has rightly declined to determine before he has the facts of the case before him. If the case went to a jury, the construction of the clause would form matter of direction to them by the presiding Judge. If he went wrong, the only remedy would be by the somewhat awkward mode of a bill of exceptions. If, however, we send the case to proof before the Lord Ordinary, a reclaiming note in ordinary form will bring the whole matter before the Court. A further consideration is the great difficulty there would be to adjust issues to try the case. I am therefore of opinion that the interlocutor of the Lord Ordinary should be adhered to.

The other Judges concurred.

The Court adhered.

Agents for Pursuer—J. & R. D. Ross, W.S.
Agent for Defender—Hector F. M'Lean, W.S.

OUTER HOUSE.

HENRY REEDIE *v.* GEORGE YEAMAN AND JAMES YEAMAN.

Husband and Wife—Property—Beneficial Expenditure—Heir—Recompense.

Held that a husband who improved his wife's property, making it more valuable to her heir, has no claim against the heir for the amount to which he is *lucratus*.

Husband and Wife—Mutual Settlement—Revocation—Gratuitous Disponee—Recompense.

A wife possessed certain heritable property, and by a mutual disposition executed by her and her husband after marriage, she conveyed this property to him after her death. The mutual deed contained a power of revocation to either of the spouses, and the wife exercised the power by settling the property on her children by a former marriage, to the exclusion of her husband. The husband became aware of the deed for the first time at her death, and in the meantime he had expended a considerable sum in improving the property. The money so expended was principally obtained from his wife or her property. *Held* that as the husband's reasonable expectations had been disappointed by the wife's secret revocation of the mutual settlement, he was entitled to recompense from the disponee taking the property for the value of the expenditure thereon in so far as beneficial.

Observations on case of *Nelson* v. *Gordon*, 26th June 1874, 1 Rettie 1093.

This was an action of reduction and payment, raised the instance of Henry Reedie, a labourer at Lady-nk, under the following circumstances. The pur-er had in the year 1855 married a Mrs Helen imsden or Yeaman, widow of Alexander Yeaman, d mother by him of the present defenders. At e date of this marriage Mrs Yeaman was possessed a small heritable property near Ladybank, inding a house, but burdened to the extent of 00. Upon 27th January 1860 the pursuer and wife, the mother of the defenders, executed a tual disposition and settlement, by which there conveyed to the survivor of the spouses whole of their joint property. The settle-nt contained the following clause:—"And we, each of us, reserve full power and liberty, ny time during our lives, and even on deathbed, to alter, innovate, or revoke these presents in whole or in part." The pursuer alleged that after the marriage he expended from his own funds a considerable sum in building additions to the property, and had in this way considerably *increased* its rental. A further burden of £50 was, however, laid on the property. On 23d November 1866 Mrs Reedie, without the knowledge of the pursuer, executed a settlement by which she bequeathed the whole of her property to her two sons, the present defenders. Mrs Reedie died in April 1872. It was this second deed which the pursuer now sought to have reduced, on the ground that the mutual disposition and settlement was not revocable by Mrs Reedie without his consent. There was an alternative conclusion that in the event of the deed not being set aside the defender should make payment to him of the sum of £150, being the amount which he alleged had been expended by him *bona fide* in the improvement of the property in the lifetime of his wife.

The defenders, on the other hand, contended that as the mutual disposition and settlement contained an express power of revocation, Mrs Reedie was entitled to execute the settlement of 1866, and that, as the pursuer had never expended any funds upon the property in question, he had no pecuniary claim against them.

The action having come before Lord Mackenzie, his Lordship, after hearing parties, issued an interlocutor repelling the conclusions for reduction, but allowing a proof of the pursuer's averments relative to his expenditure upon the property. This proof was afterwards taken before Lord Young, who pronounced the following interlocutor:—

"The Lord Ordinary having heard counsel for the parties, and considered the proof, record, and process, Finds, that the pursuer is entitled to be recompensed by the defenders for improvements made by him on the property referred to on record, now belonging to the defenders, and that to the extent of £120, but subject to deduction of the sum of £50 borrowed on the said property in 1867, and now constituting a burden thereon. Therefore decerns against the defenders for payment to the pursuer of the sum of £70 sterling, with interest from 23d April 1872, at five per cent. Finds no expenses due to or by either of the parties.

"*Note.*—The material facts of the case as admitted or proved seem to be as follows:—The pursuer's deceased wife was at the date of her marriage to him in 1855 proprietor of house property of the fee simple value of £190, and of the yearly value of £14—burdened with the debt of £100. In 1860 the spouses executed a mutual settlement, whereby the wife on her part conveyed her whole estate, and specially the house property (and indeed she had no other) to the pursuer after her death. This settlement was expressly declared to be revocable not only by both parties but by either of them, and it was in fact revoked by the wife, who conveyed her property to the defenders, her sons by a former marriage; she died in 1872, and the pursuer then first became aware of the revocation by her of the settlement of 1860. During the subsistence of the marriage the pursuer made additions to the house property at a cost of about £150—and they must be regarded as real improvements, for it is proved that the property is now more valuable by about that amount than it was at the date of the marriage. The additions were made at various times between 1859 and 1871, and I think probably with funds which the pursuer derived from his wife or her

property, for he does not appear to have been able at any period of his life to earn more by his industry than was barely sufficient for his own subsistence. He had no money of his own, was of somewhat unsteady habits, and earned his livelihood by working sometimes as a journeyman baker and sometimes as a gardener's labourer. After his marriage he tried first grain dealing and then baking on his own account, but obviously without success, as he ultimately relapsed into his old condition of a day labourer. His wife kept a small grocery and spirit shop, whereby she apparently supported herself and aided him. In 1867 it was found necessary to borrow £50 on her property which had already and prior to the marriage been burdened with £100. The pursuer says that his wife got the money for the purposes of the shop business which she was conducting, and there is no other evidence regarding it.

"To complete the view of the facts, I have to observe that the pursuer failed to satisfy me that he was at any period of his married life possessed of funds independently of his wife to an amount worth taking account of; supposing it to be material (which I think it is not) whether the additions in question were made with such funds or with money which he derived from his wife.

"The pursuer having failed to obtain reduction of his deceased wife's settlement in favour of the defenders (her sons), now claims from them the value of the additions that he made to the property which they take under it. He puts his case on these grounds:—(1.) That the husband of a proprietrix who improves her property becomes her creditor, and consequently the creditor of her heir who takes it, for the money which he expended, and that it is immaterial that he derived the money from her by the *jus mariti*. (2.) That a husband who improves his wife's property, making it more valuable to her heir, has, on the doctrine of recompense, a good claim against the heir for the amount to which he is thereby *lucratus;* and (3.) That at all events a husband whose reasonable expectations have been disappointed by the secret revocation of a settlement by his wife in his favour is entitled to recompense from her heir or gratuitous disponee who takes her property for the value of his expenditure on it, in so far as beneficial. These propositions involve legal questions of interest and magnitude, although the case itself is a small one.

"I am unable to sustain the first proposition, for I find no authority, principle, or analogy for holding that the husband of a proprietrix who spends her income passing to him by the *jus mariti* or his own funds in improving her heritage thereby becomes the creditor of herself or of her heir or representative as for money advanced or expended on her account.

"2. With respect to the second proposition, the pursuer relied on the analogy of the right which the representative of a liferenter has (as he contended) to be reimbursed by the fiar for expenditure on the property in so far as the value of the property is thereby enhanced to his benefit. The analogy would I think hold for what it is worth in the case of the representative of a husband whose possession continued on the courtesy after his wife's death; and although there is no authority on the point that I know of, and the question may be doubtful, I am disposed to assume that in the case of a husband whose right terminates by the death of his wife the analogy is not too remote to be available. It is therefore proper to consider whether or not a fiar is liable for expenditure, in so far as beneficial to him, made on his property by a liferenter who preceded him in possession. I had till lately thought that the general rule of law on this subject was, that expenditure on improvements by a liferenter or other possessor on a temporary title was considered to be made solely with a view to his own enjoyment during his occupation, and gave rise to no claim against the fiar. I say the general rule of law, because there are cases which, in respect of the peculiar circumstances attending them, have been dealt with in a peculiar and exceptional manner. Of these that of *Scott* v. *Forbes*, 5th March 1755, M. 8278, although a hundred and twenty years old, is perhaps the most recent and important example. Whether or not that case would now be followed, it is plainly no authority for the proposition that the executor of a liferenter has claim against the fiar *in quantum lucratus* by improvements during the liferent. The case of a tenement destroyed by fire has been dealt with as special, and probably the law respecting it may be considered as settled by *Halliday* v. *Gardine*, 20th February 1706, M. 13,419. The case of *Jack* v. *Pollock*, 23d February 1665, M. 3213 and 13,412 (cited by Erskine) is remarkable. There a husband on deathbed took the title to 'a little ruinous tenement' to himself and his wife in conjunct fee. The Court repelled the plea of deathbed on the ground of reasonable provision to a wife, and, moved apparently by the consideration that the husband intended she should have the little tenement in a state of repair, and that his heir was bound to give effect to this intention, they, in her lifetime, and on her action, decerned him to refund her expenses for repairing it, 'not only in so far as necessary, but in so far as he should be a profiter by greater mail after the relict's death, she leaving the tenement in as good case as at the time of the pursuit.' There is no modern instance of such a decision, and it is, I think, unlikely that the Court would now follow this singular old case as an authority.

"I have referred to the most remarkable cases of an exceptional character, because of the doubts which, as I shall immediately notice, have recently been thrown on the general rule, which I confess I had not thought doubtful. To illustrate this general rule, as I had understood it, by a familiar case, I did not suppose that the executor of the liferenter of a house who had during his possession thoroughly repaired and decorated it, and even added conveniences to it by new building, had any claim therefore against the fiar. Of course if the repairs were made so early in the liferenter's possession that he lived to take the whole benefit of them, and in the end left the property no better than he got it, there could be no claim against the fiar on the doctrine of recompense. But as the case of a liferented house being, by the liferenter's expenditure on it, left at the termination of the liferent in better order, and so more valuable than was at the beginning, must be of frequent occurrence, and our books furnish no authority for claim of recompense against the fiar in such a case and the universal understanding of the public and the profession has been that no such claim exists which accounts for the absence of decisions. I confess that I had considered the law to be quite settled. The case of an heir of entail in possession is no doubt for some purposes distinguishable from that of a liferenter in possession, but the title of the former is certainly not more temporary or more

limited than that of the latter, yet it is clear that (apart from statute law) an heir of entail can create no claim against his successor by expenditure on improvements, though his successor may thereby be greatly *lucratus*, and that the law to this effect stands on the very same principle and considerations which apply in the case of a liferenter, namely that a possessor on a temporary right is held to improve only with a view to his own possession and is not at liberty to improve at the cost of another who takes nothing from him, only his disposition. The case of a landlord and tenant is another illustration of the same principle. It is no disparagement to the doctrine of recompense that in the case of possessors on a temporary title (of which heirs of entail, tenants for life and tenants for years, are the most familiar examples) the considerations on which it is founded are outweighed by the stronger consideration that no one shall be compelled to improve his property at the will of another, and that a possessor of property on a temporary title who is minded to lay out money on it shall be deemed, and may without hardship or injustice be deemed, to have done so for what he regarded as a benefit to himself commensurate in his opinion to the expenditure which he voluntarily incurred.

"Upon this view of the law I decided the case of *Nelson* v. *Gordon*, 26th June 1874 (1 Rettie, 1093), but my judgment having been reversed by the First Division of the Court the pursuer naturally relies on the case as an authority in his favour. I am glad that, my opinion being with the pursuer on another ground, I am relieved of any difficulty which I might have felt in following my own opinion against this decision of the Court, had it been necessary for me to decide the present case on the ground I am now considering. But as this ground is fairly within the case, and the specialty which influences my judgment, as I shall afterwards notice, may not elsewhere be considered of the importance which I attach to it, I feel bound to advert to the case just cited, considered as an authority on the more general and certainly more interesting question. In that case the claim was by the representatives of the deceased husband of a liferentrix, also deceased, against the fiar of a house, and was made in answer to an action by the fiar against them to denude of a security for a debt which they held on the property. The liferentrix and her husband had personally occupied the house for about eighteen years, and the averments regarding the improvements upon it were to the effect that, after allowing it to go without any repairs for about sixteen years, the husband, when it had become 'dangerous through decay,' expended 'a sum of about £70 in making meliorations, additions, and alterations thereon, which have materially increased the value of the property.' It was stated by the claimants in the course of the debate in the Outer House that about £12 of the alleged expenditure might be taken as in excess of what was necessary for ordinary repairs. Having the opinion of the law governing the liability of fiars in this matter which I have already stated, I thought the case almost too clear for argument. I accordingly decided it immediately at the conclusion of the debate, and the petty character of the dispute being then apparent I was able to persuade the parties to avoid the cost of having the matter of expenses formally adjusted on a consideration of cross accounts, by consenting that the pursuer should have immediate decree for £20 of modified expenses, the reason for a modification being, that by calling an unnecessary party (a Mrs Gordon) he had necessitated the insertion of her name, and of a plea in law for her in common defence. I stated the grounds of my judgment fully in presence of the parties, but having no thought of such a case going further, I did not reduce them to writing. It does not clearly appear from the report whether the judgment of the Inner House proceeded on the ground that such averments as they remitted to probation are relevant in the general case to infer the fiar's liability to the representatives of a liferenter, or on the ground that they were so in the particular case only because of the specialty that the liferenter had before the expenditure bought a debt on the property, the interest of which he was bound to keep down during his possession. I speak of the liferenter simply because the circumstance that the debt was bought and the expenditure made by the husband of a liferentrix, and that his representatives were the parties claiming from the fiar, cannot of course vary the question. I thought it clear that a fiar's liability for such expenditure cannot be increased or at all effected by the circumstance that the liferenter who made it had previously purchased a debt on the property, but it appears that the Court thought otherwise, for if not it is hard to see why the circumstance was noticed and dwelt upon as a material feature of the case. Again, the value of the case as an authority on the general question is shaken by the observations of the Judges, which seem to show that they thought the case was ruled by the authorities which establish the doctrine that a security by *ex facie* absolute disposition, qualified by back bond, extends to debts subsequently incurred, so that the holder shall not be bound to denude till these also are paid. I am of course ignorant how the case was argued at the bar of the Inner House, beyond what appears from the reported process of the argument; but before me, and also so far as appears in the Inner House, the pursuer maintained no argument which warranted an appeal to that familiar doctrine, nor should I have thought that he had any interest to do so. It was in the Outer House assumed to be clear that the question of the pursuer's liability for the alleged expenditure was well raised by the defenders in answer to his action against them to denude, and it was argued and decided accordingly. But the question, whether he was liable or not, or (to state it quite exactly) whether or not the defender's averments, assuming them to be proved, were sufficient in law to infer his liability, was one to which the doctrine of expansible security was clearly quite foreign, for that doctrine assumes that the debt with reference to which it is pleaded is due according to the law that governs the subject matter of it. In truth the doctrine is practically valuable only upon questions of preference in a competition. I may say that for my part I had no more idea of questioning the doctrine of the expansibility of securities by *ex facie* absolute title than of questioning any other doctrine of law having no relation whatever to the liability of fiars for expenditure by liferenters who preceded them in possession.

"Some of the Judges seem to have proceeded on the view that the husband of the liferentrix was, when he made the repairs, in possession as a creditor on his security, and that the expenditure was to be regarded as made by him in that character. I agree with Lord Deas that possession was not necessary to entitle the defenders to decline to surrender their security by retrocession or other-

wise until the pursuer had paid all his debts to them, however incurred; but if there were grounds for holding, or if the Court in fact held, that the expenditure in question was made by a creditor in possession on his security, the decision loses all interest as an authority upon the question of a fiar's liability for expenditure by a preceding liferenter. I should myself have thought that the liferenter, having been himself liable for the interest of the debt during his possession, and there having been no failure to pay the principal on demand, it was impossible to hold that he was in possession as a creditor on his security, for the back-bond qualified and limited his right, so that he could enter on possession only on a failure to satisfy his rights as creditor, an event that never occurred; and when a creditor in possession properly expends money on the subject of his security, I should think the form of the security immaterial to his right to recover the expenditure, for *ex hypothesi* it is sufficient to warrant the possession and the expenditure. But indeed this is only stating in another form the proposition that improvements by a liferenter will, with respect to the fiar's liability therefor, be differently regarded according as the liferenter has or not previously bought a debt secured on the property, and if this is to be taken as having influenced the decision in *Nelson's* case it is no authority on the general question, however important it may be in another view of it. The fiar being, in a question with the liferentrix and her husband, or the representatives of either, under no liability for the interest of the debt prior to the termination of the liferent, even had there been any due, which there was not, and having within a month of its termination tendered the principal (which had never been demanded), I thought it clear that the question of his liability for improvements during the subsistence of the liferent must be governed by the general rule of law applicable to such liability. But it is manifest from the observations of the Judges of the First Division that this was not their opinion, and I am therefore unable to regard their decision as an authority for the pursuer in the present case. The preceding observations on the doctrine of recompense, the exception to its operation in the case of possessors on a temporary title, and the case of *Nelson* v. *Gordon*, on which the pursuer relied as an authority, are sufficient to show, I hope, clearly the view of the law on which I feel compelled to reject the second ground on which the present claim is rested. The pursuer, indeed, had no title at all, but only a lawful enjoyment of the property in right of his wife during the subsistence of the marriage, therefore, irrespective of the specialty arising from the execution of the settlement in his favour (to be noticed under another head) any expenditure by him on the property must be deemed to have been made with a view to his own temporary enjoyment, and to give rise to no claim for recompense against parties who have taken nothing through him or by his disposition. He was certainly not bound on the one hand to improve the property for the benefit of the wife's heirs, but as little was he entitled, on the other hand, to make improvements at their expense. In short, such enjoyment as he himself had of the improved property during the subsistence of the marriage must, treating the case as falling under the general rule, be held to be all he contemplated, or at least was entitled to contemplate, when he made the improvements.

"3. But the pursuer by his third ground of claim raises the specialty created by the settlement in his favour. The defenders maintain that here there is no specialty, because the settlement was to the pursuer's knowledge revocable, and was in fact revoked, and the question thus arising is, in my view of it, both novel and difficult. The result of my consideration of it is, that the fact of the settlement, though revocable and revoked, does create a specialty in respect of which the pursuer is entitled to recompense; for although the settlement created no immediate title, and in the result created none at all, it certainly gave the pursuer a reasonable prospect of a title. His wife was at liberty to disappoint this hope, and did so, but it required an active proceeding on her part, namely, the execution of another deed for this purpose, Now I think it is reasonable to impute to her the knowledge that in making the expenditure on her property the pursuer was acting in the hope which she had thus created by deed, and which stood so firmly at least that it could only be disappointed by the execution of another deed. When she executed such other deed, viz., the conveyance to the defenders, she no doubt, in the exercise of her right, voluntarily gave them on her death the benefit of the pursuer's expenditure, made, as she knew, in the hope which she so disappointed in the defender's favour. I confess that it is, at least so far as I know, a new case for the application of the doctrine of recompense; but my opinion is that it falls within the principle of the doctrine and the equitable considerations on which it rests. The defenders, by their mother's voluntary deed in their favour, made to the disappointment of the hope on which she knew the pursuer had reasonably acted in expending money, take the property increased in value by that expenditure, and I think it is according to the equity of the doctrine of recompense that they shall reimburse him in *quantum lucrate.* The case is not a very favourable one for the pursuer, as the narrative which I have given of the facts shows; but the legal considerations are, I think, with him; and I am unable, on the question of recompense as it presents itself, to distinguish between the use by him, for the purpose of making the improvements of money, which he had by the *jus mariti*, and any other funds.

"The only remaining question is the amount to which the pursuer is entitled. The rental of the property before the additions was £14. In consequence of these and the general rise of value together it is now £25. The valuation witnesses had not specially or at all satisfactorily considered the effect of the general rise in the value of property, but agreed in attributing the increased rental chiefly to the additions, and one of them suggested only £1 as the effect of the general rise, leaving £10 as due to the additions. They state £150 as the fee-simple value of the increase; I confess that fifteen years' purchase seems to me to be excessive for such property, and I am disposed to reduce it to twelve years' purchase and make the fee-simple amount £120. From this however, I think the defenders are entitled to deduction of £50, which was borrowed on the property in 1867, and with which it is now burdened, for although it is now proved that the money was spent on the property, I think it clear that the pursuer got it, and not the less although it was applied to the business which his wife was conducting for their common behoof. The defenders will have to pay the lender, and in accounting with the pursuer on such a claim as he now makes I think they are en-

titled to credit for the amount. I shall therefore give the pursuer decree for £70, taking the value of the property at £340, which seems high, it is by the debt on it (£150), reduced to £190, and when the £70, which I now award to the pursuer, is also deducted, the balance for division between the defenders will be only £120, which is less to each of them than the pursuer will receive.

"With respect to expenses, I think justice will be done by giving them to neither party. The defenders have been entirely successful with regard to the reductive conclusion and the pursuer's claim to the property. The pursuer on his side has partially succeeded in his claim for recompense, regarding which, on account of the proof, the greater expense has no doubt been incurred. It is desirable to avoid the expense which would be incurred by trying to strike the balance exactly on a consideration of cross accounts, and I attach importance to the fact, that the action, as laid and insisted in, was such as the defenders could not avoid defending at an expense to themselves out of all proportion to the value of their property, which, had the pursuer's claim been only for what he has been found entitled to, they might have avoided. Farther, the defenders were entitled to have reasonable evidence of the ameliorations, and it does not appear that the pursuer offered any extra-judicially, either before or after his claim to the property was disallowed."

In this judgment the parties have acquiesced.

Counsel for Pursuer—G. Smith and Tyndall Bruce Johnstone. Agents—Adamson & Gulland, W.S.

Counsel for Defenders—Scott Moncrieff. Agent—T. Lawson, S.S.C.

OUTER HOUSE.

SCOTT *v.* HEPBURN.

Process—Motion to report cause to Inner House—Note of Suspension—Finality of Interlocutor—Act 13 *and* 14 *Vict., cap.* 36, §§ 9 *and* 32—*Act* 50 *Geo. III, cap.* 112—*Judicature Act,* § 41—*Act of Sederunt* 11*th July* 1828, §§ 11 *and* 8—1 *and* 2 *Vict., cap.* 86, § 3—*Acts of Sederunt* 24*th Dec.* 1838, § 3, *and of* 5*th Feb.* 1861, § 6—*Court of Session Act* 1868, 31 *and* 32 *Vict., cap.* 100.

Circumstances in which the Lord Ordinary *refused motion* to report a cause to the Inner House.

This case was decided on 30th June by Lord CURRIEHILL (Ordinary) who pronounced the following interlocutor, now become final—"The Lord Ordinary having heard the counsel for the parties on the motion of the respondent to have the record in the Inferior Court and the proof therein printed and boxed to the Judges of the Inner House, and the cause reported to the Inner House, refuses the motion, and in respect the note of suspension, with articulate reasons annexed thereto, has been passed after answers have been lodged thereto by an interlocutor now final, finds that the record must be closed and thereafter proceeded with in the Outer House: Therefore appoints the cause to be put to the roll for the 6th day of July next for the adjustment of the record.

"*Note.*—This is a suspension of a decree *in foro* for £202. 3s. 8d., with £56. 5s. 6½d. of expenses, pronounced against the present complainers by the Sheriff of the Sheriffdom of Haddington and Berwick, in a petition presented against them at the instance of the present respondent, Sir Thomas Buchan Hepburn, Baronet. A record was closed and a proof was led in the Sheriff Court.

"The time within which the judgment might have been appealed elapsed, and the decree was exacted. The complainers, in order to have the judgment reviewed, both on its merits and in respect of certain alleged irregularities in the procedure, brought the present process of suspension. The note was originally presented on caution, with an articulate statement of facts and note of pleas in law annexed, and answers were ordered. Before answers were lodged the complainers lodged a minute offering consignation in place of caution, and on 8th May 1875 the Lord Ordinary on the bills, (Lord Gifford) allowed the complainers to make consignation of the sums charged for, together with the sum of £50 sterling to meet the expenses of process, amounting in all to £334 sterling.

"Consignation having been accordingly made, answers were lodged for Sir Thomas Buchan Hepburn, and after a full hearing, the competency of the suspension was sustained, and the note was passed on 3d June 1875 by an interlocutor which is now final, and the cause has now been enrolled in the ordinary motion roll for further procedure. The note having been passed with articulate reasons annexed and answers thereto, the record would apparently fall to be closed and the cause proceeded with in the Outer House in terms of section 9 of the Act 13 and 14 Vict. c. 36, which provides that where answers are lodged by any respondent in a process of advocation or suspension, the record shall thereafter be made up in the same way as in ordinary actions in which defences have been lodged. But the respondent maintains that as in the inferior court a record had been ordered and a proof led, he is entitled, under section 32 of the same Act, to have that record and proof at once printed and boxed for the judges of the Inner House, and reported to the Inner House, and to have the cause disposed of as if it had been reported to the Lord Ordinary upon a closed record prepared in the Court of Session.

The question now to be decided is whether section 32 overrides section 9, or whether it does not rather apply to advocations and suspensions other than those with which section 9 deals?

"The question is not free from difficulty, but as the complainers resist the respondent's motion it is necessary to decide the point.

"To understand the question aright, reference must be made to the practice of the Bill Chamber, and of the Court as regulated by the various Statutes and Acts of Sederunt which preceded the Act of 13 and 14 Vict. c. 36.

"The earliest to which it is necessary to refer is the 50 Geo. III., c. 112.

"By the section of that statute, bills of advocation and suspension of final judgments of inferior Judges are to be passed on caution without answers unless it shall appear on the face of the bill that it ought to be refused, in which case it is to be refused; and by section 40 it is enacted that bills of advocation and suspension when so passed are to be enrolled in the Roll of Advocations and Suspensions in the Outer House, and proceeded with before the Lord Ordinary.

The next statute is the Judicature Act, by the 41st sec. of which it is enacted that bills of advo