forged and fabricated—that there had been no jury, no inquest, and so forth—then no reduction would have been necessary; an action of declarator would have sufficed; there would have been nothing to reduce, for all would have been null *ab initio*. But things here are quite different. The pursuer's father was *valens agere* for 32 years, and he did nothing. I take it on the authority of Stair, Bankton, and Bell that an allegation of fraud merely against the author of a singular successor who has been throughout in *bona fide*, and who paid a price, will not be relevant. I have no hesitation in holding that these allegations do not go to affect the proceedings, and indeed it looks very much as if the pursuer had waited till all the parties available for the defence were dead and then sought an opportunity of obtaining that to which she was not entitled.

Lord Gifford—I concur. The father of the pursuer was seventeen at the date of the retour, became major in 1823, and lived till 1855 without doing anything to challenge the detour. The case could not be stronger than this; and as the circumstances stand they clear it of all difficulties. The fraud is disposed of by its want of relevancy.

To get up a charge of subornation of perjury such as was attempted would require a series of specific averments almost equal to what would be required for a criminal indictment.

The Court adhered, with additional expenses.

Counsel for Pursuer—Campbell Smith. Agents—M'Caskie & Brown, S.S.C.

Counsel for Defenders—Darling. Agent—Alex. Morison, S.S.C.

Saturday, November 4.

FIRST DIVISION.

[Bill Chamber.

NOBLE *v.* CAMPBELL AND HENDRY.

Bankruptcy—Trustee—Agent—Sale.

A sale by a trustee upon a bankrupt estate to the agent in the sequestration is not void under the Bankruptcy Statutes, and is reducible only at common law.

Observed (*per* Lord President) that the term agent in a sequestration is a misnomer, as no such official is recognised under the Bankruptcy Statutes.

This was a suspension by Alexander Noble, shipmaster, Fraserburgh, of a charge at the instance of Ann Noble or Campbell and Jean Noble or Hendry, with consent of her husband, of the sum of £19, 14s. 9½d. The complainer was a shipmaster, and had granted a bill, payable 3 months after date, to a merchant in Fraserburgh for furnishings supplied to a vessel belonging to him (complainer). Meanwhile the merchant's estate was sequestrated, and the debt, for which decree had been obtained in the Sheriff Court of Peterhead by the trustee appointed upon the bankrupt estate, was assigned by him to Robert Anderson, writer in Fraserburgh. Anderson again assigned it to John Proctor, law-clerk in Fraserburgh. Each of these assignations, the complainer averred, was made without value. Proctor afterwards assigned to the two chargers, who were sisters of the complainer. That assignation, the complainer stated, was also without value; and it was further averred—"The charge given to the complainer does not deduce or set forth the charge in the original action and assignation by them of the said decree, nor has the complainer seen said assignations. The complainer has also reason to believe that the debt has been paid by some one of the other owners referred to in the charge."

The complainer, *inter alia*, pleaded—"(1) The trustee on William Yeats Gray's estate having illegally assigned the decree charged on to Robert Anderson, writer, Fraserburgh, the chargers' title is vitiated *in essentialibus*, and is inept—*vide* 54 Geo. III. cap. 137, sec. 56, and the Bankrupt Act 1856; Murdoch on Bankruptcy, 3d ed. pp. 276, 277. (2) The charge is defective in respect it does not set forth the progress of the assignations by which the chargers got control of the said decree against the complainer."

The chargers and respondents denied the statements of the complainer, and, *inter alia*, pleaded—"(1) The chargers being in right of the debt for which a charge has been given, and the charge being in every respect formal and regular, the note of suspension ought to be refused, with expenses. (2) The assignation by Gray's trustee to Anderson having been for value, is not vitiated in respect of 54 Geo. III. cap. 137, and Bankruptcy Act 1856."

The Lord Ordinary in the Bill Chamber (Gifford) pronounced the following interlocutor:—

"*Edinburgh, 30th September* 1876.—The Lord Ordinary having considered the note of suspension and answers thereto, with the productions, refuses the note, and finds the complainer liable in expenses, and remits the amount thereof to the Auditor to tax and report.

"*Note.*—The complainer does not deny that he is justly due the debt charged for. The debt is constituted by decree *in foro* in the Sheriff Court of Aberdeenshire, dated 8th June 1870; and the complainer does not pretend that he ever paid any part of the sum decerned for. His averment that he 'has reason to believe' that the debt has been paid by 'some one of the other owners' plainly cannot be admitted to probation.

"The debt thus constituted has been passed by three assignments, *ex facie* regular, and has been vested in the chargers, and they hold regular warrants as assignees to enforce diligence. The assignments are produced, and there does not appear to be any good objection to the procedure and diligence."

The complainer reclaimed, and was allowed in the course of the hearing to amend his statement with reference to the assignation of the debt without value to "Robert Anderson, writer in Fraserburgh," by the addition of the words "who was then the agent in the sequestration." He argued—The assignation to Anderson was illegal, because it proceeded upon the purchase by the law-agent in the sequestration of part of the sequestrated estate. Such a sale would not give a title to an assignee in a question with the debtor.

The respondents argued—Such a sale was re-

ducible, not null. There was no statutory provision against it. If the sale was bad, it was so only at common law, and in any event it had been confirmed by the creditors.

Authorities—2 Bell's Comms. (M'Laren's ed.) 344; *Crichton* v. *Bell and Gillon*, June 25, 1833, 11 S. 781; *Robertson* v. *Adam and Others*, February 20, 1857, 19 D. 502.

At advising—

Lord President—The grounds of suspension, so far as they are now maintained, amount to this—that the chargers have no title because the sale by the trustee for Gray's sequestration was a nullity, and no right could thereby be transmitted to anyone, and none therefore to the chargers. I think that contention is supported entirely upon the argument that Anderson was disqualified from purchasing because he was the agent in the sequestration. Now, there is no statutory nullity which so disentitles him. Indeed, an agent is not an officer in bankruptcy proceedings, and is not so recognised. An "agent in a sequestration" is a misnomer; the party so termed is nothing more or less than the law-agent of the trustee, and there is nothing beyond a common law relationship between them. Therefore, if an agent is disqualified from purchasing at a sale by a trustee on a bankrupt estate, it must be at common law.

I assume that this sale might be reducible at the instance of creditors; but it is just as clear that if not so reduced it is perfectly good not only by express confirmation but by silence, signifying acquiescence. There is no ground here for suggesting that any one connected with the estate offers any objection. That being so, I think the title of the chargers good, and that we must refuse the note.

Lord Deas—I do not enter upon the question whether the complainer's objection to the title of the chargers might not be substantiated. I only say that so far as appears upon this record it is good.

Lord Mure concurred with the Lord President.

Counsel for Complainer—Kinnear. Agent—J. Watson Johns, L.A.

Counsel for Respondents—Adam. Agents—Pearson, Robertson, & Finlay, W.S.

Saturday, November 4.

FIRST DIVISION.

[Lord Craighill, Ordinary.

COOK *v.* COOK.

Proof—Witness—Adultery—Criminating Questions—Act 37 and 38 Vict. cap 64, sec. 2.

Held, upon a construction of the Act 37 and 38 Vict. cap. 64, sec. 2, that if a witness in an action of divorce on the ground of adultery, who has not "already given evidence in the same proceeding in disproof of his or her adultery, be asked a question tending to show that he or she has been guilty of adultery," it is the duty of the Judge to interfere and, unless the witness shall volunteer to answer or make a statement, to prevent the question from being put or recorded.

Cook, a miner, separated from his wife in January 1873, five months after their marriage, and since that time he had never seen her. Three years after the separation she gave birth to a child, and in an action of divorce upon the ground of adultery, thereafter raised by the husband, he averred that a man of the name of Mackie was father of the child. The action was undefended, and at the proof Mackie was called, and in the course of his examination Counsel asked, "Whether he had intercourse with the defender at a place named in the condescendence, in the month of July 1875?" The Lord Ordinary (Craighill) doubted whether he should allow the question to be put, on the ground that it appeared incompetent under the Statute 37 and 38 Vict. cap. 64, sec. 2, and the point was reported by him to the First Division.

The case of *Kirkwood* v. *Kirkwood*, Dec. 9. 1875, 3 R. 235, was referred to.

At advising—

Lord President—The Court are of opinion that the object of the statute plainly is that a witness shall not be put in the position of refusing to answer, and therefore it enacts that he shall not be liable to be asked, such a question as that which has been put. In these circumstances, if the question is pressed, it is the duty of the Judge to say no, and to allow nothing to be taken down. If the witness volunteers to answer the question or to make a statement, he must of course be allowed so to do, and what he says may be recorded. The protection afforded by the statute extends to this length, that it is not to be allowed that a witness shall be obliged even to decline to answer such a question as that about which we have been consulted by the Lord Ordinary.

Lord Deas and Lord Mure concurred.

Counsel for Pursuer—Rhind. Agent—C. B. Hogg, L.A.

Tuesday, November 7.

SECOND DIVISION.

[Lord Shand, Ordinary.

AYR HARBOUR TRUSTEES *v.* WEIR.

Statutory Trustees—Harbour—Quay Wall—"Free Port"—"Port and Harbour."

Circumstances in which *held* that the statutory trustees of a harbour were entitled to construct and maintain a continuous line of quay wall, and to require the proprietor of a shipbuilding yard opposite the said quay wall to fill up a launching slip or opening passing through it from his yard.

Observations (*per* Lord Gifford) on the rights implied in grants of "free port" and of "port and harbour."

This was an action raised by the Ayr Harbour Trustees, incorporated by Acts passed in 1855 and 1873, against Alexander Weir, chemical manufacturer and shipbuilder in Ayr. The sum-