ducible, not null. There was no statutory provision against it. If the sale was bad, it was so only at common law, and in any event it had been confirmed by the creditors.

Authorities—2 Bell's Comms. (M'Laren's ed.) 344; *Crichton* v. *Bell and Gillon*, June 25, 1833, 11 S. 781; *Robertson* v. *Adam and Others*, February 20, 1857, 19 D. 502.

At advising—

Lord President—The grounds of suspension, so far as they are now maintained, amount to this—that the chargers have no title because the sale by the trustee for Gray's sequestration was a nullity, and no right could thereby be transmitted to anyone, and none therefore to the chargers. I think that contention is supported entirely upon the argument that Anderson was disqualified from purchasing because he was the agent in the sequestration. Now, there is no statutory nullity which so disentitles him. Indeed, an agent is not an officer in bankruptcy proceedings, and is not so recognised. An "agent in a sequestration" is a misnomer; the party so termed is nothing more or less than the law-agent of the trustee, and there is nothing beyond a common law relationship between them. Therefore, if an agent is disqualified from purchasing at a sale by a trustee on a bankrupt estate, it must be at common law.

I assume that this sale might be reducible at the instance of creditors; but it is just as clear that if not so reduced it is perfectly good not only by express confirmation but by silence, signifying acquiescence. There is no ground here for suggesting that any one connected with the estate offers any objection. That being so, I think the title of the chargers good, and that we must refuse the note.

Lord Deas—I do not enter upon the question whether the complainer's objection to the title of the chargers might not be substantiated. I only say that so far as appears upon this record it is good.

Lord Mure concurred with the Lord President.

Counsel for Complainer—Kinnear. Agent—J. Watson Johns, L.A.

Counsel for Respondents—Adam. Agents—Pearson, Robertson, & Finlay, W.S.

Saturday, November 4.

FIRST DIVISION.

[Lord Craighill, Ordinary.

COOK *v.* COOK.

Proof—Witness—Adultery—Criminating Questions—Act 37 and 38 Vict. cap 64, sec. 2.

Held, upon a construction of the Act 37 and 38 Vict. cap. 64, sec. 2, that if a witness in an action of divorce on the ground of adultery, who has not "already given evidence in the same proceeding in disproof of his or her adultery, be asked a question tending to show that he or she has been guilty of adultery," it is the duty of the Judge to interfere and, unless the witness shall volunteer to answer or make a statement, to prevent the question from being put or recorded.

Cook, a miner, separated from his wife in January 1873, five months after their marriage, and since that time he had never seen her. Three years after the separation she gave birth to a child, and in an action of divorce upon the ground of adultery, thereafter raised by the husband, he averred that a man of the name of Mackie was father of the child. The action was undefended, and at the proof Mackie was called, and in the course of his examination Counsel asked, "Whether he had intercourse with the defender at a place named in the condescendence, in the month of July 1875?" The Lord Ordinary (Craighill) doubted whether he should allow the question to be put, on the ground that it appeared incompetent under the Statute 37 and 38 Vict. cap. 64, sec. 2, and the point was reported by him to the First Division.

The case of *Kirkwood* v. *Kirkwood*, Dec. 9. 1875, 3 R. 235, was referred to.

At advising—

Lord President—The Court are of opinion that the object of the statute plainly is that a witness shall not be put in the position of refusing to answer, and therefore it enacts that he shall not be liable to be asked, such a question as that which has been put. In these circumstances, if the question is pressed, it is the duty of the Judge to say no, and to allow nothing to be taken down. If the witness volunteers to answer the question or to make a statement, he must of course be allowed so to do, and what he says may be recorded. The protection afforded by the statute extends to this length, that it is not to be allowed that a witness shall be obliged even to decline to answer such a question as that about which we have been consulted by the Lord Ordinary.

Lord Deas and Lord Mure concurred.

Counsel for Pursuer—Rhind. Agent—C. B. Hogg, L.A.

Tuesday, November 7.

SECOND DIVISION.

[Lord Shand, Ordinary.

AYR HARBOUR TRUSTEES *v.* WEIR.

Statutory Trustees—Harbour—Quay Wall—"Free Port"—"Port and Harbour."

Circumstances in which *held* that the statutory trustees of a harbour were entitled to construct and maintain a continuous line of quay wall, and to require the proprietor of a shipbuilding yard opposite the said quay wall to fill up a launching slip or opening passing through it from his yard.

Observations (*per* Lord Gifford) on the rights implied in grants of "free port" and of "port and harbour."

This was an action raised by the Ayr Harbour Trustees, incorporated by Acts passed in 1855 and 1873, against Alexander Weir, chemical manufacturer and shipbuilder in Ayr. The sum-