

Saturday, January 31.

FIRST DIVISION.

[Lord Trayner, Ordinary.]

WHYTE v. WHYTE.

*Husband and Wife—Separation and Alim-
ment—Decree in Absence—Reponing.*

In an action of separation and alim-
ment by a wife against her husband,
the defender, although the summons
was served upon him personally, and
although he had due notice of the day
of proof, allowed decree in absence to
pass. He thereafter lodged a reclaiming-
note and tendered defences, and the
Court remitted to the Lord Ordinary
to repone the defender upon such terms
as seemed just.

Mrs May Philips or Whyte, Aberdeen,
raised an action of separation and alim-
ent against her husband George Whyte, Leslie
Terrace, Aberdeen, the summons in which
was personally served upon the defender,
who did not enter appearance or defend
the action.

In the proceedings an order for proof was
pronounced and notice thereof was sent to
the defender by registered letter.

The defender was not represented at the
proof, and the Lord Ordinary after hearing
the evidence granted decree of separation
and decerned against the defender for a
sum of alim-ent for herself and her children.

The defender lodged a reclaiming-note
and tendered defences, which the Court
allowed to be received.

On the case appearing in the Summar
Roll, counsel for the pursuer objected to
the competency of the reclaiming-note, and
argued that the decree obtained by the pur-
suer was a decree in absence, recal of which
by means of a reclaiming-note was by sec. 23
of the Court of Session Act 1868 incompe-
tent—Fraser on Husband and Wife, p. 1238.
The proper course for the defender to follow
if he was in earnest was to bring a reduc-
tion of the decree—*Stewart v. Stewart*,
Feb. 27, 1863, 1 Macph. 449. It was a hard-
ship that the defender, who was well aware
of what was going on, should be allowed to
lie by, and after decree had been pron-
ounced to have the whole proceedings
commenced *de novo*.

The defender argued that he was out of
Scotland when the proceedings were going
on, and that he was unable from poverty
to defend the action at the previous stage
of the proceedings.

The Court remitted to the Lord Ordinary
to repone the defender upon such terms as
to his Lordship should seem fit.

Counsel for the Pursuer—Younger. Agent
—A. Laurie Kennaway, W.S.

Counsel and Agent for the Defender—
Party.

Saturday, December 20, 1890.

FIRST DIVISION.

[Lord Kinnear, Ordinary.]

THE GENERAL PROPERTY INVEST-
MENT COMPANY (LIMITED) AND
MYLES (LIQUIDATOR) v. CRAIG.*Public Company—Liquidation—Ultra
Vires—Compromise with Insolvent Share-
holder—Surrender in Lieu of Forfeiture
—Purchase by Company of its Own
Shares—Companies Acts 1862 and 1867.*

A holder of 250 shares in a public
company became insolvent in conse-
quence of the failure of the City of
Glasgow Bank, and made an assign-
ment of his whole estate including said
shares to the liquidators. A call there-
after became due upon the shares, which
the shareholder was unable to pay, and
the shares accordingly became liable
to forfeiture. In point of fact they
were not forfeited, but the share-
holder, with the concurrence and ap-
proval of the liquidators of the bank,
executed a deed of transfer in favour of
the company upon 14th April 1879. The
deed bore to be granted "in considera-
tion of my being hereby relieved of
liability for the uncalled portion of the
share capital of 'The General Property
Investment Company, Limited,' in re-
spect of the shares after mentioned, and
without any price or consideration hav-
ing been made to me by The General
Property Investment Company, Limi-
ted, hereinafter called the said trans-
ferees." After the date of the transfer
the shareholder was treated as such no
longer, his shares were in part re-issued,
and no steps were taken to recover the
amount of the call above mentioned.
The company having gone into liquida-
tion an action was brought in the year
1889 for reduction of the transfer, and
for payment of the amount of the calls
with the interest attaching to such of
the shares as had not been re-issued.
Held that the arrangement under which
the transfer was made and accepted
was such a compromise as the company
was entitled to make with an insolvent
shareholder, and that the transaction
was not void as being a purchase by the
company of its own shares.

Opinion by Lord M'Laren that a
company would not be entitled to
accept a surrender of his shares from
a solvent shareholder on the under-
standing that he was to be released
from liability for calls already made.

(*Vide Matheson v. General Property In-
vestment Company, ante*, vol. xxvi. p. 185,
and 16 R. 282.)

This was an action of reduction at the in-
stance of The General Property Investment
Company, Limited, and David Myles, ac-
countant in Dundee, the official liquidator
of said company, against Robert Craig,
papermaker, Dalkeith, and the object of