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 condescendence 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 condescendence annexed to the summons as a condescendence of the fund *in medio*, and by another which repelled objections to the condescendence.

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

Thursday, February 21.

SECOND DIVISION.

[Lord Rutherfurd 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

child nevertheless taking the share or shares which would have belonged or accrued to his, her, or their parent if such parent had been alive, whom failing for behoof of the said Georgina Mollison Allardice's nearest heirs and assignees in fee."

During the subsistence of the marriage the trustees had paid the annual income of Mrs M'Lean's estate to the spouses in terms of the contract of marriage. After Mr M'Lean's death the parties of the first part received payment of the principal sum in life policy on his life, with bonus additions thereto, amounting to £603, 15s. This, with £1022, 3s. 9d., conveyed by Mrs M'Lean to the trustees, formed the whole estate —in all, £1625, 18s. 9d.

At her husband's death Mrs M'Lean claimed (1) the one-half of the estate which had been conveyed by her; (2) the other half of the estate conveyed by her, together with the proceeds of the policy.

The latter claim the trustees resisted.

The questions of law submitted to the Court were as follows:—"(1) Are the parties hereto of the first part entitled in a due administration of their trust to pay to Mrs Georgina Mollison Allardice or M'Lean, a party hereto of the second part, the one-half of the means and estate conveyed by her by the said contract of marriage, which they are thereby directed in the events which have happened to hold and apply for behoof of the said Georgina Mollison Allardice or M'Lean's nearest heirs and assignees in fee? (2) Are the parties hereto of the first part entitled in a due administration of their trust to pay to the said Mrs Georgina Mollison Allardice or M'Lean, one of the parties hereto of the second part, the proceeds of the said policy of assurance on the life of the said Reverend Daniel M'Lean?"

Authorities quoted for the first parties—*Pursell* v. *Elder*, June 13, 1865, 3 Macph. (H. of L.) 59; *Cumstie* v. *Cumstie's Trustees*, June 30, 1876, 3 R. 921; *Martin* v. *Bannatyne*, March 8, 1861, 23 D. 705.

At advising—

Lord Ormidale—The authorities which have been quoted to the Court differ from the present case in this very important particular—that here there were no children born of the marriage, and that the liferent was not declared to be alimentary. Accordingly, the question of a protection to be extended over the capital sum entirely falls through, there being no interests to protect. That being so, it really comes to this—that the widow Mrs M'Lean is the only person who has an interest in this portion of the fund claimed by her, and accordingly it is hers, and she is entitled to have it conveyed to her absolutely.

Lord Gifford—The only object of this clause in the marriage-contract is to protect children. Now, here the marriage has been dissolved by Mr M'Lean's death, and there are no children, accordingly the widow has come to be the only interested person as regards the fund claimed. Mrs M'Lean could sell or assign her interest in this money, and there is no reason why it should not absolutely be paid to her.

Lord Young—(who had been called into this Division in the absence of the Lord Justice-Clerk)—I concur. It seems to me perfectly clear that the purpose of restricting Mrs M'Lean's interest to a liferent as regards half of the fund was to protect the interests of children. This may be readily seen by reading the clause without that part of it which refers to children. Now, no one would think of giving a fund to a lady in liferent and her heirs and assignees in fee, and it is manifest Mrs M'Lean has the fee.

The Court answered both questions in the affirmative.

Counsel for First Parties—M'Laren—Jameson. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Second Party—M'Lean—Mitchell. Agent—J. M. Bell. W.S.

Tuesday, February 26.

FIRST DIVISION.

COWAN, OFFICIAL LIQUIDATOR OF THE EDINBURGH THEATRE COMPANY, PETITIONER (SHAW'S CASE).

Public Company — Liquidation — Compensation by Account Due, where Calls on Shares sued for.

Terms of a verbal agreement between the chairman of a limited company and a creditor, who was also a shareholder of the company, and in arrear of calls on his shares, *held* irrelevant to infer a crossing of the claim for arrears of calls by the debt due to the shareholder, so as to entitle him to set the one against the other when the company came into liquidation.

Proof—Discharge—Verbal or Written.

Question whether compensation whereby two debts are discharged can be proved verbally, the mutual obligations having been constituted in writing.

This was another case (*vide* Gowans' case, *ante*, p. 315), arising in the petition by the official liquidator of the Edinburgh Theatre Company to settle a list of contributories. The official liquidator proposed to put Mr Shaw on the list for thirty shares, and stated the amount due by him for arrears of calls on these shares at £255. Mr Shaw objected to the amount set down as due by him, and claimed to be entitled to set against this demand a sum of £215, 15s. 6d. due to him by the company. The balance of £39, 4s. 6d. he was willing to pay. The cross claim arose in this way—Mr Shaw was, like Mr Gowans, one of the contractors for the building of the theatre, and averred that he had subscribed for thirty-one shares on the understanding that his claims for work done were to be set against the company's claims for calls.

Mr Shaw, in his answers to the liquidator's petition, averred further, that his "work was executed in the months of December 1875 and January 1876, and an account therefor, amounting to £215, 15s. 6d., was shortly thereafter rendered to the company, and was not disputed. It was subsequently, on 7th December 1876, certified by the company's architect that the respondent was entitled to re-