1863, No. 10 of process; (2) Account of the intromissions of said trustees from 3d Jan. 1863 to 31st Dec. 1864, No. 25 of process;" and elsewhere in the same document he recognised them as "detailed trust accounts." A remit was made on 13th July 1869 to Mr Charles Ogilvy, accountant in Edinburgh, to examine and audit the trust accounts of the defenders, and to report. Upon the appearance of Mr Ogilvy's report the defender stated a number of objections to it, and he now maintained that the accounts No. 10 and 25 were truly the accounts of the late pursuer Henry Sawers alone, and that they were inaccurate in many respects. By interlocutor of the Lord Ordinary, of 27th July 1870, the accountant was instructed to proceed with the remit under which he acts, on the footing that he is to reject consideration of all objections stated to the accounts referred to by him in the said note as "the prior trust accounts, closing at 31st December 1864." This interlocutor was not reclaimed against, and proceedings went on before the accountant, which resulted in a second report, with which the Lord Ordinary (JERVISWOODE) made avizandum, and upon 8th Nov. 1872 issued an interlocutor finding a certain balance due to the pursuer as executrix of the late Henry Sawers, and finding her entitled to expenses.

Against this interlocutor the defender, who still insisted upon the objections which he had stated to the accountant's reports, reclaimed. He asserted his right to go back upon the accounts Nos. 10 and 25 of process, and show that they were incorrect, and maintained that his rights as beneficiary were not to be prejudiced by his acting as trustee.

The respondent maintained that the defender was *personali exceptione* barred from doing this. He was one of the trustees who originally lodged the accounts in question, and had since that, while carrying on the action both as sole trustee and beneficiary, referred to them as correct. Upon the footing that they were so the accounting had proceeded.

At advising—

LORD BENHOLME—The question here is, whether Peter Sawers is precluded, as trustee or beneficiary, from objecting to the accounts? I do not think he is barred from stating such objections by anything which he has done as trustee or co-trustee or beneficiary. He alleges that injury has been done to the fee of the estate by making payments to liferent which should have been made to fee. That is a very important objection, and I see no reason why the accounts should not be looked into.

The other Judges concurred.

Counsel for Pursuer—Fraser, Lee, and Scott-Moncrieff. Agent—D. Scott-Moncrieff, W.S.

Counsel for Defender—Lord Advocate and Scott. Agent—A. Beveridge, S.S.C.

Friday, February 7.

FIRST DIVISION.

SPECIAL CASE—PAROCHIAL BOARD OF BOTHWELL AND ANOTHER.

Process—Special Case—Competency.

Held that it is not competent to bring a Special Case unless the question is one which could be tried in some known form of process between the same parties.

This case was presented by the Parochial Board of the parish of Bothwell—the Local Authority of that parish—under The Public Health (Scotland) Act, 1867, and Mr Thomas Pearson, a proprietor and occupier of lands and premises in the parish.

The facts set forth in the case were as follows:—In 1866 the first parties, as the local authority in the said parish under the Nuisances Removal (Scotland) Act, 1856, in virtue of the powers contained in that Act, and also in the Sewage Utilization Act, 1865, and the Sanitary Act, 1866, so far as these last two mentioned Acts applied to Scotland, executed certain drainage works within a portion of its district. In November 1867 the local authority resolved to form a portion of its district (including the portion in which the drainage work already mentioned had been executed) into a special drainage district, under The Public Health (Scotland) Act, 1867. One of the proprietors in the proposed district appealed against the resolution defining the district, and the Sheriff sustained the appeal. Then two other proprietors opposed the carrying out of the scheme, on the ground that certain proposed outlets would be hurtful to their properties, and raised actions of suspension and interdict against the local authority. The local authority, however, executed the proposed work, with the exception of a portion which they could not complete on account of the legal proceedings mentioned above. In the course of the execution of the works expenses were incurred—(1) in giving the statutory notices regarding the formation of the special drainage district; (2) in defending the appeal against the resolution defining the special drainage district; (3) in defending the actions before referred to; and (4) in obtaining plans of a proposed intercepting sewer, in order to a compromise of the questions in dispute. The object of the case was to ascertain against what assessment these expenses were chargeable; and the questions submitted to the Court were:—

"(1) Are the expenses which were incurred in connection with the formation of the special drainage district chargeable against the special drainage assessment leviable under section 93 of the 'Public Health (Scotland) Act, 1867'?

"OR,

"(2) Are these expenses general expenses incurred in executing the Act, and chargeable against the assessment leviable under sub-section 2 of section 94 of the said Act?

"(3) Are the expenses incurred subsequent to the formation of the said special drainage district in connection with the actions before-mentioned, and with the proposed compromise of these actions, chargeable against the special drainage assessment leviable under section 93 of the 'Public Health (Scotland) Act, 1867'?

"OR,

"(4) Are these expenses general expenses incurred in executing the said Act, and chargeable against the assessment leviable under sub-section 2 of section 94 of the said Act?

"(5) If the expenses incurred in connection with the formation of the special drainage district, and the expenses incurred subsequent to the formation of the said district, or either of these expenses, are held to be chargeable against

the assessment leviable under sub-section 2 of section 94 of the said Act, is that assessment leviable on and within the special drainage district alone, or upon the whole district of the local authority?"

At advising—

LORD PRESIDENT—The question in this case is, whether certain expenses form a charge against the ratepayers of the district generally, or against the ratepayers of the special drainage district. The drainage commissioners say that the expenses must be charged against the particular district, and Mr Pearson, one of the ratepayers, says that they must be charged against the district generally.

I am always unwilling to refuse to entertain a Special Case, for I think that it is a very expedient and economical mode of trying a question of law when parties are agreed upon the facts. But we must take care not to pervert the provisions of the statute for the purpose of enabling parties to bring questions before the Court which they could not raise in any other process. The meaning of the statute is, that when parties could try the question in some known process, and agree as to the facts of the case, they may bring a Special Case. Now, could the Parochial Board of Bothwell and Mr Pearson have tried the question here presented to us in any known process. I think not, for the case rests only on the statement of parties that it is intended to impose an assessment. Now, Mr Pearson could not have brought a suspension of the threatened assessment, and he could not have brought an action of declarator, for in that case it would have been necessary to call all the other ratepayers as parties to the case. If, then, this matter could not be tried either in a suspension or in a declarator, I do not know of any other form of process in which it could even be attempted to try it. Thus the question here, being one which cannot be tried by a known form of process, it cannot be made the subject of a Special Case. I therefore think that this case should be dismissed.

LORD DEAS—I do not feel safe to say that in all cases in which an action can be brought, a Special Case may be brought if the parties are agreed as to the facts, but certainly there can never be a Special Case unless there could be an action between the same parties who are parties to the Special Case, and between them only. Now in this case, if the question had been raised in any other form, it would have been a good objection to it that all parties interested had not been called.

Another objection to this case is that no assessment has been imposed, and the question presented to us may never arise, and we have often refused action when matters were in that position. I therefore concur with your Lordship that the case should be dismissed.

LORDS ARDMILLAN and JERVISWOODE concurred.

The Court dismissed the case as incompetent.

Counsel for the First Party—Balfour. Agents—Morton, Neilson, & Smart, W.S.

Counsel for the Second Party — Lancaster. Agents—Jardine, Stodart, & Frasers, W.S.

Friday, February 7.

SECOND DIVISION.

(1) ANDREWS *v.* ANDREWS & STIRLING.
[Lord Jerviswoode, Ordinary.

(2) ANDREWS *v.* ANDREWS & STIRLING.
[Lord Shand, Ordinary.

Process—Conjoined Actions.

A raised an action for divorce against his wife, and thereafter reclaimed; before the case came on for hearing he raised a second action, alleging acts of adultery committed since the first was raised. *Held* that the two actions must be conjoined in pronouncing decree of divorce, the Court being satisfied with the proof of adultery in both.

Expenses—Conjugal Rights Act, 1861, § 7.

Held, (1) That the defender, *qua*-wife, is entitled to recover her expenses from her husband in an action for divorce although adultery has been proved; (2) That under the Conjugal Rights Act 1861, § 7, the co-defender may be decerned against *both* for the pursuer's expenses and for those thus paid by the pursuer to his wife.

These two actions were both for divorce on grounds of adultery. In the first action a reclaiming note was presented by the pursuer, Aug. 20, 1872, against the interlocutor of Lord Jerviswoode, and the second action was reported to the Inner House by Lord Shand on January 21, 1873. The interlocutor pronounced was as follows:—"The Lord Ordinary, having considered the cause, for the reasons stated in the subjoined note reports the cause to the Lords of the Second Division of the Court: Appoints the pursuer to print and box the record, proof, and documents; and grants warrant to enrol in the Inner House rolls." And thereafter in his note the Lord Ordinary, on the point of the two actions, adds—"The present case is the sequel of a previous action of divorce between the same parties, which has not yet been finally disposed of. In that action the pursuer maintains that he has proved acts of adultery between the defender and co-defender during a period prior to that embraced in the present action, and although he has failed to establish this to the satisfaction of the Lord Ordinary before whom the case was heard, their Lordships of the Second Division of the Court have made avizandum with the debate, and have not yet pronounced judgment. It appears to the Lord Ordinary, in these circumstances, that while on the one hand he ought not to delay the proceedings in the present action till the issue of the other case, on the other hand he ought not to pronounce a decree of divorce, seeing that the Court have at present under consideration the question whether a decree of divorce ought to be granted in the action before them, which was instituted before the present. As both cases are now ripe for judgment, it appears to the Lord Ordinary that they should be disposed of at the same time; and, indeed, it will be for the consideration of the Court whether they ought not to be conjoined,"

At the same time the Court heard counsel on the reclaiming note in the first action.

At advising—

LORD JUSTICE-CLERK—(His Lordship proceeded