord Jerviswoode.)

GARDNER *v.* M'GAGHAN (*ante* pp. 6, 95).

Expenses—Jury Trial—Abandonment of Action. A pursuer having abandoned an action after obtaining a verdict in his favour, which the Court set aside, granting a new trial, the defender held entitled to full expenses.

The pursuer brought an action against the defender claiming £500 of damages for slander and wrongful apprehension on a charge of theft. The jury, after deliberating for three hours, found for the pursuer by a majority of 11 to 1, and assessed the damages at £10. The defender then moved for a new trial on the ground that the verdict was contrary to evidence, and obtained it, the question of expenses being reserved. The Lord Ordinary fixed the 3d of July for the new trial. Thereupon the pursuer put in a minute abandoning the action, consenting that the result of the second trial, assuming it to have taken place, should be held to be a verdict for the defender, and that the defender should be assoilzied. Each party moved for expenses, the pursuer on the ground that he had been successful in the first trial, and the defender because by his minute the pursuer had confessed himself to be wrong from the commencement, and that the action was one which never should have been brought. The Lord Ordinary pronounced the fol-

lowing interlocutor, which has been acquiesced in:—

"*Edinburgh, 3d July* 1866.—The Lord Ordinary having heard counsel and made avizandum, finds the pursuer liable in the expenses of process, including those incurred by the defender in the trial which took place on the 6th day of March last; allows an account of such expenses to be lodged, and remits the same to tax, and to report.

(Signed) "CHARLES BAILLIE.

"*Note.*—The Lord Ordinary is of opinion that on the footing on which he is now called on to deal with this case he must find the pursuer liable to the defender in full expenses. The statement now made in the minute for the pursuer, No 22 of process, appears to the Lord Ordinary, of necessity, to infer that were a second trial to take place the pursuer could not present to a jury a more favourable case than that which, as the Lord Ordinary construes the judgment of the Court, has been held insufficient to warrant the verdict on either of the issues. In these circumstances success in the cause is plainly with the defender; and looking to the whole process and character of the litigation, the Lord Ordinary is of opinion that justice demands that the defender should be freed from the expenses of a trial in which she should never have been summoned."

Counsel for Pursuer — Gifford and Guthrie. Agent—James Renton jun., S.S.C.

Counsel for Defender—Alex. Moncrieff and W. A. Brown. Agent—James Bell, S.S.C.

SMITH *v.* SMITH.

Husband and Wife—Divorce—Proof. In an action for divorce on the ground of adultery—the confessions of the defender, corroborated by other indirect evidence, held sufficient proof of adultery.

This was an action of divorce by a husband against his wife on the ground of adultery. There was no appearance for the defender. It was proved that the marriage took place in December 1849, but that for five or six years prior to the raising of the action the spouses had lived entirely separate, though in the same city. One part of this proof consisted of the defender's averments in an action of aliment raised by her against the pursuer, in which she set forth that she had been living separate from the pursuer for a period of years. There was some evidence also as to the defender's conduct on a particular occasion, when she might have committed, and probably did commit, adultery, though no actual adultery was proved. But the pursuer also proved that the defender had acknowledged on two different occasions, to different persons, and in circumstances when there was no ground for suspecting collusion, that a child to which she had given birth—and whose birth was fully proved—during the period of separation, was not the issue of the pursuer. The defender had likewise been guilty of making a false registration of the birth of the child (which she registered as illegitimate), as to name, place, and date, and had been committed for trial in respect of that false registration. Further, though the pursuer made regular payments of aliment to the defender through a third party, she did not apply for any increase subsequent to the child's birth; she made no provision otherwise for its birth, and expressed satisfaction when first informed of its death.

The Lord Ordinary thought the case peculiar, and ordered a hearing on the evidence, when

BRAND, for the pursuer, contended that the evidence of pursuer and defender having lived separate for years, of the false registration, and above all of the repeated confessions made under circumstances which removed all suspicion of collusion, constituted ample evidence of adultery if the Lord Ordinary believed the evidence. He cited 1 Fraser, 662; Harris *v.* Harris, 2 Hag. Eccl. Rep., 408; Mortimer *v.* Mortimer, 2 Hag. Con. Rep., 315; Burgess *v.* Burgess, 2 Hag. Con. Rep. 229; M'Queen's Prac., 655 (Evidence in Lord Ellenborough's case); Springthorpe *v.* Springthorpe, 15th May 1830, 8 Sh., 751; Robinson *v.* Robinson and Lane, 1 Swab. and Trist., 362; Williams *v.* Williams and Padfield, 22d November 1865, 1 "Law Reports" (C. L.), p. 29; and Sawyer *v.* Sawyer, Walker's Amer. Chan. Reports, p. 48.

The Lord Ordinary made avizandum, and on 19th June last pronounced decree of divorce.

Agent—W. R. Skinner, S.S.C.

JURY TRIALS—JULY SITTINGS.

SECOND DIVISION.

(Before Lord President.)

Monday and Tuesday, July 23 and 24.

WINK *v.* REID AND OTHERS (*ante, p.* 40).

Bankruptcy—Fraud—Stat. 1621, *c.* 18 Verdict for defenders in an action of reduction of a disposition founded on the statute 1621, c. 18, and on fraud at common law.

In this case George Wink, accountant in Glasgow, trustee on the sequestrated estates of David Reid, sometime spirit dealer at Holehouse, in the parish of Neilston and county of Renfrew, thereafter bottler in Glasgow, is pursuer; and the said David Reid, for himself, and as administrator-in-law for his wife, Mrs Martha Hopkins or Reid, and for his children, David Reid, Elizabeth Reid, Janet Reid, Robert Reid, James Reid, and John Reid, and for any other child or children born or to be born of the marriage betwixt him and the said Mrs Martha Hopkins or Reid; and also the said Mrs Martha Hopkins or Reid, and the said David Reid, Elizabeth Reid, Janet Reid, Robert Reid, James Reid, and John Reid; John Baird and John Gibson Patrick, both wine merchants in Paisley, are defenders.

The following are the issues:—

"It being admitted that the estates of the defender David Reid were sequestrated on or about the 15th day of January 1864, and that the pursuer is trustee on the said sequestrated estates—

"1. Whether the disposition, No. 8 of process, so far as in favour of the defender Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the defenders David Reid and the said Mrs Martha Hopkins or Reid, was an alienation by the said David Reid to conjunct and confident persons of property belonging to him, without true, just, or necessary cause, to the hurt and prejudice of prior creditors of the said David Reid, now represented by the pursuer, contrary to the Act 1621, cap. 18?

"2. Whether the defender David Reid, when insolvent, procured the said disposition, No 8 of process, to be executed, so far as in favour of the defender Mrs Martha Hopkins or Reid, and the children born or to be born