

Saturday, February 18.

OUTER HOUSE.

[Lord Low.]

DUNCAN v. DUNCAN.

Husband and Wife—Divorce—Adultery—Proof—Extrajudicial Confession—Circumstances which, coupled with Extrajudicial Acknowledgment of the Illegitimacy of a Child, Held Sufficient to Infer Adultery on Part of a Wife, and to Entitle the Husband to Decree of Divorce.

In an undefended action of divorce for adultery raised by a husband against his wife it was proved that the wife had registered a child as born on the 10th January 1892, and that when registering it she had stated to the registrar that her husband was not the father of the child, and that she had no personal communication with him since September 1889, when they had ceased to live together. The husband also deponed that he had no communication with his wife since that date. It was not proved however that there had been no opportunity of intercourse between the husband and wife, who had been residing in the same town at the time when the child must have been conceived. Apart from the evidence of the husband as above, there was no evidence except the certificate of registration of the birth of a child that the defender had committed adultery. The Court granted decree of divorce.

Counsel for Pursuer—Howden. Agent—W. C. Dudgeon, W.S.

Tuesday, February 21.

FIRST DIVISION.

[Lord Wellwood, Ordinary.]

MUIRHEAD v. FORTH AND NORTH SEA MUTUAL STEAMBOAT INSURANCE ASSOCIATION.

Marine Insurance—Conditions in Policy—Insurance subject to Conditions in Articles of Association of Mutual Insurance Company—Alteration Made on Article without Procedure Required by Companies Acts being Followed.

A mutual steamboat insurance company passed a special resolution altering one of its articles of association by inserting a regulation that it should be a condition of any insurance effected by the company on any vessel that the assured should keep one-fifth of the value of such vessel uninsured. The resolution was confirmed on the same day as it was passed contrary to the provisions of section 51 of the Companies Act 1862, which required a

fortnight to elapse between the passing and confirming of a special resolution. After the resolution was registered a shipowner insured a vessel with the company for £1000. The declared value of the vessel was £3750, and it was provided in the policy that the articles of association should be deemed part thereof. The shipowners subsequently insured the same vessel with another company for £3000.

In an action by the shipowner, held that as the regulation contained in the special resolution was not contrary to the original articles of association, and was perfectly legal in itself, it was quite within the power of the company to make it a condition of the policies issued by them; that though the regulation had not validly been made part of the articles of association, the pursuer having accepted it as part of his contract, and having violated the condition it contained, could not recover under his policy.

Marine Insurance—Valued Policy—Declared Value.

A shipowner insured a steamer with an insurance company, the policy providing that the steamer for the purposes of the agreement between the insurers and the assured was and should be valued at £3750.

Held that in considering whether the assured had violated a condition of the policy which required him to keep one-fifth of the value of the steamer uninsured, the value of the steamer must be taken to be the value declared in the policy.

The Forth and North Sea Steamboat Mutual Insurance Association was incorporated under the Companies Acts for the purpose of insuring steamships in which the members of the association were interested. By article 3 of the articles of association a member was defined to be any person who insured a ship or part of a ship with the association, and such person's membership continued so long as he had a ship or part of a ship insured with the association. Article 6 empowered the directors to make calls upon the members for payment of the liabilities of the association, and declared that every person on the register of members when any liability arose should be liable for payment of such a proportion of the total amount thereof as the amount then insured by him should bear to the total amount of the insurances current at that date.

Article 31 provided—"A general meeting shall be held on or before the 1st day of February in each year. . . . The business to be transacted at this meeting and decided by a majority of the members present, shall be . . . and any alterations of the articles or warranties of the policy of insurance, of which, however, at least ten days' notice must have been given to the directors, and notified to the members seven days before the day of meeting." . . .

Article 66 provided—"The company may