instance) have not rightly exercised their discretion in the matter. Certainly the Court ought not to interfere on light or trivial grounds; but if a solid substantial case occurs for their interposition, it is both their privilege and their duty to afford it.

The petitioner has under her marriage contract a jointure of £1500 per annum, and she received an additional yearly sum of £2000 under her husband's settlement, to be increased to £4000 per annum in the event of her son's death. She obtained, besides, by that settlement, a right to occupy her deceased husband's house of Stichill (built by him a few years ago at the cost of £36,000) till her son attained twenty-one, with an allowance of £150 per annum to aid in maintaining the garden. The question is now, what additional sum she shall receive in name of maintenance and education of her son.

I think it clearly was the intention of the deceased Mr Baird that his widow should continue to live at Stichill House till his son attained majority, and that Stichill should till that period continue to be his son's home with his mother. Of course I do not mean that the son was not to be sent to school, as he has been; but to his mother at Stichill, as to his proper home, it was, I think clearly intended that he should return when not elsewhere resident. For the sake of his son therefore, and not alone for the sake of his widow, I consider Mr Baird to have specially intended that Stichill House should be maintained and resided in by mother and child. And the present petition is presented on the express footing of this purpose being carried out. The allowance is sought, not to maintain a residence for the widow, but a home for the child.

But further, it is my opinion that this maintenance of Stichill as the home, with his mother, of George Alexander Baird, is of the highest possible importance towards the training and upbringing of this boy. It may be said in a strictly proper sense to belong to his education,—for education is not merely school tuition; it is the formation of character, and comprehends, as an essential part of it, those many insensible influences which produce superiority in the individual. I think it is of the highest moment, in the upbringing of this young man, that he should be made familiar with the residence which is in all probability to be the home of his future life—with its scenes and with its people, his future neighbours, and tenants, and dependants. To them, on the other hand, he ought to be the object of close acquaintance and interest. It is thus he will best be brought up for filling the place which under Providence he will afterwards assume. The home should further, as I think, be maintained, not merely well replenished with common material comforts, but full of those refinements, and accessible to that social intercourse, which befit so large a fortune, and contribute their insensible elements to the formation of an accomplished and well-bred gentleman. All this, I think, goes materially to the upbringing and education of George Alexander Baird, and ought to be secured to him by any reasonable annual outlay out of his magnificent income.

The question therefore, in my apprehension, simply comes to be, what annual sum should be paid to Mrs Baird for the purpose of enabling her to maintain her residence at Stichill relatively to these views and objects. The question is to be looked at entirely in the interests of the boy himself. But I think that it is best to promote his interests to enable his mother to maintain such a residence.

It is plain that with her own allowance of £3500 per annum Mrs Baird cannot accomplish this object; and no one says that she is to devote all her own allowance to this object without any addition from the boy's own income. The place is evidently an expensive one,—a house, it is said, consisting of sixty rooms, and requiring twenty-four servants in house and stables, with all the appendages of a gentleman's house of this magnitude. The style of living befitting such a house, and such prospects, will require a large outlay, to which the sum in question is quite inadequate. But I conceive the supplemental sum proposed by the trustees to be paid out of the pupil's income, viz., £1000 for the first year, £1500 for the second, and £2000 for the third and thereafter (for such is their resolution), to be greatly below the mark,—so greatly, that I think a proper case occurs for the interposition of this Court. I am of opinion that the sum of £3000 a-year, which has been mentioned, is not beyond a fair allowance. It is explained that the boy's schooling and relative expenses involve an actual outlay of £500 a-year, and that this will be increased when the boy goes to Eton. Allowing for this deduction, I think the surplus will not be more than is sufficient, added to her own jointure, to meet the expense of residing at Stichill in the way in which I think she ought to reside. Certain I am that £3000 per annum, taken out of the immense yearly income of £55,000 a-year, will be employed in this way much more beneficially for the pupil than if added to the enormous accumulation which will be his when he attains to twenty-five years of age.

I would only suggest, in addition, that this aliment should draw back to Martinmas 1870, the term posterior to Mr Baird's death. The mere difference of age of the boy does not infer any material difference in the expenditure which the allowance is to meet, which will be substantially the same throughout.

The Court fixed the allowance to be paid to Mrs Baird for her son's maintenance and education at £3000 a-year, payable quarterly in advance, commencing as at Martinmas 1870, and reserved to both or either of the parties to present another application in case of a change of circumstances.

Agent for Petitioner—Alex. Howe, W.S.
Agents for Respondents—Webster & Will, S.S.C.

Friday, January 19.

COWPER (SMITH'S TRUSTEE) *v.* CALLENDER.

Process—Reclaiming-Note—13 and 14 *Vict. c.* 36, *sec.* 11.

The Lord Ordinary pronounced an interlocutor disposing of the merits of a cause, and finding the pursuer entitled to expenses, subject to modification, to be determined after they should be taxed; and by a subsequent interlocutor he decerned against the defender for a certain sum of expenses. The defender having on the 21st day from the last mentioned interlocutor presented a reclaiming note, it was objected to the competency of the reclaiming note that it should have been pre-

sented within ten days, as the interlocutor reclaimed against was not one disposing of the merits of the cause, which had been disposed of by the previous interlocutor. Objection *sustained.*

The Lord Ordinary (ORMIDALE) on the 2d August 1871 pronounced an interlocutor disposing of the whole merits of the cause, and finding the pursuer entitled to expenses, but subject to modification, the amount of which is left to be determined till after the pursuer's account of expenses has been taxed and reported on by the Auditor.

On the 18th November following his Lordship pronounced the following interlocutor:—

"*Edinburgh, 18th November* 1871.—The Lord Ordinary approves of the Auditor's report upon the pursuer's account of expenses, No. 318 of process, amounting as taxed to the sum of £135, 3s. sterling; and having heard the counsel for the parties on the modification of expenses, modifies the same to the sum of £110, 10s. sterling; for which decerns against the defender."

On the 7th December following the defender presented a reclaiming-note.

SOLICITOR-GENERAL and BLACK, for the pursuer, objected to the reclaiming-note as incompetent, not having been presented within ten days, as required by 13 and 14 Vict. c. 36, sec. 11.

HALL, for the defender, argued that the enactment does not apply to the last interlocutor in a case; *Fisher* v. *Pearson*, March 7, 1851, 13 D. 906; *Henderson* v. *Joffray*, Nov. 13, 1852, 15 D. 11. He also referred to the Court of Session Act, 1868, sec. 52 and following sections.

At advising—

LORD PRESIDENT—The pursuer objects to the competency of this reclaiming-note as being too late, and founds on 13 and 14 Vict. c. 36, sec. 11. It is not suggested that this enactment has been repealed. The leading words of the enactment are negative, which are always imperative.—"It shall not be competent to reclaim against any interlocutor of the Lord Ordinary at any time after the expiration of ten days from the date of signing such interlocutor." The only exceptions are "reclaiming-notes against interlocutors disposing in whole or in part of the merits of the cause, and against decrees in absence;" these may be competent when presented within twenty-one days. This reclaiming note certainly does not fall within the exception; it therefore falls within the leading enactment, and is necessarily incompetent. No relevant answer has been attempted. It has been suggested that some provisions in the Court of Session Act, 1868, giving a particular effect to reclaiming notes, take off the effect of sec. 11 of 13 and 14 Vict. c. 36. Section 52 of the Court of Session Act enacts that every reclaiming note shall have the effect of submitting to review the whole of the prior interlocutors. But that does not mean every reclaiming note, whether competent or incompetent. What would have been the effect of this note had it been presented in time is a question not before us.

LORDS DEAS and ARDMILLAN concurred.

LORD KINLOCH—I am clearly of opinion that this reclaiming-note, not being presented within ten days of the judgment reclaimed against, is incompetent. It is so under the express terms of the Act 1850; and the Act 1868 does not in this respect alter the previous statute. Though the objection to competency was reserved till the discussion of the case on the merits, it must be sustained in the same way, and to the same effect, as if the note was at once thrown out when the case appeared in the Single Bills.

This being so, I think the question argued to us does not arise, Whether, if the reclaiming-note had been competent, it would have brought up for review all the prior interlocutors in the cause. For I entertain no doubt that such an effect can only be operated where the reclaiming-note is in itself competent. I have a strong impression on that question. But I think it is better not to state it where the question is not properly before us.

HALL then moved the Court to transmit the process to the Lord Ordinary, with a view to the defender presenting a petition to be reponed.

SOLICITOR GENERAL—The process is not before the Court. There has been an attempt to bring it here, which has been unsuccessful.

The Court found the reclaiming-note incompetent, and refused the motion for the defender.

Agent for Pursuer—David Curror, S.S.C.

Agents for Defender—Hill, Reid, & Drummond, W.S.

Friday, January 19.

TAYSEN & CO. *v.* JOHNSEN, *et e contra.*

Sale—Rejection—Disconform to Contract.

Circumstances in which the consignees of a cargo of dried fish were *held* warranted in rejecting the same as disconform to contract.

In June 1870 Christian Johnsen of Christiansünd, in Norway, undertook to supply Taysen & Co., merchants, Leith, with a quantity of "new white hard dried ling" and "new white and well dried tusk." On the arrival of the cargo it was rejected by Taysen & Co. as disconform to contract, and was subsequently sold under a warrant. Each party brought an action against the other—Taysen & Co., who had resold the cargo before its arrival, for the loss of profit which they would have made, and Johnsen for the difference between the invoice price and that actually realized.

The actions were conjoined, and a proof allowed. The question involved was whether Taysen & Co. were warranted in rejecting the cargo. For Johnsen it was contended that the fish were as white as Norwegian fish usually are, and that Taysen & Co., themselves Norwegians, having ordered fish from Norway, must be satisfied if they got what is known in Norway as "new white hard dried ling" and "new white and well dried tusk."

The Lord Ordinary (MURE) found that the cargo consigned did not consist of "new white hard dried ling" or "new white and well dried tusk," and that Taysen & Co. were warranted in rejecting the cargo as being disconform to contract, and decerned against Johnsen for £132, 10s. 5d., as the profit which Taysen & Co. would have made upon the sale.

In his note his Lordship observed that "the defence, even if relevant in law, which he is disposed to think it is not, was not borne out by the evidence."

Johnsen reclaimed.

ASHER and DARLING for him.

SOLICITOR-GENERAL and TRAYNER in reply.

The Court adhered.

Agents for Johnsen—Scarth & Scott, W.S.

Agent for Taysen & Co.—P. S. Beveridge, S.S.C.