in the title-deeds or excerpts produced by the pursuer, for that has not been stated, and it does not appear that these title-deeds or excerpts had been seen by them before the surplus teinds in dispute were taken payment of by them, or indeed till they were produced by the pursuer in the present process at the conclusion of the proof.

I am therefore, without entering into further detail or a consideration of any more of the points which formed the subject of discussion at the debate, of opinion that the interlocutor of the Lord Ordinary ought to be adhered to.

Lord Gifford—I concur, and have nothing to add to the exhaustive opinions pronounced by your Lordships.

The Court adhered.

Counsel for Pursuer (Respondent)—Balfour—Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Lord Advocate (Defender and Reclaimer) — Solicitor-General (Macdonald) — Ivory. Agents—Murray, Beith, & Murray, W.S.

Counsel for other Defenders—Lee—Rutherfurd. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Saturday, March 2.

SECOND DIVISION.

SPECIAL CASE—BRUCE (BRYCE'S TRUSTEE) AND OTHERS.

Husband and Wife — Jus administrationis *where* jus mariti *excluded.*

Held, where a husband's right over the bequest of an annuity was not excluded, but the *jus mariti* was, that the exclusion of the former was not necessarily to be implied, and that the husband must be a concurring party in any payments which were made to his wife; and *observed* that if he should refuse to concur, the Court, on cause shown, would authorise her to act without him, or name another curator.

Observed (*per* Lord Gifford), that the principle of the *jus administrationis* of a husband implies that it must be exercised solely for his wife's behoof, and to save her from being hurt by her own acts.

Succession—Conditio si sine liberis decesserit.

A testator in his trust-disposition left £100 to each of several nephews and nieces who predeceased him. In a codicil he left (1) £1200 "to the family" of one of these nephews, and (2) £500 to another nephew. He died unmarried, and his nephews and nieces or their children were, with the exception of a housekeeper and a natural son, the whole beneficiaries under his settlement. None of them were omitted, although they were not called as a class or equally favoured. *Held* (1) that these provisions were cumulative; and (2) that the circumstances being such that the testator must be held to be *in loco parentis* to all his nephews and nieces, the *conditio si sine liberis* applied, and that the children of those who had predeceased were entitled to take their parents' provisions.

Succession—Bequest in a Codicil of Residue Proportionally to Amount of Legacies Bequeathed—Jus mariti *of Husband.*

A testator having in his trust-deed left certain provisions to various parties, and in a codicil left them other provisions, which were held to be cumulative, stated further in the codicil that the residue of his estate was to be divided proportionally among "the above-named legatees and annuitants."—*Held* (1) that the beneficiaries under the deed and the codicil were entitled to a proportional share of the residue corresponding to the *cumulo* amount of their provisions under both deeds, and that the bequests of the liferent of a house and furniture and of annuities fell to be valued for that purpose similarly with pecuniary legacies; and (2) that when the *jus mariti* or right of administration of the husband of any female beneficiary was excluded with regard to the provision to her under the deed or the codicil, it was also excluded with regard to her share of residue.

Succession—Testament—Falsa demonstratio.

A testator left "£3000 to J. B., and to each of the other three children of my brother £2000." Her brother had in fact four other children, and the five were all specially named as sole residuary legatees in the residuary clause in the trust-deed.—*Held* that this was a case of *falsa demonstratio*, and that each of the four children was entitled to the legacy of £2000.

Counsel for the Parties—Dean of Faculty (Fraser) — Kinnear — H. Johnston — White—Maconochie, &c. Agents—George Bruce, W.S. —John Whitehead, S.S.C.—Hope, Mann, & Kirk, W.S., &c.

Tuesday, March 5.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

MONTGOMERY (COMMON AGENT IN SOUTH LEITH LOCALITY) *v.* SMITH SLIGO'S TRUSTEES (HERITORS).

Teinds — Process — Locality—Objection to locality being approved final.

A rectified scheme of locality had formed the rule of payment for nearly three years, and was then approved final on the motion of one of the heritors. Against this interlocutor the common agent reclaimed, on the ground that it was his intention to allocate the stipend due from certain lands among some feuars who had acquired their rights since the date of the preparation of the interim scheme. The reclaiming note was *refused.*

Observations on delay in teind processes.

In this process the stipend was modified on 30th January 1867. A locality was prepared, and by interlocutor, dated 15th July 1875, a rectified locality was approved of as a second interim scheme of payment. In July 1877 the case was put to the roll by Smith Sligo's Trustees, who were heritors in the parish, to have the scheme approved final, and on that date the motion was allowed to drop, in respect that there was no appearance for the common agent. When the case appeared again on the motion roll in October following, the common agent resisted the motion, on the ground that it would be necessary to allocate the stipend due from certain lands in the parish among new feuars who had recently acquired rights. Nothing was done on that date, but on 8th February 1878 the Lord Ordinary pronounced an interlocutor approving of the scheme as a final locality.

The common agent reclaimed, and when the case came up in the Single Bills he stated, in answer to a motion by Smith Sligo's Trustees to refuse the reclaiming note, that he had had no other notice of the motion to the Lord Ordinary than the appearance of the case in the Teind Roll; that in consequence of the transference of certain lands in the parish to new feuars an adjustment of the share of stipend among these feus was necessary, and if it was not allowed the minister would be put to great inconvenience in collecting his stipend. What he now intended to ask was that the feuars should be held as cited, and a remit made to re-adjust the locality.

The respondents answered—If the giving off of feus was to be held a sufficient excuse for delaying the finality of a locality in such a parish as South Leith, a final locality would never be pronounced at all.

At advising—

Lord President—I am for refusing this note, and I hope our judgment in this matter will be taken as a precedent for avoiding delay in similar cases. If such a motion as this is to be entertained in consequence of every fresh feu that is given off from every estate in the parish, I cannot see how any locality in such a parish as South Leith is ever to come to an end, and I cannot see any object in keeping it open. It has been said that the minister will be prejudiced. I am quite unable to understand how that can be, and both the Lord Ordinary and the teind clerk, as I have learned, are equally unable to do so. As the minister has not come here, I cannot in these circumstances give any weight to such a suggestion. It is stated by the parties whom the reclaimer represents that they have no interest in the matter whatever, and the conclusion therefore seems to be that there is no party who has any interest whatever to keep this locality open any longer, and therefore I cannot justify the view of the common agent that it should be kept open.

Lord Deas and Lord Mure concurred.

Lord Shand—I am of the same opinion, and I may say that I very willingly take any opportunity of putting a stop to the grievous delays that are taking place in these localities. It may be a proper practice that when a locality is being kept open by some reason beyond the control of the common agent he should use the time thus occupied in redistributing the stipend among the feuars who have acquired their property in place of the one or more heritors who have sold it. But after a locality is ready to be closed I can see no reason to keep it open for the purpose of allocating the stipend among new feuars who are in a position to be brought in. A locality may be closed, and the very next day a feu may be given off which would alter the locality were it allowed to be opened up. In the case of such parishes as South Leith there never would be a final locality if we were to sustain a reclaiming note in circumstances such as the present.

The Court refused the reclaiming note.

Counsel for Common Agent (Reclaimer)—Kinnear. Agent—Party.

Counsel for Respondents—Thoms. Agents—Hill & Fergusson, W.S.

Wednesday, March 6.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

FERRIER (CONNELL'S TRUSTEE) *v.* BUSHNAN AND OTHERS.

Process—Multiplepoinding—Competency.

Where there was neither double distress nor the refusal of beneficiaries to concur in granting a discharge—*held* that a trustee is not entitled to raise a multiplepoinding in order to try the question, whether the only claimant of the fund in dispute has a valid title to grant a discharge.

The pursuer in this action was the surviving trustee under the trust-disposition and settlement of the late Miss Susan Graham Connell, and the subject in dispute was a legacy of £500 which the truster left to her nephew Mr Newton O. R. Bushnan. This legacy was subject to the liferent of the truster's sister Mrs Bushnan, who died in September 1875. Previous to this date, on 30th November 1866, Mr Bushnan executed an indenture of mortgage, in English form, by which he assigned all that he might become entitled to receive under the will of Miss Connell to Mr John Laws Milton, his executors, administrators, and assigns, with power to them to sue in his name. On the 15th October 1868 Mr Bushnan, becoming bankrupt, assigned his estate and effects to Mr Smallpage, one of his creditors in London, as trustee under the Bankruptcy Act 1861. In 1876, on the death of the liferentrix Mrs Bushnan, Mr Smallpage demanded payment of the £500 upon a discharge to be granted by himself alone. The pursuer objected to accept this discharge without satisfactory evidence that the preferable creditor's claim was satisfied. Eventually Mr Smallpage withdrew his claim, and assented to the whole legacy being paid to Mr Chalk, as assignee of the first mortgagee Mr Milton. The mortgage was assigned to Mr Chalk on the 7th September 1876. He offered the pursuer a complete discharge, but the pursuer doubting Chalk's title considered it