

the marriage subsists and so long as the sequestration continues.

In short, I am of opinion that this annuity is, in questions between husband and wife, in precisely the same position as the rents of an heritable estate or subjects belonging to the wife would have been. The husband has no right to claim or to dispose of his wife's heritable estate, but if his *jus mariti* is not excluded therefrom he can claim each half-year's rents of the estate as they become current or due. He can only claim the annual accruing proceeds, which of course are moveable as they accrue.

The next question is, At what time must the wife claim a provision for her maintenance and support out of the annuity or out of each term's payment of the annuity, so as to entitle her to receive such provision in terms of the 16th section of the Conjugal Rights Act of 1861? I am of opinion on this matter that each half-year's payment of the annuity as it falls due (and by the settlement it is payable in advance) is to be regarded as a separate fund out of which the wife may claim a provision at any time before it falls due, or before it is actually paid to her husband or attached by decree of furthcoming by her husband's creditors. I do not mean that a separate claim is necessary by the wife every half-year, as if each half-year's payment were a separate succession. I think she may claim once for all, and that such claim will subsist for future payments so long as the circumstances of the spouses remain the same, but in order to make the claim effectual as to any specified half-year's annuity, the claim must be made before such half-year's annuity has been reduced into possession by the husband, and before any of his creditors have obtained therefor decree of furthcoming. A completed and reported poiding and sale, which is the other alternative of the statute, is not applicable to a money payment like a half-year's annuity.

Applying these principles to the facts of the present case, there is no dispute as to the half-year's annuity payable in advance at Whitsunday 1877 or as to any previous payments. These payments have all been made to the wife herself and I suppose have been spent by her for her maintenance. The first half-year's annuity which the trustee in the sequestration claims is that falling due in advance at Martinmas 1877, but by that time, as I understand it, the present Special Case had been adjusted, and the wife had intimated her statutory claim for a provision, and as I think this claim was in time if it was made before the term's annuity fell due, I think the wife's claim for a provision is effectual under the statute, and this apart altogether from the fact or from the date of the husband's sequestration.

In this way, I think it is unnecessary to decide in this case the precise legal effect of the husband's sequestration—I mean whether the husband's sequestration is, in questions under the Conjugal Rights Act, equivalent to a decree of furthcoming or a completed and reported poiding and sale by a creditor of the husband. But, as I had occasion to say in the previous case which we decided this morning (*Ferguson v. Jack*, ante, p. 343), I am inclined to think that a mercantile sequestration has not the effect contended for. The declaration in the Bankrupt Act that the first deliverance in a sequestration, when sequestration is awarded, shall be equivalent to an arrestment and furthcoming, to a

poiding and sale, to an intimated assignation, and so on, appears to me to be merely to give the trustee a complete title in the sequestration for the purposes of distribution, and cannot, I think, be held as equivalent to the special completed diligence which the Conjugal Rights Act expressly requires as the only means except actual payment which will exclude the wife's equitable claim for a maintenance out of her own funds.

The only remaining question is, Whether the wife's statutory claim for maintenance exceeds or exhausts the annuity in question? and I am of opinion that it does. The wife has no other means of maintenance for herself and two children, who are delicate and require care and medical attendance. £20 a-year is a very small sum to meet the claims upon it, and therefore I am for answering the question put in this Special Case in the affirmative, and to the effect that the wife, the second party to the case, is entitled to the whole of the annuity in question as a separate provision for her maintenance and support.

The Court accordingly found that Mrs Ann Dougall or M'Walter, the party of the second part, was entitled to draw, term by term, the whole of the annuity of twenty-pounds referred to in the case, as a reasonable provision for her support and maintenance, under the 16th section of the 'Conjugal Rights (Scotland) Amendment Act 1861;' and decerned accordingly

Counsel for First Party—Harper. Agents—Hill & Ferguson, W.S.

Counsel for Second Party—H. J. Moncreiff. Agents—J. & J. Ross, W.S.

Tuesday, February 12. \*

## FIRST DIVISION.

[Lord Curriehill, Ordinary.

LORD BLANTYRE AND MASTER OF BLANTYRE *v.* LORD ADVOCATE AND CLYDE NAVIGATION TRUSTEES.

*Property—Possession—Right to Foreshore of a Public Navigable River—Where a Barony Title is followed by Possession.*

Parties holding a barony title to certain lands situated on the banks of the river Clyde, which was a public navigable river, raised an action against the Crown concluding for declarator that the foreshore *ex adverso* of their lands belonged to them in property, subject to such rights of navigation or other rights as the public and the Clyde Navigation Trustees under their statutes might have over it. The Clyde Navigation Trustees got themselves sisted as defenders (Jan. 15, 1876, 13 Scot. Law Rep. 213), and after a proof had been led regarding the state of possession, it was held (*aff. judgment of Lord Curriehill, Ordinary*) that the acts of possession proved, which consisted, *inter alia*, in the use by the pursuers and their tenants of all available portions of the foreshore for pasturing their cattle, in the cutting of reeds and sea-weed found there,

\* Decided 19th December 1877.

and in the carrying off of sand and stones for building purposes, extending over the prescription period and following as they did on a barony title to lands so situated, constituted a right of property in the foreshore, although there was no express grant thereof in the title.

*Opinions per Lord Curriehill and First Division* (in accordance with the case of *Agnew v. The Lord Advocate*, decided by the Second Division, Jan. 21, 1873, 11 Macph. 309) that a barony title to lands so situated, which does not contain any express grant of foreshore, or any such specific boundary as can be held to include the foreshore, is not sufficient to confer that right, if unaccompanied by any proof of possession.

Counsel for Pursuers (Respondents)—Balfour—Hunter. Agents—Skene, Webster, & Peacock, W.S.

Counsel for Lord Advocate—Lord Advocate (Watson)—Ivory. Agent—Donald Beith, W.S.

Counsel for Clyde Trustees—Asher—Lorimer. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, February 20.

FIRST DIVISION.

[Lord Adam, Ordinary.]

M'FARLANE v. WALKER AND OTHERS.

*Process—Multiplepoinding—Leave to Reclaim.*

Two records were made up in a multiplepoinding, one upon the condescence of the fund *in medio* and objections thereto, and another upon the claims.—*Held* (1st) that the two were separate causes, and that an interlocutor disposing finally of all objections against the fund *in medio* exhausted that cause, and that it was therefore unnecessary to obtain leave from the Lord Ordinary to reclaim; and (2d) that the amount of the fund *in medio* was finally settled by an interlocutor which held the condescence annexed to the summons as a condescence of the fund *in medio*, and by another which repelled objections to the condescence.

Counsel for Reclaimer—Thorburn. Agents—J. & J. Gardiner, S.S.C.

Thursday, February 21.

SECOND DIVISION.

[Lord Rutherford Clark, Ordinary.]

DALGLEISH v. DALGLEISH.

*Husband and Wife—Divorce—Expenses.*

A raised an action of divorce for adultery against his wife. The defence was a denial of the adultery, and also condonation. The Lord Ordinary found the adultery proved, and pronounced decree of divorce. On a

reclaiming note for the defender, in which the only defence relied on was that of condonation, the Court affirmed the Lord Ordinary's interlocutor without calling for a reply from the pursuer.—*Held*, in an application by the defender for her expenses in the Inner House, that the defender having shown no probable grounds for reclaiming, this was a proper case for following the rule laid down in *Kirk v. Kirk*, November 12, 1875, 3 R. 128, and that therefore the defender was not entitled to her expenses.

Counsel for Pursuer (Respondent)—Brand. Agents—J. & A. Hastie, S.S.C.

Counsel for Defender (Reclaimer) — Lang. Agent—R. A. Veitch, S.S.C.

Saturday, February 23.

SECOND DIVISION.

SPECIAL CASE—POLSON AND OTHERS  
(M'LEAN'S TRUSTEES).

*Fee and Liferent—Antenuptial Contract—Provision for Children—Default of Issue.*

By antenuptial contract of marriage the intending spouses conveyed to trustees a fund providing that in event of the husband's predecease one-half of it should be held in liferent for the widow for her liferent use allenarly, and for the issue of the marriage in fee, whom failing for the widow's "nearest heirs and assignees in fee."—*Held* that upon the dissolution of the marriage without issue the widow was entitled to have the fund conveyed to her absolutely.

This was a Special Case presented by William Polson and others, trustees under an antenuptial contract of marriage, dated in 1862, between the Rev. D. M'Lean and Miss Georgina Mollison Allardice, as parties of the first part; and Mrs Allardice or M'Lean, widow of the Rev. D. M'Lean, who predeceased his wife on 28th May 1876, and D. W. Allardice, her factor, of the second part. No children were born of the marriage.

The clause in the marriage-contract under which the questions stated in the case arose was as follows:—"In the event of the said Daniel M'Lean predeceasing the said Georgina Mollison Allardice, the said means and estate conveyed by her as aforesaid shall, to the extent of one-half thereof, as such half shall be valued, ascertained, and fixed by the said trustees, be freed from and disencumbered of the trust hereby created, and paid or conveyed by the said trustees or their foresaids absolutely to the said Georgina Mollison Allardice, and the other half of the said means and estate, together with the foresaid sum of £500 contained in the policy of assurance above mentioned, and whole bonuses and additions thereto, shall be held and applied by the said trustees and their foresaids for behoof of the said Georgina Mollison Allardice in liferent, for her liferent use allenarly, and the child or children of the said intended marriage, and the survivors or survivor of them, the issue of any predeceasing