To let Mr Tod know that I wish (the bequest and) the name of Cunningham to be erased from my settlement; and I do hereby desire it to be done.—MARY MURRAY." The truster's said sister, Miss Ann Murray, died on the 17th day of December 1869. The said three daughters of the said Mrs Archbald or Cunningham, mentioned in the said settlement, and above named, were connections by marriage of the testatrix through their mother. They all survived the said Mary Murray, but one of them, viz., Miss Barbara Gray Cunningham died intestate and unmarried on 9th December 1869. She is therefore represented by her two sisters and her father. The said memorandum was never communicated during Miss Mary Murray's life to Mr Henry Tod senior, W.S., senior partner in the said firm of H. & H. Tod, who is believed to have been the "Mr Tod" therein referred to; nor was he otherwise made aware of the wish therein expressed. The trustees of Miss Mary Murray declined to pay to the Misses Eliza Campbell Cunningham and Mary Boston Cunningham, and the representatives of Miss Barbara Gray Cunningham, the legacy of £150, on the ground that it had been recalled by the terms of the memorandum. On the other hand, the Misses Eliza Campbell Cunningham and Mary Boston Cunningham, and the representatives of Miss Barbara Gray Cunningham, for their respective rights and interests, claimed the full amount of the said legacy, on the ground that the memorandum did not form a codicil to the trust-disposition and settlement, or a proper testamentary writing, but only contained instructions to the truster's agent (but which were never carried out), and that the legacy was not revoked by the said memorandum; and further that, looking to the phraseology and purport of the memorandum itself, which appeared intended to refer to some one person named Cunningham, and not to the before designed legatees, the intention of the truster in executing the said memorandum failed from uncertainty, even if it could be held that the said memorandum constitutes a proper testamentary writing.

The following were the questions laid before the Court;—

(1). Whether the said legacy of £150, directed by the said trust-disposition and settlement to be paid to the three daughters of the said Mrs Archibald or Cunningham as aforesaid, is now payable; or

(2). Whether the said legacy has been recalled by the said memorandum printed in the appendix.

MACDONALD and ASHER, for the legatees, relied on *Walker* v. *Steel*, 16 Dec. 1825, 4 S. 323; *Stainton*, 17 Jan. 1828, 6 S. 363.

FRASER, for the trustees, relied on *Scott* v. *Sceales*, 2 Macph. 613.

The Court answered the first question in the affirmative, and the second in the negative.

Agents—T. & R. B. Ranken, W.S. and H. & H. Tod, W.S.

Friday, March 17.

HARVEY *v.* LIGERTWOOD.

Divorce—Disposition omnium bonorum*—Reduction.* Circumstances in which *held* that a person who had been divorced on the ground of adultery, was not entitled to reduce a disposition *omnium bonorum* embracing provisions due to him under his antenuptial marriage-contract.

In this action Harvey sought to reduce a disposition *omnium bonorum*, granted by him to the defender in 1851. The said deed conveyed, *inter alia*, the provisions due to him under his antenuptial marriage-contract, dated in 1842. By the said marriage-contract the pursuer bound himself to hand over a certain sum to trustees, the interest of which was to be paid to him during his life, and on his death to his widow. The pursuer was divorced from his wife, and by a decree of the Court, dated 16 July 1870, it was decided that the effect of said divorce was equivalent to natural death.

The grounds upon which he now sought to reduce the said deed appear sufficiently from the following interlocutor and note of the Lord Ordinary (ORMIDALE):—"The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings, finds that no relevant or sufficient grounds of reduction are averred by the pursuer entitling him to insist in the present action; therefore repels the reasons of reduction, dismisses the action, and decerns; finds the defenders entitled to expenses, allows an account thereof to be lodged, and remits it when lodged to the auditor to tax and report.

"*Note*—This action must be looked at in connection with the former one mentioned in the record, at the instance of the pursuer against his marriage-contract trustees, judgment in which was pronounced by the Court on 12th July 1870, and is reported in 8 Macph. 971. In that former action the pursuer referred to the present as being about to be brought by him in order to clear his title. But the Court, by the judgment referred to, found, independently altogether of the objection that the pursuer's title might be held as affected by the disposition *omnium bonorum* now sought to be reduced, that he had no right to insist in the claims made by him, in respect he had been divorced from his wife on the ground of adultery. This result was arrived at on the ground that the pursuer had forfeited, by the dissolution of the marriage by his adultery, all right to his marriage-contract provisions which might otherwise have been available to him, just as they would have been by his natural death. It was therefore in that action, where the pursuer restricted his claim to the interest or income of the funds held in trust under the marriage-contract between him and his wife, expressly held that, in respect of his divorce for adultery, there were no grounds on which he could maintain such a claim.

"What interest, therefore, the pursuer can have in now insisting in the present action is not apparent. And, at any rate, the Lord Ordinary cannot see that he has set forth any relevant or sufficient ground for insisting in the action: (1) He says it was *ultra vires* of him to have granted the disposition *omnium bonorum*, so far as it had reference to his rights and interests under his marriage-contract, as these rights and interests were declared to be beyond the diligence of his creditors. It is now, however, *res judicata* that in consequence of the dissolution of his marriage, in respect of his adultery, he had forfeited all claim to at least the interest or income of the marriage-contract funds. It was argued, however, that eventually, on the death of his wife, the pursuer's claim to the income or interest of the marriage-contract funds will revive, and the case of *M'Alister*, 18th July 1854, Scottish Jurist, was

referred to in support of this view. But the Lord Ordinary cannot see how the pursuer's claim to the interest or income in question can again revive, and neither can he see the application of the case of *M'Alister*. There is only a very short report of that case, from which it appears that the only contested point was the right of the offending wife, not to any marriage-contract provisions in favour of herself, but to exercise a certain power of division of provisions constituted in favour of her children. The Lord Ordinary must therefore hold that no question as to the pursuer's rights under the marriage-contract can arise, except as regards his eventual claim under the fifth head of the marriage-contract, as referred to in article 3 of the pursuer's condescendence; but, in regard to such claim, it does not appear to the Lord Ordinary that the pursuer was under any disability to assign the same to his creditors by the disposition *omnium bonorum* now challenged. (2) As to what the pursuer called his second ground of reduction, viz., the contraint under which he says, in article 10 of the condescendence, he acted in granting the disposition *omninm bonorum*, the Lord Ordinary thinks it is obviously quite untenable, his allegations amount to nothing more than that he was obliged, before being liberated from prison, to do what every debtor similarly situated is legally bound to do. (3) The only thing else on which the pursuer founded in support of the reduction was his statement in article 11 of his condescendence; but clearly that statement does not entitle the pursuer to have the disposition *omnium bonorum* cut down and set aside. Possibly Mr Ligertwood may not have properly discharged his duty as trustee under that deed, and if so, the pursuer may have his remedy, but certainly not by reducing the deed itself."

The pursuer appealed.

BALFOUR for him.

HALL in answer,

The Court unanimously adhered.

Agent for Pursuer—John Shand, W.S.
Agents for Defender—Tods, Murray, & Jamieson, W.S.

Saturday, March 18.

FIRST DIVISION.

CORNWALL AND MESSRS CRAWFORD & GUTHRIE, S.S.C., HER AGENTS, *v.* WALKER.

Process—Expenses—Agent and Client—Writers' Hypothec on Costs—Compromise of Case. Circumstances in which it was *held* (affirming the judgment of Lord Ormidale; *diss.* Lord Kinloch) that the parties having come to a private and extrajudicial settlement of the case, after the proceedings had reached a point which necessarily and legitimately inferred a subsequent finding of expenses in favour of the pursuer, and the pursuer having immediately thereafter left the country, the pursuer's agents were entitled to sist themselves as parties to the cause, with a view to recover their expenses from the defender.

This was an action in which Matilda Cornwall, having previously obtained a divorce from her husband James Walker, sought to recover from him the amount of terce and *jus relictæ* due to her upon the dissolution of the marriage. She pleaded —"(1) The pursuer having obtained decree of divorce against the defender is entitled to be paid her legal provisions out of his estate in the same way as if he were naturally dead. (2) The pursuer is entitled to an accounting with the estate of the defender for the purpose of ascertaining the amount payable to her out of the same; and failing the defender rendering such accounting, the pursuer is entitled to decree for a sum sufficient to cover the amount of her provisions."

The defender pleaded—"(1) The defender is not liable to the claims of the pursuer. (2) The defender not being possessed of heritable and moveable estate, liable to the pursuer's claims, of the value stated, the pursuer is not entitled to decree as concluded for. (3) In the whole circumstances the defender is entitled to absolvitor with expenses."

Upon closing the record, the Lord Ordinary (ORMIDALE) appointed the defender "to lodge a state of the heritable and moveable estate belonging to him at the date of the dissolution of the marriage." He thereafter pronounced the following interlocutor:—

"*10th January* 1871.—The Lord Ordinary having heard parties' procurators, decerns against the defender to make payment to the pursuer of an interim sum of £40 sterling, and remits to Mr Wm. Ross, C.A., Edinburgh, to examine the process, and to report upon the value of the heritable estate, and the amount of the moveable estate of the defender at the date of dissolution of the marriage, with power to the reporter to meet with the parties, and receive their explanations, and to call for and recover all books, vouchers, and other writings that may appear to him to be necessary, and, if necessary, to examine havers, and receive their productions; and grants diligence at the instance of each of the parties for citing havers, and recommends the reporter to make his report with as little delay as possible."

While the case was before the accountant, the parties came to an extrajudicial compromise, in which the pursuer's agents were not consulted, and accordingly, upon 21st January, the defender put in the following minute craving to be assoilzied in respect of this compromise—"Lorimer, for the defender, stated to the Lord Ordinary that the parties had agreed about the sum to which the pursuer would be entitled in full of her claims under the present action, and that she had of this date received from the defender the sum of £600, and had executed a discharge in his favour of the action, and of all claims. Said discharge is herewith produced, and the counsel for the defender craved that in respect thereof his Lordship should pronounce decree of absolvitor, and find neither party entitled to expenses."

Upon 31st January 1871, the agents for the pursuer in the case, Messrs D. Crawford and J. Y. Guthrie, put in a minute craving to be sisted as parties in the action. After narrating the circumstances of their employment, and the different proceedings which had taken place in the case, this minute proceeded as follows—"While these proceedings were depending, the said Matilda Cornwall, without any communication to her agents, the said D. Crawford and J. Y. Guthrie, and without their knowledge, received proposals from the defender or his agents for a settlement of her claims under this action. The defender's agents did not communicate with the agents for the pursuer, and did not inform them that these proposals