a case which the husband required to meet, by alleviating circumstances. But, so far from there being extenuating circumstances, his conduct is highly discreditable. It is an aggravated case—and I agree that we should deprive him of his paternal power.

LORD NEAVES—I concur. We should refuse this petition in the special circumstances. I do not lay it down as a general rule that a husband when divorced for adultery is to forfeit the rights of the *patria potestas*. There may be innumerable cases where his rights may continue, notwithstanding his divorce for adultery. The law of this country in this respect is stricter than in other countries—allows divorce for a single act of adultery at any distance of time, if not knowingly condoned, and in whatever circumstances of temptation, for a single lapse in an otherwise virtuous life. In other countries other circumstances require to co-exist with the adultery. But it is not so in this country. The principle is as laid down in *Lang's* case. Would it injure the children? I do not concur with the Lord Justice-Clerk that the injury to the child in losing its mother is sufficient. That is not the kind of injury referred to. But here there is an aggravated case, which disqualifies the father. The illicit intercourse was continued with the nurse at the time when there was a negotiation for a reconciliation going on. Is then the mother disqualified? I agree with Lord Cowan that a special case must be set forth, for she has the next *prima facie* right. And his objections to her are excluded by his own conduct. His allegations against her character were made long before, and he retracted them. We do not foreclose the other question as to the father's access to the child, which I trust will not be refused.

Agent for Petitioner—N. M. Campbell, S.S.C.
Agents for Respondent—H. & A. Inglis, W.S.

OUTER HOUSE.

POLLOCK & ANOTHER (STRANG'S TRUSTEES) *v.* METEYARD AND OTHERS.

Heritable and Moveable—Jus relictæ—*Legitim*—*Act* 1661, *cap.* 32—*Provisions of Trust-Disposition in favour of Trustees.* In a competition betwixt trustees, the widow of the truster, and certain beneficiaries, *held* (by Lord Mackenzie, and acquiesced in) (1) that, as in a question with the widow, a sum of money mortgaged on the security of the works and rates of the Glasgow Water Company was heritable; (2) that in respect two of the truster's children had forfeited their liferent rights under their father's deed by their election to take legitim, that forfeiture operated in favour of the residue which was by that deed burdened with the liferent; and (3) that in respect of the provisions of the deed the trustees were entitled to receive the whole residue after certain payments, and to hold the same for behoof of the respective issue of the truster's children, and to manage the same during their respective pupillarities and minorities.

The late William Strang executed a trust-disposition and settlement in 1861, by which he conveyed his estate, heritable and moveable, to certain trustees therein named, for certain and in particular the following purposes, viz:—to pay to his widow, Mrs Margaret M'Dougall or Strang, the free yearly rents of his whole estate, and at her death or marriage to convert his property into money, and divide it into three equal parts, one-third to go to his daughter Julia Strang in liferent, and her children equally in fee; a third to go to his daughter Margaret Strang in liferent, and her children equally in fee; and the remaining third to his son William Strang in liferent, for his liferent use allenarly. The issue of the truster's children were to receive their shares of the fee provided to them on the death of their parent, and on majority or marriage in case of females. Further, the trustees were appointed tutors and curators to those of the truster's grandchildren who might become entitled to provisions under the deed of settlement for the management of these provisions during their respective pupillarities and minorities, with all competent powers. The truster was married a second time, and his second wife, Barbara Campbell or Strang, survives him. There were no issue by that marriage. There also survived the testator Julia Strang or Thomson, having four children, of whom three were in pupillarity. Margaret Strang or Meteyard also survived, having five children, all in pupillarity. William Strang survived his father, but died before this action was brought. Julia Strang or Thomson and Margaret Strang or Meteyard repudiated the liferent provisions in their favour, and claimed legitim. The trust-estate was entirely moveable with the exception of £1500, lent by the truster on 11th November 1864, on the security of the works and rates of the Glasgow Water Company. The mortgage is declared to be moveable by the Water Company's Acts, and there is no sasine on it. A great part of the Company's works are situated in burgh. Questions having arisen between the parties as to the amount of the widow's right in the succession, and as to whether the truster's widow had either right of terce or *jus relictæ* in the said £1500 stg., as to the extent and scope of the trustees' curatorial rights, and others, the present multiplepoinding was brought.

BRAND for the trustees.
SCOTT for Mr and Mrs Meteyard.
CAMPBELL for the widow.

For the trustees it was maintained that the £1500 contained in the mortgage granted by the Water Company, being a loan for a tract of time, and bearing interest payable periodically before the term of payment of the principal, was heritable so far as regarded the rights of the claimant as a widow, and fell to be deducted from the fund *in medio* before the claimant could claim her *jus relictæ; Downie* v. *Christie*, 14th July 1866, 4 Macph., 1067. The widow relinquished any claims to the said £1500, but maintained that out of the debts and charges payable from the estate, in reckoning with her, and amounting to £680, 16s. 6d. stg., a proportion thereof, consisting of debts proper, fell to be allocated upon the said sum of £1500 as being moveable, *quoad* the children of the truster, and equally liable with the remainder of the fund *in medio* in payment of the debts and charges. In support of this contention, reference was made to the Act 1661, cap. 32, providing that in certain circumstances bonds are to be holden and interpret as moveable. The reply of the trustees was, that this was an attempt on the widow's part to get the benefit to a certain extent of the said £1500 in an indirect way, seeing that

in so far as debts were allocated thereon, to that extent would she be thereby benefited.

Further, the trustees maintained, as in a question with Mr and Mrs Meteyard and their children, that since by the deed the trustees were made tutors and curators to the children in pupillarity or minority, and invested with full powers, they were entitled to receive and hold in trust and administer the shares of the estate falling to the children respectively.

The Lord Ordinary (MACKENZIE) pronounced the following judgments, which have become final:—

"*Edinburgh*, 21*st June* 1870.—The Lord Ordinary having heard parties' procurators, and considered the closed record and process, finds that the sum of One thousand five hundred pounds contained in the mortgage granted in favour of the truster by the magistrates and council of the city of Glasgow as commissioners appointed and acting in pursuance of the Glasgow Corporation Water Works Acts 1855, 1859, and 1860, is heritable as respects the rights of the claimant Mrs Barbara Campbell or Strang, the widow of the deceased William Strang, the truster, but moveable as respects legitim; Finds that the forfeiture of the liferent provisions in the trust-disposition and settlement of the deceased William Strang to Mrs Thomson and Mrs Meteyard, incurred in consequence of their having claimed legitim, operates in favour of the trustees acting under the said trust-disposition and settlement, and appoints the cause to be put to the roll for the application of these findings.

"*Note.*—The Lord Ordinary is of opinion that the mortgage by the magistrates and council of the city of Glasgow, as commissioners appointed under the Glasgow Corporation Water Works Act, is truly a bond bearing interest, which is excepted from the operation of the Act 1661, c. 23, and therefore that it is not to be taken into computation in ascertaining the amount of the estate out of which *jus relictæ* is exigible; Stair, 3, 4, 24; Erskine, 2, 2, 9 and 10, and 3, 9, 22; *Mackenzie*, 23d Dec. 1668, Dict. 5784; *Ross* v. *Graham*, 14th Nov. 1816, F. C.; *Downie* v. *Christie*, 14th July 1866, 4 Macph. 1067. It is admitted by the claimants that the mortgage is moveable as regards legitim.

"The forfeiture of the liferent rights of Mrs Thomson and Mrs Meteyard under their father's trust-disposition and settlement, in consequence of their election to take their legitim, operates, the Lord Ordinary is of opinion, in favour of the residue which was by that deed burdened with the liferent; *Breadalbane's Trustees* v. *Pringle*, 15th January 1841, 3 D. 357. The trustees are thereby directed to divide the residue into three equal shares, and to hold the same for behoof of the truster's three children in liferent, and their issue in fee, it being provided that the issue of the children respectively shall receive payment of their respective proportions of the fee provided to them on the death of their parent, to whom the liferent is provided, and on their respectively attaining majority, or in the case of females at majority or marriage. In the event of any of the children dying without issue, his or her share of the residue is directed to accresce to the survivors or survivor. A very important power is then conferred upon the trustees in the following terms:—'Declaring always that notwithstanding the foregoing provisions restricting the rights and interest of my said children to a liferent of my means and estate, it shall be lawful to, and in the power of my said trustees, if they in their discretion shall deem it advisable, to advance and pay to my said children or any of them such portion of the capital of the shares provided to them and their issue respectively in liferent and fee as aforesaid, as my said trustees may consider necessary and proper for the education and maintenance and upbringing of such issue, and of which my said trustees shall be sole judges.' The trustees are also nominated tutors and curators to such of his grandchildren as might become entitled to provisions under the deed 'for the management of such provisions during their respective pupillarities and minorities, with all the powers competent to tutors and curators by the law of Scotland.

"The Lord Ordinary is of opinion that the trustees are entitled to receive the whole residue which remains after payment of *jus relictæ* and legitim, and to hold the same for behoof of the respective issue of the truster's three children, and to manage the same during their respective pupillarities and minorities subject to the provisions and with the powers conferred by the deed. He thinks that neither the parents nor the children are entitled to be preferred in this process, in terms of their claims, to the interest of their respective shares. It will be for the trustees to decide, according to the circumstances of each particular case as they may emerge, whether, and if so, to what extent, they can exercise the power committed to their sole discretion of making advances for the education, maintenance, and upbringing of the grandchildren of the testator. The Lord Ordinary conceives that in regard to this matter no decision can be given in this process.

"*Edinburgh*, 20*th June* 1870:—The Lord Ordinary having resumed consideration of the cause, with the state for Mrs Barbara Campbell or Strang, No. 191 of process, and heard the counsel for the parties, ranks and prefers the said Mrs Barbara Strang upon the fund *in medio* for the sum of £127, 7s. 7d., being the balance due to her in respect of her one-third of the goods in communion between her and her deceased husband, the truster William Strang, and decerns in the preference and against the holders of the fund *in medio* accordingly: Finds that Mrs Meteyard and her husband have received from the trustees of the said William Strang the sum of £412, 3s. 3d., and that the said sum exceeds Mrs Meteyard's share of her father's moveable estate due to her on account of legitim, and therefore repels their claim on the fund *in medio* to any further payment on account of legitim; ranks and prefers Archibald Pollock and John Russell, as trustees of the said William Strang, to the balance of the fund *in medio*, to be held by them as trustees under and in terms and subject to the provisions of the trust-disposition and settlement of the said William Strang, and decerns in the preference accordingly; repels the remaining claims of Mr and Mrs Meteyard and their children in so far as not given effect to in the interlocutor of 1st June 1870; finds the claimant Mrs Barbara Campbell or Strang liable to the said Archibald Pollock and John Russell in three guineas of expenses; finds no further expenses due by any of the claimants, and decerns."

Agent for Pollock and Russell, the trustees—W. S. Stuart, S.S.C.

Agent for Mr and Mrs Meteyard and Others—John Walls, S.S.C.

Agents for Mrs Barbara Campbell or Strang—Campbell & Smith, S.S.C.