also for a decree of separation and aliment. The distinction thus suggested is not one which recommends itself to the Lord Ordinary; and he is of opinion, on principle as well as authority, that the husband's adultery, whether committed within or without the dwelling-house of the spouses, is an equally good foundation for a decree of separation and aliment at the instance of the wife as for a divorce *a vinculo*. He can see no reason for holding that the offending husband is to be allowed to dictate to his wife the redress she is to demand, and to maintain that she must divorce him, the very object, it may be, he had in view and was desirous to attain—and so be allowed to derive the benefit of his own misconduct, of not only being made free to marry his paramour, but also to relieve himself from all pecuniary obligation towards his innocent wife. Nor does the Lord Ordinary think that the circumstance of the pursuer in the present case having been living apart from her husband, the defender, at the time he committed adultery is any such speciality as to take the case from within the scope of what he holds to be an established general principle of law, that adultery is a good ground for separation and aliment. The pursuer could not adhere to the defender (her husband) after his adultery had come to her knowledge without forfeiting her right to the remedy not only of separation and aliment but of divorce, and she only asks for aliment for a period subsequent to the adultery; or, to put it differently, the husband's adultery would be an unanswerable defence by her to an action of adherence at his instance; and if so, by parity of reasoning, it appears to the Lord Ordinary to be an equally good ground of action at her instance for a separate aliment.

"The Lord Ordinary was referred to the authorities cited by Mr Fraser (Domestic Relations, vol. i., pp. 264-5), and they appear to support the views he has expressed."

Friday, March 16.

SECOND DIVISION.

ALLARDICE'S TRUSTEES *v.* RITCHIE AND OTHERS.

Trust—Legacy—Vesting. A bequest of a sum of money to each of a testator's three grandsons, payable on their attaining majority, held (aft. Lord Jerviswoode) to vest *a morte testatoris.*

Counsel for Mrs Ritchie, &c.—Mr Gifford and Mr John Hunter. Agents—Messrs Morton, Whitehead, & Greig, W.S.

Counsel for Allardice's Trustees—Mr Cook and Mr Spens. Agents—Messrs W. & J. Cook, W.S.

The late Robert Barclay Allardice of Ury died in 1854, survived by a daughter, Mrs Margaret Barclay Allardice or Ritchie, widow of the deceased Samuel Ritchie, and by three grandsons, Robert, Samuel, and David Ritchie, sons of Mrs Ritchie, all in pupillarity or minority at the date of his death. Mr Barclay Allardice left a trust-disposition and settlement. The first purpose of the trust is for payment of debts; the second for payment of £3000 to David Stewart, the truster's illegitimate son; the third for payment of an annuity of £100 to Ann Angus, who was the mother of his two natural sons; and of an annuity of £200 to his daughter Mrs Ritchie. The fourth purpose of the trust is for payment of £1000 to each of his said three grandsons, "declaring that said bequests to the said Robert, Samuel, and David Ritchie shall only be payable to them on their respectively attaining majority; but in the event of the previous predecease of their mother, my said trustees shall apply the interests of the said bequests, after that event, in alimenting and educating the said Robert, Samuel, and David Ritchie until they respectively attain majority; which several sums and annuities I hereby leave and bequeath accordingly to the parties respectively before-mentioned. In the fifth place, the testator directs his trustees to make over the residue of his estate, heritable and moveable, to Robert Stewart, his eldest natural son by the said Ann Angus, "with full power to my said trustees to apply the annual rents or interests of the foregoing bequests to my said two sons (tha is, the illegitimate sons David and Robert Stewart), in alimenting and educating them during their minority, and if found advisable, to apply the principal sums, in whole or in part, in purchasing commissions for them in the army or navy, or otherwise settling them in life; and declaring that, subject to the exercise of these powers, the bequest in favour of my said son Robert shall not take effect until he shall attain the age of thirty years complete, unless my said trustees shall be of opinion that it should take effect sooner." Samuel Ritchie died in the United States in April 1862, before attaining majority. Mrs Ritchie and her two sons are his heirs *in mobilibus*, and as such claim the legacy of £1000 as having vested in him *a morte testatoris.* The trustees raised this action of multiplepoinding to have it determined whether this sum of £1000 had so vested, and they claimed it in the multiplepoinding as part of the residue of the trust-estate, on the ground that it was not intended to vest in the legatee till majority. The Lord Ordinary (Jerviswoode) held that the bequest vested in Samuel at the death of the testator, and sustained the claim of Mrs Ritchie and his other heirs *in mobilibus.* The trustees reclaimed, and the Court adhered.

The LORD JUSTICE-CLERK agreed with the Lord Ordinary, and thought the case clear. After stating the facts his Lordship said:—See what the testator does for his two natural sons whom he intended to prefer. The bequest to the second is in the most simple terms possible. Then there is the bequest of the residue. Taking these two bequests together nobody could suggest a doubt of their vesting *a morte testatoris.* But certain provisions apply to both the natural sons. Now, in this part of the deed he gives full power as regards the bequest to David as well as the residuary bequest to Robert. He gives power to spend the interest in alimenting them, and the principal in setting them out in life. He does not mean this bequest to Robert to take effect till he was thirty, unless the trustees should think proper to make it over sooner. Now, it is not the question here whether this part of the estate did vest or not at the testator's death; but it will aid us in coming to the right conclusion as to the legacy of £1000 if we can see the testator's meaning as to the residue. Nothing is more hopeless than to contend that the vesting of the residuary bequest was postponed till Robert's attaining the age of thirty. Did your Lordships ever hear of such an idea? The words are insufficient even to suggest it. The provisions as to the natural children being thus distinct, we come to the daughter and her sons. One purpose of the trust is "for payment to each son of £1000." Stopping there, observe that the words are precisely the same in the specific bequest to David Stewart, the natural son. The words previous to the word "declaring" are words of complete gift in themselves. If the testator gives to trustees for the purpose of making payment, there is as complete a bequest as if it were made directly without the intervention of trustees. If such a bequest is followed by a declaration that the gift is subject to a condition, we must give effect to that condition; but we approach the condition with this fact in our view—that the gift is absolute. Here the condition is that it shall be payable only at majority. But it is said this condition is the same as if it were part of the bequest—as if the bequest and the condition were blended together in one sentence. That is a view which I cannot adopt, and which is quite inapplicable to this deed. The declaration contains words that convey two different ideas. That which he regards as the bequest is not to be payable till the majority of the grandsons, the testator wishing

them to have the whole of their fortune untouched at their entrance on life. It is the same as if he had said, "I leave and bequeath £1000, &c., but I direct that it shall not be payable till," &c. But he goes on to make a provision as to the income of this part of the estate, which is a most important clause, as enabling us to arrive at the mind of the testator. While the mother lived the trustees were charged with no duty in regard to the grandsons; but in the event of her death before her children reaching majority they are to apply the interests of the legacies for their aliment and education. The word "interests" in the plural means plainly interests accruing on each sum respectively of the three sums of £1000. Now, what, according to the testator's view, was to become of these interests during the life of the mother? Were they to fall into the residue? There is no indication of anything of the kind. The trustees were not in the same position towards these children as to the natural sons, to whom they were appointed tutors and curators; and accordingly the interests accruing during the mother's life are apparently to be administered by her, and applied to the maintenance of the household establishment in which the legatees were naturally brought up, the means of which were certainly limited enough so far as this testator is concerned. But he takes his trustees bound to step in on the death of the mother, which is a perfectly natural arrangement. I can see no other construction of the deed which is either harmonious or consistent.

Lord COWAN said it was important to observe what was the character of the trust-deed. It was not intended for accumulating, but for distributing; and what was conveyed was the whole estate. The fourth provision was an immediate bequest. The duty is imposed on the trustees of paying £1000 to each grandson. There is a subsequent declaration as to the time of payment, and the whole fallacy of the trustees argument lay in mixing up the bequest with the subsequent declaration. These are separate and distinct. I arrive at the same conclusion as your Lordship the more easily because I think interest is due *a morte testatoris* whether the mother lived or died. It is a necessary presumption in the circumstances that the interest should go for maintenance of the grandsons; and the last clause of this purpose of the trust is a mere provision for the administration of the interest in the event of the mother's death during the minority of any of her sons.

Lord BENHOLME—I also have a clear opinion, but I might not have had a clear opinion but for the clause as to interest. I cannot understand interest running on a sum not vested. I give no opinion as to what the result might have been had that clause not been here.

Lord NEAVES—There is no pretence that the legacy of £3000 to David did not vest; so also as to the residuary bequest to Robert. If there is vesting as to these two, that helps as to the other family who, though not so liberally provided for, had at least as strong claims on the testator. This is quite different from those cases in which a simple direction to pay is qualified *in gremio* by a condition. Here the condition is simply *morandæ solutionis causa*. The view of the testator was not to swell the benefit of the residuary legatee; but the provision was for the good of the young men themselves, by giving them the entire fund when they came of age. The interest payable infers a debt.

Tuesday, March 20.

FIRST DIVISION.

JAMIESON *v.* ANDREW (*ante*, p. 179).

Company — Limited Liability — Law Agent — Lien. Held that an English solicitor had no lien over the register and transfers of a limited liability company which was being wound up, for payment of an account due to him.

Counsel for Liquidator—Mr Gifford. Agents—Messrs Auld & Chalmers, W.S.

Counsel for Mr Andrew—Mr W. M. Thomson. Agents—Messrs C. & A. S. Douglas, W.S.

This is an application by Mr G. A. Jamieson, C.A., the official liquidator of the Garpel Hœmatite Company (Limited), for delivery of the books, deeds, and papers of the company. These were in the hands of Mr John Andrew, Solicitor in London, who retained them, claiming a lien over them for a sum of £768, 19s. 3d. due to him as solicitor of the company. Some time ago the Court ordered that the papers should be transmitted to the Clerk of Court in order that they might be inspected in his hands. The question as to Mr Andrew's lien was then argued in writing, and the Court on 23d February last expressed an opinion that the liquidator should, before getting access to the register and transfers of the company (to which he now restricted his demand), oblige himself to pay Mr Andrew's account, in the event of its being found that there was a lien over the papers. The liquidator refused to grant this obligation, but offered to bind himself to pay the claim, if the lien should be held to exist, out of the first recoveries of the estate. The Court to-day allowed him to get up the register and transfers without requiring him to grant the obligation they had previously suggested.

The LORD PRESIDENT said—In this case the liquidator tells us that the register and transfers are essential to him, and that he can do nothing in regard to the liquidation without them. It is therefore now necessary for us to determine this question in so far as the register and transfers are concerned. It is said that the register and transfers are in a different position from the other papers of the company, inasmuch as under the clauses of the Joint-Stock Companies Act of 1856 the register was a document requiring to be deposited and kept in the registered office of the company, which is at Garpel in Ayrshire, that all parties might have access to it; and that the company was bound to keep it there under certain penalties. It is very important to observe that when introducing the system of limited liability the Legislature have taken care that the public should have the benefit of access to the register of the company. Under the statute the register should have been at the registered office of the company. Had the company then power to remove the register not only from the office, but from the jurisdiction within which it was situated? Another question is—Could the company pledge the register of the company for their debts so as to give a creditor a lien over it? It appears to me they could legally do neither; but they have removed the register to England, and so deprived the public of the right of access to it which the statute provided. It is said, no doubt, that by giving up the register to the liquidator we will enable the company to undo its own illegal act; but it is to be kept in view that Mr Andrew was himself a shareholder of the company at the time when the register was placed in his hands. Then, in regard to the transfers, they are just a part of, or rather the foundation of, the register. But they belonged not to the company, but to the individual shareholders, who are now represented by the liquidator. The company had therefore no power to pledge them either.

The other Judges concurred.

The counsel for Mr Andrew moved that extract should be superseded for a few days, in order that he might have time to present an appeal to the House of Lords; but the Court refused the motion.

MURRAY *v.* MERRY AND OTHERS.

Judicial Factor—Powers. Circumstances in which held (aff. Lord Jerviswoode) that a judicial factor who had made necessary payments to a truster's widow and daughter, in excess of the