and to recover the same in this process under the finding for expenses in his favour." Counsel for the defender moved the approval of the account, which included the above three sums embraced in the reservation. He stated that the first of them (£20) was paid on 1st December 1880 in virtue of an interlocutor pronounced by Lord Craighill (before whom the case then depended in the Outer House) on 26th November 1880, in which he ordained "the defender to make payment to the pursuer of the sum of £20 to account of her expenses in the cause, reserving, however, any claim the defender may hereafter be able to instruct for repetition of said sum." The second sum (£80) was paid on 4th January 1881, under an interlocutor by Lord Craighill ordering payment under a reservation in the same terms. The third sum (£40) was voluntarily paid by the defender to the commissioner appointed by the Lord Ordinary to take evidence for the pursuer in Canada, on an agreement with the wife's agents that there should be the same right of repetition regarding it as regarded the other two sums.

Counsel for the pursuer opposed the motion for repetition of the three sums as being unprecedented.

At advising—

Lord Craighill—The interlocutors referred to were pronounced by me in the Outer House, and I think it right to say that now that I have cast my mind back to the circumstances of the case, I find the event has occurred which I had in view when I ordered the payments and made the reservations in regard to them. I remember that I thought the circumstances of the case rendered it reasonable that I should allow the pursuer in her action for reduction of her divorce such a sum as would be necessary to enable her to bring forward proof in support of her case, but what I desired to provide for was, that should the grounds of the reduction of the decree turn out to be unfounded, the defender might be put in the same position as if the order had not been pronounced. Therefore I think that the defender having been found entitled to expenses, and there being no technical question in the matter, it is only reasonable that he should be allowed to introduce the three sums in question into the account of expenses, and there is no distinction between the third and the two first sums. There was no interlocutor with reference to it, but there was an agreement that the sum advanced on the same footing as the other two sums should be repeated.

The Lord Justice-Clerk, Lords Young and Rutherfurd Clark concurred.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties on the Auditor's report on the defender's account of expenses, Approve of the report; ordain the pursuer to make payment to the defender of the sum of Eight hundred and sixty-eight pounds sterling, being the taxed amount of the said expenses; and decern."

Counsel for Pursuer—J. C. Smith—M'Kechnie. Agents—T. & W. A. M'Laren, W.S.

Counsel for Defender—A. J. Young. Agents—Duncan & Black, W.S.

Friday, February 1.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

CRITCHLEY *v.* CAMPBELL.

Lease—Landlord and Tenant—Game Lease—Exclusive Right of Shooting — Possession of Material Part of Subject not given to Tenant —Actio quanti minoris.

A lease of shootings for a year gave the tenant "the exclusive right of shooting" over certain lands "all as lately occupied by D." The rent was payable before the season commenced, and was paid. It turned out that a portion of the land let was a commonty over which another proprietor had, and exercised, a joint right of shooting. The tenant raised against the landlord an action of damages on the ground that he had not obtained possession of the whole subject let to him. *Held* (1) that the action was equivalent to a claim for abatement of rent, and was not open to objection as an *actio quanti minoris;* (2) that the words "all as lately occupied by D" were demonstrative merely, and not taxative, and did not put it upon the tenant to inquire into the nature and extent of D's right, and therefore that the tenant was entitled to damages.

Process—Written Offer before Raising of Summons —Tender—Expenses.

Before the raising of an action the defender had offered, without prejudice to his legal rights, to pay the pursuer £75 in full of his claim. The offer having been rejected, the action was raised, and the offer was not repeated in it. The pursuer recovered £70. *Held* that the Court might competently consider the fact of the offer in determining the question of expenses, and that no expenses ought to be found due.

John Asheton Critchley of Stapleton Towers, Annan, sued Francis William Garden Campbell of Troup and Glenlyon for the sum of £200 in name of reparation for the loss he had sustained through the defender's failure to put him in possession of a material part of certain shootings let to him for the year 1882–83, and for which the stipulated rent had been paid by him before the shooting season began. By minute of lease dated 5th and 13th July 1882 the defender let to pursuer "the exclusive right of shooting over the lands of Glenlyon House," together with the privilege of fishing in a part of the river Lyon, and the mansion-house, garden, &c., "all as lately occupied by J. Griffith Dearden, Esq.," for one year, from Whitsunday 1882 to Whitsunday 1883, at a rent of £550, payable at 1st August 1882. The rent was duly paid, and a receipt was granted therefor dated 8th August 1882.

Before entering into the lease the pursuer asked two of his friends to visit Glenlyon and to obtain for him particulars regarding the extent and character of the shootings. In the spring of 1882 these gentlemen proceeded to Glenlyon, and were met by defender's gamekeeper and also by his factor Mr M'Gillewie. The party walked over a portion of the moor, but did not attempt the more distant beats, the direction and boundaries of which were pointed out by the game-

keeper, who explained that the ground was divided into seven beats, but did not make any reference to the fact (which afterwards appeared) that a portion of the ground was commonty, over which the game tenant of an adjoining property of Lord Breadalbane had a joint right of shooting along with the tenant of Glenlyon House.

The pursuer averred that it was on the strength of the information supplied to his friends by defender's gamekeeper and factor that he was induced to enter into the lease in question, but that the exclusive right of shooting beats 6 and 7 was not given him as bargained for in the lease, and that these two beats were the best on the ground.

The defender averred that the shootings were let to the pursuer by a lease which described them as "all and lately occupied by J. Griffith Dearden, Esq.," and that the pursuer had full opportunity of learning from that gentleman the nature and extent of the ground.

He also alleged that the game-book, and not the mere extent of ground, was the true criterion in fixing the rental of a shooting, and that, looking at the bag which the pursuer had made throughout the season of 1882 as compared with what had been taken off the moor in previous seasons, the pursuer had sustained no loss or damage whatever. With regard to beat No. 6, he explained that a decree-arbitral dated in 1723 had fixed that the boundaries of Glenlyon included that beat, and that there was no right in any other person than himself over it, except that it was subject to a servitude of pasturage in favour of the tenants of an adjoining property.

The pursuer pleaded—"(1) The defender is liable in reparation to the pursuer, in consequence of his failure to put the pursuer in possession of a material portion of the subject let. (2) The defender having made the representations condescended on, is liable in damages as concluded for."

The defender pleaded—"(2) The pursuer having retained possession of the shootings under said lease, the present action being truly an *actio quanti minoris*, is incompetent. (4) There having been no misrepresentation or concealment on the part of the defender as to the subjects of said lease, the defender should be assoilzied. (5) In any view the damages claimed are excessive."

The Lord Ordinary allowed a proof, from which it appeared that when the pursuer's two friends visited Glenlyon in the spring of 1882 they were taken over a portion of the ground and were pointed out in which direction the remainder lay, but that no reference was ever made to a joint right of shooting any portion of the ground being enjoyed by any neighbouring proprietor.

On the 11th August 1882 pursuer went to Glenlyon with a party of friends for the shooting season. He intimated to the keeper that evening that he intended upon the following day to shoot over beat No. 7, but was then informed by the keeper that the right to shoot over that portion of the ground was a joint right which was shared in equally by the tenant of the neighbouring shooting, and this beat was actually shot over on the 12th August by Mr Lane, the tenant of the adjoining moor belonging to Lord Breadalbane. The pursuer at once complained to Mr M'Gillewie, the factor, and he left untouched for the rest of the season the beat in question. Some days later, when a party from Glenlyon were shooting beat No. 6, they met a shooting party from another lodge also shooting over this portion of the ground. The right of this party to shoot over this beat was at once challenged, and letters passed between pursuer and the factor regarding the joint right claimed over this further portion of the subject which had been let to pursuer. It appeared that this beat continued to be shot over by the party whose right had been challenged during the rest of the season, and that the Glenlyon party also shot the ground on one or two occasions.

Before the present action was raised the defender offered through his agents to return a sum of £75, being one-seventh of the rent of the shootings. The pursuer offered to accept £157. Both offers were made in writing, and the respective letters contained the provision that the offer was not to be founded on in the event of any subsequent legal proceedings. The defender did not repeat his offer on record.

The Lord Ordinary on 18th July 1883 decerned against the defender for the sum of £70, and found the pursuer entitled to expenses.

"*Opinion.*—There can be no question as to the meaning of the contract in this case. The pursuer contracted for an exclusive right of shooting over the whole lands embraced within the lease, including beats No. 6 and No. 7. In the month of April his friend Mr Cobb visited Glenlyon at his request, for the purpose of advising him whether he should take the shootings. Mr Cobb went over the ground with the defender's factor and keeper. The keeper told him distinctly that there were seven beats, and pointed out No. 6 and No. 7 as two of these beats, saying at the same time that they were very good beats, and about the best there were; and upon this information, which he communicated to the pursuer, the pursuer took the lease.

"It is said that an exclusive right to the shootings of these two beats is not given by the lease, because the subjects are let 'all as lately occupied by J. Griffith Dearden;' and Mr Dearden had not an exclusive right, but only a joint right of shooting over Nos. 6 and 7. But these words are, in my opinion, merely demonstrative or descriptive of the subjects included in the lease. They are not intended to define the right which is to be given over these subjects; nor are they at all apt or appropriate words for that purpose. When a right of shooting is let on lease in general terms, it is *prima facie* an exclusive right that is conferred; and if the lessor means to give something less than an exclusive right, it is incumbent upon him to use clear and unambiguous language to express that meaning. But no one construing the pursuer's lease, without notice of the particular question that has been raised in this case, would doubt that it was intended to give what is generally understood by a right of shooting, that is to say, an exclusive right.

"But even if the words 'as lately occupied' were intended to denote a limitation of the right, I think the defender is barred from using them for that purpose against the pursuer. For he undertook by his keeper to point out the extent of the occupation, and the keeper did so, without suggesting that any part of the ground was subject to a joint right vested in another pro-

prietor. On the contrary, he distinctly pointed out the beats in question to Mr Cobb, who was the pursuer's agent in the matter, and led him to understand that the right of shooting extended over these distant beats in the same sense—to the same effect—as over any other part of the ground.

"The pursuer, therefore, was quite entitled to believe, as he certainly did believe, that he had acquired an exclusive right of shooting over an estate containing seven separate beats; and when he found on the morning of the 12th of August that on one of these beats he could only have a joint right he was in my opinion entitled to reject the joint right as not being what he had contracted for, and to claim damages, or an abatement of the rent, on the ground that a material portion of the subject of his lease had been withheld from him.

"The question as to No. 6 is very much the same, and must be decided in the same way as the question as to No. 7. There is this difference, however, which goes to affect the amount of damage, that the pursuer had some enjoyment of No. 6 before he discovered that that beat also was subject to a joint right.

"I have some difficulty in estimating the amount of damages, because the value of the beats that were lost to the pursuer is not very clearly made out. I cannot hold that each beat represents exactly a seventh of the rent; nor can the relative value of each be estimated merely by its extent, because the character and situation of a smaller beat may make it better than a larger one. On the other hand, I cannot rely upon the keeper's evidence as to the beats in question, because his statements in the box do not agree with his previous statements to the witnesses. On the whole, I think £70 a reasonable amount, and I give decree for that sum accordingly. It is said that there was a tender, but as the defender's counsel admits that it was made in circumstances which prevent his founding upon it, the pursuer must have expenses."

On the following day, before the interlocutor was signed, the defender having brought before him the offer made before the action was raised, and having moved that no expenses be found due, his Lordship refused the motion.

"*Opinion.*—(19th July 1883)—I think it too late to re-open this question. When I gave judgment yesterday, the defender's counsel did not found upon the tender; and when something was said about it from the other side of the bar, he admitted that it did not affect the question of expenses; and the pursuer was therefore found entitled to expenses as having succeeded in the action. It is true that the interlocutor which has been written out has not been signed; but it is too late to disturb the decision which has been pronounced."

The defender reclaimed, and argued that the subjects, as shown by the lease, consisted of the exclusive right of shooting over the lands of Glenlyon House, all as lately occupied by J. Griffith Dearden, Esq., all which had been given to the pursuer. That beat No. 7 was not a part of Glenlyon, but merely a pertinent, and nothing said by the keeper could control the terms of the lease, under which no exclusive right of shooting over this commonty beat No. 7 was given. No loss had been sustained by the pursuer, as shown by the game book, for the pursuer's party had taken off the moor a bag quite upon an average with that of former tenants. To instruct damages the pursuer must prove that the misrepresentations made to him were material, and were made fraudulently —*Earl of Wemyss* v. *Campbell*, June 6, 1858, 20 D. 1090, and *Dobbie* v. *Duncanson*, June 18, 1872, 10 Macph. 810. As the pursuer retained possession of the subject of the lease to the end of his term, the present was really an *actio quanti minoris*, and so not competent by the law of Scotland. (2) The defender was entitled to expenses, as the sum offered by him before the action was raised was above that found due by the Lord Ordinary—Mackay's Practice, vol. ii. p. 536, and *Ramsay* v. *Souter*, March 19, 1864, 2 Macph. 891; *Bilsborough* v. *Bosomworth*, December 5, 1861, 24 D. 109. The sum of £75 having been offered by the defender for the settlement of the case, the action in these circumstances became an improper and unnecessary one.

Argued for pursuer—What the pursuer bargained for in his lease was an exclusive right of shooting, and owing to the existing right of commonty, of which he was not made aware, this exclusive right had not been given to him. The mention of Mr Dearden's name in the lease did not impose upon the pursuer the duty of inquiring into what was let to Dearden, nor did it suggest the existence of any joint right. It did not now prevent him from obtaining redress for being deprived of the exclusive right of shooting over a portion of the lands let to him. In defence to an action for rent it would have been competent for the present pursuer to have pleaded that full use of the subject let had not been enjoyed by him—*Riddell*, 3 Patton's App. 203; *Kilmarnock Gas Co.* v. *Smith*, November 9, 1872, 11 Macph. 58; *Yeaman* v. *Gilruth*, Hume 783. The damages due to the pursuer were just the difference caused by his exclusion from part of the subject in consequence of the joint right of shooting the disputed beat. The reclaimer's argument that this was *actio quanti minoris* was extravagant, and would lead in the case of shootings to an unfortunate result for the owner if he had his shootings thrown back upon his hands at a time when it might be impossible to obtain another tenant—Ivory's Ersk. iii. 3, 10, and note p. 107. On the question of expenses, the defender's offer was not made on record, but before the action was raised, and it was very guarded as to the time for which it was to be available. As therefore there was no tender in the action, expenses must follow the result.

At advising—

Lord President—This is a very unfortunate dispute between a landlord and his game tenant, and it is one which ought never to have come into Court. But as it has been brought before us we are bound to dispose of it, and after giving the case my most careful consideration I have come to agree with the Lord Ordinary in the view at which he has arrived.

The shootings were let for the season of 1882 to Mr Critchley, the pursuer, and the rent was paid by him in advance about the beginning of August, so that he had no opportunity of retaining a part of the rent, which he might have done to satisfy the claim which he now makes. The

present action accordingly takes the form of an action of damages, which is equivalent to a demand for abatement of rent in respect of the loss which he has sustained through not getting the exclusive right of shooting over the grounds let to him. I do not think the form of action at all incompetent, nor do I think that it at all interferes with the general rule of law which has been laid down with reference to the *actio quanti minoris*. There are many cases in which actions of a similar nature have been brought in circumstances analogous to the present.

That being so, the only question which remains is on the merits. It is clear beyond all dispute that after Mr Critchley entered into possession of his shooting he found that one of the beats upon the ground, viz., No. 7, was a commonty, and that accordingly the only right which the landlord could give to his tenant was a joint right of shooting this ground along with another, and that as regards beat No. 6, the adjoining game tenant claimed a joint right of shooting it along with the tenant of Glenlyon House. And although on the other hand the proprietor Colonel Campbell maintained that he is the exclusive proprietor, and that the neighbouring proprietor has no such rights as he claims, it is clear in this state of matters that the exclusive right of shooting this portion of the ground could not have been made available to Mr Critchley in 1882. Besides, when in the course of shooting this beat the rival parties met and claimed equal right, Mr Critchley was referred to his own keeper, the latter, upon its being put to him, was obliged to admit that whether the right existed or not, the use challenged had been exercised in previous years by the adjoining proprietor. Therefore as regards beat No. 6, although Colonel Campbell claimed the exclusive right of shooting over it, it is quite clear that Mr Critchley had not full and undisturbed possession of it during the season of 1882. As to beat No 7, there can be no doubt about its being a commonty, and it is that very circumstance which Mr Critchley complains of. I think also that the complaint was timeously made, for whenever Mr Critchley discovered the true state of matters he gave intimation to Colonel Campbell's factor of the grievance.

The question therefore comes to be, whether or not there was a breach of the contract of lease? and that depends upon a construction of the expressions contained in the first clause of the lease. The subjects let consist of the "exclusive right of shooting over the lands of Glenlyon House, together with the privileges of fishing" in a portion of the river Lyon, together with the mansion-house, &c., and then follow the words "all as lately occupied by J. Griffith Dearden, Esq."

Now, it is contended for Colonel Campbell that these last words "all as lately occupied by J. Griffith Dearden, Esq.," are the overruling words of the clause, and that in so far as Mr Critchley got all that Mr Dearden had, he thereby received the full enjoyment of the subjects let to him under the lease, inasmuch as Dearden possessed them subject to the joint rights I have mentioned. Now, I am not in any way prepared to hold that that is the true construction of this lease; on the contrary, I read the words "all as lately occupied by J. Griffith Dearden, Esq.," as demonstrative, and not taxative. The shootings had previously been occupied by different tenants for years past, and indeed it was from one of those tenants, Mr Bell, that Mr Critchley first heard about them He was satisfied with the general account which he got from Bell, and I do not see that he was in any way bound to inquire as to the amount of ground or nature of the rights enjoyed by Mr Dearden. He was accordingly entirely without notice or knowledge of the difficulties he encountered. What was let to him was the exclusive right of shooting over the subjects let, and no reference of any kind seems ever to have been made or suggested as to joint rights being enjoyed by adjoining tenants over any portion of the lands. In these circumstances I find it impossible to get over the use in the lease of the words "exclusive right of shooting over the lands of Glenlyon House." There is no specification of the boundaries or extent of the subject let; what is given is the exclusive right of shooting over the lands known as those of Glenlyon House. I think therefore that the Lord Ordinary is right in the result at which he has arrived, and upon the question of the amount of damages which have been found due I am not disposed to distrust his Lordship's verdict.

But although agreeing with the Lord Ordinary up to this point of his interlocutor, I am not prepared to concur in his finding with regard to expenses. It appears that at the time when judgment was pronounced he had not had placed before him the grounds upon which the defender maintained that he should not be found liable in expenses. Subsequently his Lordship said quite rightly that he could not go back upon the question which he had already decided. The defender says that in respect of his offer of £75 which was made before the action was raised, the action was unnecessary, and that as the sum now found due by the Lord Ordinary is less than the amount offered by him, that he is entitled to his expenses. Now, this sum was offered extrajudicially, and some time before the action was raised, and it was not repeated on record; it is therefore not in the position of a tender, for if it had been, then of course the defender would have been entitled to get his whole expenses. All that he can now expect is, that neither party should be found entitled to expenses. In the letter from Colonel Campbell's agents, in which they offer £75 in full of the pursuer's claim, there was a condition attached that the offer was not in any way to be founded on nor to prejudice the legal rights of the defender, or prevent him from making an out-and-out defence against the claim, and we find that a similar condition was attached to the offer by Mr Critchley's agents to accept £157 as a settlement. The meaning of the parties I think was that the offers were not in any way to prejudice their rights in regard to the question between them, and not that they might not be referred to as affecting the question of expenses. I think therefore that neither party should be entitled to expenses.

Lords Deas, Mure, and Shand concurred.

The Court recalled the Lord Ordinary's interlocutor so far as it related to expenses, found neither party entitled to expenses, and *quoad ultra* adhered to the interlocutor.

Counsel for Pursuer—J. P. B. Robertson—Darling. Agents J. & F. Anderson, W.S.

Counsel for Defender—Mackintosh—J. A. Reid. Agents—Philip, Laing, & Trail, S.S.C.

Friday, February 1.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

PIRIE *v.* ROSE.

Property—Barony—Foreshore—Seaware—Claim by Members of Public to take Seaware.

A proprietor of lands which formed part of a barony and were *de facto* bounded by the sea, although the seashore was not specified as the boundary in his title, *held* entitled to interdict from cutting and removing the seaware from the foreshore *ex adverso* of the lands, members of the public who alleged right to do so by immemorial custom.

Alexander Pirie of Leckmelm, Ross-shire, sought to have Hugh Rose, a fisherman and crofter, of Letters, which is situated on the west shore of Loch Broom, nearly opposite Leckmelm, interdicted "from cutting, collecting, or removing, by himself or others acting on his authority or instructions, seaware from the foreshore of Loch Broom between high and low water-mark *ex adverso* of the complainer's property of Leckmelm." The complainer's property of Leckmelm was part of the barony of Loch Broom, and described in his title as, "All and Whole the easter and wester quarters of the lands of Lackmaline (now called Leckmelm), extending to one half davock of land, with houses, biggings, yards, tofts, crofts, outsets, shealings, grazings, fishings, annexis, connexis, parts, pendicles, and universal pertinents thereof whatsoever, all lying within the barony of Loch Broom." It extended two miles along the shore of Loch Broom.

The complainer averred (Stat. 3) that he had under his titles sole and exclusive right to the seaware whether growing or drifted. "The said lands and estate of Leckmelm, which are part of the said barony of Loch Broom, extend for two miles or thereby along the eastern shore of Loch Broom, and under his titles the complainer has the sole and exclusive right to the seaware, whether growing or drifted, between high and low water-mark on the shore of Loch Broom *ex adverso* of his said lands and estate of Leckmelm, and to remove and dispose thereof at pleasure, by himself or others having his authority. The complainer and his authors, and their tenants, have from time immemorial exercised the sole and exclusive right of cutting, gathering, removing, and utilising or disposing of said seaware." He further averred that respondent had trespassed on the shore and collected seaware.

The respondent denied the pursuer's alleged right, and stated that he and his predecessors, in respect of his and their tenancy of part of Letters, and the tenants and possessors of the adjoining glebe lands and others, members of the public generally, had "exercised the right of cutting, gathering, removing, and disposing of seaware on the shore between high and low water-mark of Loch Broom *ex adverso* of the said lands and estate of Leckmelm, whether growing or drifted thereon, habitually, or according as they required the ware for agricultural purposes, and that for upwards of forty years prior to the complainer acquiring the property of Leckmelm in 1877." He also averred that the foreshore was not the complainer's property but that of the Crown. He admitted having gone upon the foreshore between high and low water-mark for the purpose of taking seaware, but denied having been on the complainer's property.

The complainer pleaded—"The complainer having right to the whole seaware on the foreshore of Loch Broom *ex adverso* of his lands and estate of Leckmelm, and the respondent having removed seaware without his authority, the complainer is entitled to interdict as craved."

The respondent pleaded—"(1) The complainer's statements are irrelevant and insufficient to sustain the prayer of the note. (3) The complainer not having any exclusive right to the whole seaware on the foreshore *ex adverso* of his lands, is not entitled to suspension and interdict as craved. (4) The respondent being entitled to remove seaware from the said foreshore in virtue of prescriptive usage by himself and his predecessors or authors, and other tenants or possessors of the glebe lands of Loch Broom, ought to have the note refused."

The Lord Ordinary (Fraser) found that the respondent had not averred any relevant right to collect seaware *ex adverso* of the lands of Leckmelm belonging to the complainer; therefore suspended the proceedings complained of, and interdicted the respondent from cutting, collecting, or removing, by himself or others acting under his authority or instructions, seaware from the foreshore of Loch Broom between high and low water-mark *ex adverso* of the complainer's property of Leckmelm.

"*Opinion*—The question in this case is as to whether or not the respondent, a fisherman and crofter, residing at Letters, Loch Broom, in the county of Ross, has a right to carry off seaware from the foreshore of Loch Broom *ex adverso* of the complainer's property of Leckmelm. The complainer's property consists of a part of the barony of Loch Broom, and extends for two miles along the eastern shore of Loch Broom. It is not expressly said to be bounded by the sea, but it is *de facto* so bounded, and there can be no doubt that, having such a boundary, even though he has not an express title to the foreshore (except what may be implied in the clause of parts and pertinents followed by alleged possession), he has the right to the seaware thrown upon the shore.

"The respondent, on the other hand, is a crofter and fisherman, living on the opposite shore of Loch Broom, and crosses over from that shore in a boat to the east shore *ex adverso* of the complainer's estate of Leckmelm, and there gathers seaware from that eastern shore, and this he does because he and other tenants of Letters, and the tenants of adjoining glebe lands, 'members of the public generally, have exercised the right of cutting, gathering, removing, and disposing of seaware on the shore between