of age, in the custody of her mother, from whom he had been divorced; and action concluding for payment of £60 per annum dismissed accordingly.

James Ketchen, a lieutenant in the Bombay Native Infantry, the defender in this action, married Julia Matilda Grant on July 5th 1862, went with her to India, and was thereafter promoted to the rank of captain. Four children were born of the marriage, of whom Ethel Julia Grant, the pursuer in this action, alone survived. In October 1868 they returned to Great Britain, and went to reside at Kingillie House, near Nairn; but in May 1870 Mrs Ketchen obtained a decree of divorce against her husband on the ground of adultery. In June 1870 the Second Division of the Court refused the prayer of a petition by the defender for the custody of his child, and gave the custody to the mother. In July 1870 defender offered to pay £25 per annum as aliment for his daughter, but that offer was declined as unsuitable. On November 23d, 1871, pursuer raised the present action, concluding for aliment at the rate of £60 per annum. It appeared that defender was proprietor of Kingillie House, the rental of which was entered on the Valuation Roll as £65, but that the property was burdened with heritable debts to the extent of £1000. Defender's pay as captain in the Indian army amounted to nearly £500, but from September 1868 to September 1870 he had been in receipt of half-pay only, while, subsequently to the latter date, he was allowed 10s. 6d. per diem only.

Pursuer pleaded that "The defender, being the pursuer's father, is bound to aliment the pursuer, and is therefore liable as concluded for."

Defender pleaded, *inter alia*—"(1) The pursuer, being a pupil, has no title to sue, and the action ought therefore to be dismissed. (4) The action is barred by the statements and pleadings of the pursuer's mother (the *vera domina litis*) in the petition for custody." (This plea referred to a statement by the mother, in objection to that petition, that "she was quite able to support and educate the child in a manner befitting her position in life.") "(6) The offer made by the defender to pay £25 a-year was, in the circumstances, a reasonable one, and this action was unnecessary."

The Lord Ordinary (JERVISWOODE) pronounced an interlocutor "ordaining the defender to make payment to the pursuer of the sum of forty pounds sterling (£40) yearly, in name of aliment, payable at the terms, in manner, and with interest, as concluded for in the summons, and that during the pupilarity of the pursuer, without prejudice to such claim for aliment thereafter as she may be advised to insist in.

"*Note.*—It was here earnestly argued, on behalf of the defender, that having regard to the principles of law applicable to the class of cases within which the present may be held to come, and of which the case of *Maule* v. *Maule*, as decided in the House of Lords is a prominent instance, the aliment which the defender should here be found liable to pay should be fixed at a sum sufficient merely to preserve the pursuer from absolute want. But the Lord Ordinary holds, and in his present judgment has proceeded on the footing, that the case of *Maule* does not rule, or seriously affect, the principle which is to be applied.

"Here the foundation of the claim, at the instance of the pursuer, is the misconduct of the defender himself. That this is so is rendered clear by the terms of the judgment, and of the opinion of the Court, as delivered in the case of *Ketchen* v. *Ketchen* (the defender), reported under date July 2d, 1870; and it appears to the Lord Ordinary that it would be contrary to principle to find first that the defender is disqualified by his personal conduct to act as the custodier of his child, and to follow such a finding by fixing the aliment which is, in consequence, to be paid to another, who is to act *in loco parentis*, at the lowest possible rate consistent with the actual subsistence of the child."

The defender reclaimed.

BURNET for him.

LANCASTER for respondent.

At advising—

The LORD JUSTICE-CLERK—I am of opinion that the offer made by the defender for the aliment of his child is sufficient in the circumstances, and that the action should therefore be dismissed. When the defender presented a petition to us, praying for the custody of the child, we debarred him from separating it from its mother; but her statement, that she was in a position to support and educate it, formed an element in the considerations which induced us to give her the custody. Now, this is really an application by the mother for the aliment of the child. Keeping in view, therefore, her former statement, and the circumstance that the child is to live with the mother, I think the defender has made a sufficient offer of aliment, and it is not necessary to touch on the general principles by which such aliment is to be determined. The amount offered is enough in the meantime, but if a change in the circumstances of the defender takes place, an increased aliment may perhaps reasonably be demanded.

LORD BENHOLME—I hold that the action should be dismissed, on the ground that the offer made by the defender is sufficient, although circumstances may so far change as to justify the pursuer in asking for an increase. The case of *Maule* is the ruling authority in all these cases, and cannot be regarded as otherwise than binding. The Lord Ordinary, however, appears to me to have allowed himself to be a little affected by the previous misconduct of the father, and to have granted a higher aliment than that offered, as a kind of penalty; but I consider £25 per annum as an allowance for a child living with its mother to be sufficient in the circumstances, while the misconduct of the father has no bearing on the matter.

LORD COWAN and LORD NEAVES concurred.

The Court accordingly pronounced an interlocutor dismissing the action, "in respect of the offer made by the defender to pay £25 per annum as aliment."

Agents for Pursuer—H. & A. Inglis, W.S.

Agent for Defender—N. M. Campbell, S.S.C.

Tuesday, March 14.

FIRST DIVISION.

MACKENZIE, PETITIONER.

Petition—Entail—Montgomery Act—Improvements—Enclosing. Circumstances in which wire fences were sanctioned as permanent improvements under the Montgomery Act.

This was a petition to charge the entailed estate of Seaforth with expenditure for Improvements, under the Montgomery Act, 10 Geo. III, c. 51, part of which expenditure was incurred in the erection

of wire fences and feal dykes with wires along the top. The Lord Ordinary (MACKENZIE) remitted to a man of skill, who reported that the enclosures were chiefly of plantations and ground in the course of being reclaimed, and that the work had been executed in a substantial and durable style.

As there was some doubt whether wire fences were permanent improvements under the Act, Lord Mackenzie reported the case.

The Court were of opinion, that no general rule could be laid down declaring that any particular kind of fence was an enclosure within the meaning of the statute; that each case must depend on its own circumstances; that the mode adopted in this instance was very expedient; and that the enclosure of plantations was specially contemplated by the statute, the juxtaposition of planting and enclosing running through our statutes from the earliest times. Authority was accordingly given to charge the estate.

Agents for Petitioner—Mackenzie & Black, W.S.

Tuesday, March 14.

REID *v.* LAIRD.

Property—Foreshore—Boundary—Prescription. A party acquired a subject of which he had been tenant, described as the just and equal westmost half of a certain piece of shore-ground, as presently possessed by himself, and bounded on the east by a wall. The wall had existed for upwards of forty years as the boundary between the properties, but did not extend below high-water mark. The proprietor of the eastmost half had, in reclaiming ground from the river, encroached towards the west, and the wall did not in point of fact divide the properties equally, but slanted towards the west. In an action of declarator at the instance of the disponee against his author, the proprietor of the eastmost half, to have the boundary below high-water mark ascertained, *held*, that though the pursuer was excluded by the terms of his title from claiming any ground to the east of the wall so far as it extended, he was not barred by his title or by prescription from claiming an equitable division of the ground below high-water mark, which had not been possessed by either party; and the contention of the defender *negatived* that the boundary must be ascertained by prolonging the line of wall seawards.

Held, on a review of various modes of division proposed, as in the cases of *Campbell* v. *Brown*, 18th November 1813, F.C., and *M'Taggart* v. *M'Dowall*, 6th March 1867, that the legal boundary below high-water mark was a perpendicular let fall from the extremity of the original land march upon a straight line representing the average line of the *medium filum* of the river between two points fixed by the Court.

These proceedings, which related to a disputed boundary on the south shore of the Clyde between high and low water mark, near Port Glasgow, were commenced by John Laird, one of three *pro indiviso* proprietors of a piece of shore-ground, raising an action against Mr John Reid, shipbuilder, carrying on business as John Reid & Co., the conterminous proprietor on the west, complaining of certain encroachments alleged to have been made by Reid. A plea was stated in defence that being only one of three *pro indiviso* proprietors the pursuer had no title to sue.

The Lord Ordinary (ORMIDALE) repelled the plea, and substantially decided on the merits in favour of Laird.

Reid reclaimed.

The Court having suggested the propriety of a new action, in which all parties interested should be called, Reid raised an action of declarator, calling as defenders the whole representatives of the three *indiviso* proprietors. The conclusions of the summons were, that the legal boundary between the shore-ground belonging to the pursuer and defender respectively was a certain line A B, or alternatively a certain other line A C, to be explained presently.

In 1811, Lord Belhaven's trustees feued to John Laird and Peter Macfarlane a piece of shore-ground described as "all and whole that piece of vacant shore-ground on the north side of the turnpike-road leading from Port-Glasgow to Greenock, bounded by the lands of David Brown, gardener, on the east; by the lands feued to John Burns, deceased, and now belonging to Alexander Watson and Archibald Falconer, on the west; by the river Clyde at low-water mark, on the north; and by the said turnpike-road on the south parts." In the same year an arrangement was made by which Laird retained the eastmost half of the ground, and the westmost half was conveyed to parties named Carswell and Steel. No actual division took place, and the portion conveyed to Carswell and Steel was merely described as the just and equal westmost half of all and whole that piece of shore-ground described as above. The eastmost half remained in the hands of John Laird, and is now the property of his successors, the defenders. The westmost half passed through several hands, and in 1850 was acquired by John Laird, one of the defenders, who in 1853 conveyed it to the pursuer, who had been previously the tenant of the same. In the disposition to the pursuer the subject is described as the just and equal westmost half of all and whole that piece of vacant shore-ground, described as in the original feu-charter of 1811, but qualified by the words "as the same is presently possessed by John Reid & Co.;" reference also made to the wall between the two properties extending from the turnpike-road to high-water mark as forming the eastern boundary of the property conveyed. The wall here mentioned is still in existence, and had existed for more than forty years before 1853. The pursuer stated that the wall slanted outwards towards the west, and made his "half" considerably smaller than that belonging to the defenders. He did not, however, claim any ground to the east of the wall as it actually existed, but he maintained his right in calculating the proper mode of division to measure from the boundary of the two properties at the turnpike-road. The pursuer proposed two alternative principles of division, the first known as the "*medium filum* principle," the application of which to the present case is stated in his condescendence as follows:—"A plan has been prepared with a view of showing the proper line of division. The red line A C laid down upon that plan shows the line of division fixed upon the principle approved of in the case of *Campbell* v. *Brown*, as reported under date 18th November 1813, F.C. The north boundary of the ground now to be divided is the river Clyde at low-