think it would be stretching the meaning of these words too far to say that they authorise the altering or revoking of an Ordinance which incorporates the College with the University. I accept the view as it was shortly put by my noble and learned friend opposite, that the ordinances there referred to are not ordinances constituting the incorporated body, but ordinances affecting the University after it has been so constituted, and affecting it in reference to the details of its management and other like matters. It does not embrace the power to bring a corporate body of that kind to an end; indeed, after such incorporation has taken place, it appears to me that it would be a matter almost inexplicable to go back upon what has been done, and formally done. That is a very strong consideration in my mind for interpreting the words "ordinances affecting such university" in this sense.

The fourth head of the agreement was also objected to; but even if there were force in criticism on the details of that provision, the provision itself is made expressly "subject to the provisions of the statute," so the statute must prevail.

My Lords, I am of opinion with your Lordships that the case for the pursuer entirely fails on its merits; and if the Court of Session, instead of granting a decree dismissing the action, had granted a decree of absolvitor, dealing with the case on its merits, I should have been prepared to affirm that decree.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Sol.-Gen. Scott Dickson—Byrne, Q.C.—J. C. Pitman. Agents—Grahames, Currey, & Spens, for J. & F. Anderson, W.S.

Counsel for the Respondents—D.-F. Asher, Q.C.—Johnston—Clyde. Agents—Martin & Leslie, for J. Smith Clark, S.S.C.

Monday July 27.

(Before the Lord Chancellor (Halsbury), and Lords Watson, Herschell, and Shand.)

ROSS *v.* ROSS.

Minor and Pupil—Maintenance and Upkeep of Establishment of Pupil-heir—Allowance Where Mother Sole Guardian.

In an action of accounting raised by an heir of entail to large estates on attaining majority against his mother for her intromissions as his sole tutor and curator, *held* that the allowance to which she was entitled for the heir's maintenance and upkeep of establishments was to be determined with reference to the whole circumstances as they had arisen, and in particular with reference to what a prudent guardian would allow in order to secure for his ward the advantage of living with his mother.

Interlocutors of First Division *varied*, and allowance fixed at £3000 a-year.

This was an action at the instance of Sir Charles Ross, heir of entail of the estate of Balnagown, in the county of Ross, against Lady Rebecca Sophia Ross, his mother, the widow of the late Sir Charles W. A. Ross of Balnagown, who had nominated her his executrix and tutor and curator to the pursuer along with two other persons who did not accept office. The pursuer was the only child of the marriage between the late Sir Charles Ross and the defender, and was twelve years old when his father died.

The action concluded for count, reckoning, and payment against the defender in respect of her intromissions with the pursuer's estate from the date of his father's death, on 26th July 1883 until 4th April 1893, when he attained majority. Under the will of the late Sir Charles Ross the defender was entitled to his whole moveable estate, including the furniture of the principal mansion-house of Balnagown Castle, and of the shooting lodges and other residences upon the entailed estate. She was also entitled to the liferent of all the unentailed lands, and to a jointure of £2000 in the form of an annuity, which was made a burden upon the revenues of the entailed estate. The defender's income from the two last sources was about £4000. The pursuer succeeded to the entailed estate and also to the fee-simple of the unentailed estate upon his mother's death. The free rental of the entailed estate available for the heir was, on an average of the last eight years of his minority, about £5500.

Along with the present action various other actions were raised between the same parties shortly after the present pursuer's majority. By an action raised in the Sheriff Court of the county of Ross the present pursuer craved a warrant of ejectment against the defender from certain farms upon the estate of Balnagown (Dec. 11th 1894, 22 R. 174). Subsequently the present defender raised an action against the pursuer for payment of her jointure annuity, and against this claim the pursuer pleaded a counter claim for legitim and for the balance claimed in the present action of accounting (March 9th 1895, 22 R. 461). A separate action for payment of legitim was afterwards brought by the present pursuer against Lady Ross, and a counter action at her instance for declarator that Sir Charles Ross having elected to claim legitim, was, on payment, bound to renounce his interest in the unentailed lands in her favour (June 16th, 1896, 33 S.L.R. 607; and July 15, 1896, 33 S.L.R. 765).

In the present action many questions were raised as to the defender's intromissions with the ward's estate during the period of her curatory, but the main question in the House of Lords was as to the allowance to which the defender was entitled for upkeep of establishments and maintenance of the ward. In this question two others were involved as subsidiary, (1) what interest, if any, was due to the defender on the furniture in Balnagown Castle and the other residences upon the

estates, and (2) whether she was entitled to credit for any part of the rent of certain shootings, partly upon the entailed and partly upon the unentailed lands, which Lady Ross maintained were reserved unlet for the pursuer's use at his own request during the last three years of his minority. The total rent of this shooting was £300, of which £200 effeired to the unentailed estate and £100 to the entailed estate.

The abstract of accounts lodged by the defender was as follows (the item as to the Forest Farm, No. 3, is not material):—

"*Receipts.*

"Amount of rents, woods and estate produce, received per Appendix No. I., page 4,	£158,666 0 9

"*Payments.*

1. Public burdens, repairs, interest of heritable debt, rent charges, management and miscellaneous estate payments, also upkeep of establishments and heir's maintenance, per Appendix, No. II. p. 4,	£129,344 2 10	
2. Jointure to Lady Lockhart Ross, under marriage contract and bonds of annuity to Martinmas 1892, per Appendix No. III. p. 5,	18,605 9 7	
3. Sums payable in respect of Forest Farm sheep stock, including sum borrowed from Lady Ross, and interest, in terms of Mr Howden's Report for year 1884, per Appendix No. IV., p. 5, . . .	3,513 11 3	
4. Rent of furniture in Balnagown Castle, Bonnington House, and shooting lodges, belonging to Lady Lockhart Ross, per Appendix, No. V., p. 6, .	5,212 17 6	
5. Interest on sums due to Lady Lockhart Ross for period of Accounts, per Appendix No. VI., p. 6,	2,698 11 10	
6. Balance in factor's hands at 4th April 1893, to which Lady Ross is entitled, . . .	7 10 0	
		159,382 3 0
"Balance due by the heir to Lady Lockhart Ross, . . .		£ 716 2 3"

In the first item of the above account is included a charge of £4000 a-year for upkeep of establishments and maintenance of heir. This item is dealt with in Appendix II. and relative note as under:—

"Payments for Public Burdens, Repairs, Interest of Heritable Debt, &c., &c., Upkeep of Establishments and Heir's Maintenance, from 26th July 1883 to 4th April 1893.

	Public Burdens, Repairs, Interest of Heritable Debt, etc., etc.		Upkeep of Establishments and Heir's	
	Balnagown.	*Bonnington.*	Maintenance.	TOTAL.
1883-84..	£10,543 8 10*	£1,007 6 10*	£4000	£15,550 15 8
1884-85..	6,959 8 11	982 7 0	4000	11,941 15 11
1885-86..	6,904 13 3	912 2 0	4000	11,816 15 3
1886-87..	7,768 14 5	1,307 0 9	4000	13,075 15 2
1887-88..	6,468 9 0	1,095 7 2	4000	11,563 16 2
1888-89..	7,971 6 2	793 2 6	4000	12,764 8 8
1889-90..	8,315 17 2	839 11 8	4000	13,155 8 10
1890-91..	9,237 15 4	1,159 5 2	4000	14,397 0 6
1891-92..	8,223 1 3	1,313 9 6	4000	13,536 10 9
1892-93..	7,325 13 5	1,216 2 6	3000	11,541 15 11
				£129,344 2 10

* See Mr Howden's Report, p. 79.

"*Note.*—In regard to the statement of the round sum of £4000 per annum, in respect of cost of upkeep of establishments, and maintenance and education of the minor heir, it is stated that the curator did not consider it necessary, as between herself and her son, to keep regular accounts and vouchers of expenditure on the above heads, and that, in point of fact, beyond some incomplete jottings or memoranda she has no accounts, and beyond her cheques she has no vouchers of her expenditure on these heads. It might be possible at the cost of much time and labour to collect some material from which to create an account more or less complete of her expenditure on these heads. But she herself is quite satisfied—and she believes that her son must be satisfied also from his own knowledge—that the sum actually spent by her on his account, and to a great extent at his own request, upon these heads has been considerably in excess of the round sum here stated, and for the present she is content to state that sum so covering the expenditure, reserving her right to restate this branch of the account upon such materials as she may be able to recover hereafter should that be found necessary."

The objections lodged to these accounts by the pursuer contained the following articles:—"(1) The accounts lodged by the defender are not fully vouched. In particular, no vouchers have been produced to instruct the sum of £4000 per annum, for which the defender takes credit for the upkeep of establishments and heir's maintenance in Appendix No. II. of defender's account. The pursuer is willing, however, under reservation of his right to demand a detailed and fully vouched account, to allow the defender to take credit for the sum of £19,220, 11s., being the amount of an allowance, calculated at the rate of £2000 per annum, from 26th July 1883 to 4th April 1893, as shown in Appendix I. hereto, and he objects to any larger sum than that being charged, whatever vouchers may be produced. (3) The pursuer objects to the charge made for interest on furniture, and submits that the defender is only entitled to 5 per cent. on the value of the furniture in Bonnington House and the shooting lodges, as shewn in Appendix III. hereto, and to no interest on the furniture in Balnagown Castle, she having occupied the castle herself."

The offer contained in the first of these articles was not accepted, and the defender then lodged accounts showing an expenditure on the upkeep of Balnagown Castle, gardens, &c., of upwards of £3000 per annum, on the school fees, personal expenses, and travelling expenses of the heir, of £1260 per annum, and on Ankerwycke, their residence near Eton, of £657, in all about £5000 a-year. In his opinion (*vide infra*) the Lord Ordinary finds that the defender spent £5000 per annum on an average of years exclusive of her personal expenses.

Sir Charles Ross was in the first instance at school at Inverness College, where he remained till 1886. He then went to Eton, which he left in 1891 for Trinity College, Cambridge. According to Lady Ross' evidence he was of a headstrong disposition, and both at school and college was extravagant in his expenditure. Letters were produced by her written by Sir Charles when he was at Eton, and by Sir Charles' tutors there, which supported her evidence. She explained that fearing that he would borrow money unknown to her

she arranged with him to supply him amply with pocket-money and to provide for him such mechanical and electrical appliances, and such shooting, yachting, and boating as he might want. The defender had kept no record of the net expenditure upon these heads, but she maintained that it amounted to considerable sums and was so far beneficial to the heir as to prevent him running into debt.

The accounts so far as they related to the expenditure upon Balnagown Castle, and on the establishments near Eton, were not questioned as regards amount, but it was maintained by the pursuer that both establishments were kept up almost entirely for the defender's own benefit and to gratify her own wishes. Upon this point there was a conflict of evidence as to how far the pursuer used these establishments himself and for the entertainment of his school and college friends.

As regards the item of travelling expenses the defender maintained that the journeys abroad were undertaken by her on account of the pursuer's health, while on the other hand the pursuer's evidence was that this was not the case, but that he merely attended his mother on these occasions at her request. In regard to the Scotsburn shootings the pursuer denied that he authorised that they should be retained for him, but admitted writing a letter to Lady Ross in which he said—"I hope for the next three years you will keep Scotsburn in your hands, and then I can take it off you, as half our game goes there, and we are in a maimed condition without it."

At the outset of her curatorial management the defender had been advised by her law-agent to keep regular accounts, and had fixed in consultation with him to draw £2000 a-year from the rentals of the entailed estate for the maintenance of the heir.

A proof was led, and the Lord Ordinary by his interlocutor of 22nd April 1895 made, *inter alia*, the following findings:—"The Lord Ordinary having considered the cause, finds with reference to article 1 of the pursuer's objections to the defender's account that the defender is entitled to take credit in her said account for sums in name of upkeep of establishment and maintenance of heir at the rate of £2000 a-year from 26th July 1883 to 26th July 1886, and £2500 a-year from the last-mentioned date till 4th April 1893, and also as separate items of charge against the pursuer for sums amounting to £2205 which were placed to his credit after he went to Cambridge, and for the actual payments made by the defender in respect of guns and boats for the pursuer's use:" . . . "With reference to article 3 of said objections, finds that the defender is not entitled to take credit for interest on the appraised value of the furniture in Bonnington House, and the shooting lodges, as brought out in Appendix III. to said objections, but substituting the rate of ten per cent. for the rate of five per cent. therein proposed, and that the defender is not entitled to take credit for any interest on the furniture in Balnagown Castle:" . . . . . "With reference to the further item of rent for Scotsburn shootings, finds that the defender is not entitled to charge against the pursuer any rent in respect thereof, and subject to these findings, appoints the cause to be enrolled, in order that the total sum due by the defender to the pursuer, including interest, may be ascertained."

His Lordship's note appended to this interlocutor contained the following passages applicable to the findings in question:—"1. *Upkeep of Establishments and Heir's Maintenance.*—The question here is between £4000 a-year, claimed by the defender, and £2000 a-year which the pursuer is willing to allow. Lady Ross began by resolving to make £1500 suffice for this purpose; then she tentatively fixed £2000 a-year, as shown by Mr Pitman's memorandum of 3rd April 1884, but before long she increased this to £3000 a-year, and this sum was regularly passed by the estate officials to the credit of her private account. It now appears that, on an average of years, she spent nearly £5000 a-year, without taking into account her purely personal expenses. Of this she proposes to charge the heir with a proportion amounting to four-fifths, and she does so on the avowed principle, as expressed in her answers to the pursuer's objections, that as the heir was to succeed to a large income "there was no object in accumulating a sum of ready cash for his coming of age." I cannot subscribe to that doctrine. Considering that the pursuer was to succeed to a free income of not much more than £5000 a-year, with all the responsibilities of a large proprietor of land, and with the necessity of raising money to buy the very furniture in the family residence, a prudent guardian would have acted on exactly the opposite principle, and would have made it his first endeavour to accumulate such a sum as might enable the heir, on his attaining majority, to meet all capital expenditure and start clear. On the other hand, I say nothing against the defender's resolution to keep up the family place. Undoubtedly that required a much larger expenditure than would have been necessary for the actual maintenance and education of a boy of twelve. But the advantages to the boy himself of being brought up with tastes, habits, and associations which would fit him for the position he was to fill, were such as to outweigh all considerations of mere economy. I look at the question, therefore, in this light. Lady Ross had herself an income not far short of the heir's. It would have been possible for her to live more economically away from Balnagown, but to her also it must have been a satisfaction to remain in the house where her married life had been spent, and to retain the influence and authority which such a residence implied. For these advantages I think she might fairly be called upon to make some pecuniary sacrifice. I have not, therefore, fixed the sums of £2000 and £2500 a-year successively on the footing that these sums ought to have covered the whole expense of the joint-establishment and ward's education, but on the footing that, with a suitable contribution from

Lady Ross, and with a proper regard to economy, they might have been made to do so. On this principle it seems to me that, for the first three years of the period of guardianship the sum of £2000 a-year proposed by the pursuer is quite sufficient, for so long as he was at Inverness College the mere cost of his education must have been comparatively small. After he went to Eton, I think an addition of £500 a-year is reasonable. But I have fixed these sums on the footing that the pursuer is to allow—as he expressed his willingness to do—not merely the sums amounting to £2205 which were placed to his credit after he went to Cambridge, but also the actual payments made by the defender for guns and boats, as a separate charge against him; and I have provided for this accordingly. I may add that I think the defender's proposal to saddle her son with the expense of her summer residence on the Thames is quite preposterous." . . .

"3. *Interest on Furniture.*—The pursuer admits his obligation to pay interest on the value of the furniture in Bonnington House and the shooting lodges, but I think the rate which he proposes is too low by one-half. Neither party has proposed any test of value except the appraisement made by Mr Dowell, and I have not left out of view that the appraisement was probably a moderate one. With regard to the furniture in Balnagown Castle, the defender had the use of it herself, and it is an afterthought on her part to make any charge for it. Her original resolution was to make none, and I think she was right then, and is wrong now." . . .

"8. *Scotsburn Shooting.*—This is an item which, so far as I see, is not specifically dealt with in any of the pursuer's objections; but counsel on both sides discussed it, and I have dealt with it accordingly. The defender proposes, as I understand, to debit the pursuer with £200 a-year from 1890 onwards, as rent of the shootings on the unentailed portion of Scotsburn estate, on the ground that these were retained by her entirely for the pursuer's behoof. In proof of this she founds on a letter written to her by the pursuer from Eton on October 9th 1889, in which he says—'I hope for the next three years you will keep Scotsburn in your own hands, and then I can take it off you, as half my game goes there, and we are in a maimed condition without it.' Now, I think there has been too much of this sort of thing in the defender's case Her argument repeatedly has been that the boy wanted her to do this or that; therefore she did it; and therefore he must pay for it. It was no part of her duty as his guardian to gratify every whim of a rather headstrong lad, and if she did so out of good nature, or for the sake of making things pleasant at the time, it by no means follows that he should be compelled to bear the cost. In this instance, I daresay, the retention of Scotsburn increased the sporting attractions of Balnagown both to the pursuer and to all the male visitors who came there. It would be perfectly justifiable for the guardian of such a ward to retain a moderate portion of his own shooting instead of letting it, and in so far as Scotsburn was entailed, I do not think the pursuer could complain (or does complain) of its not having been let. But it is a very different thing to charge him with a rent for the portion of the shooting which belonged to the defender herself, and I see no justification for it."

On appeal, the First Division, on February 25, 1896, varied the Lord Ordinary's interlocutor to the following effect as regards the findings in question:—"The Lords having considered the reclaiming-note for the defender against the interlocutors of Lord Stormonth Darling, dated 22nd April and 13th November 1895, and heard counsel for the parties, recal the findings in said interlocutor of 22nd April 1895 with reference to article 1 of the pursuer's objections to the defender's account: . . . Find with reference to article 1 of the pursuer's said objections to the defender's account that the defender is entitled to take credit in her said account for sums in name of upkeep of establishment and maintenance of heir at the rate of £2000 a-year, from 26th July 1883 to 26th July 1886, and £2500 a-year from the last-mentioned date to 26th July 1891; and £2000 a-year from the last-mentioned date to 4th April 1893." . . .

The following opinion was delivered:—

LORD ADAM—The chief question at issue between the parties, and which was argued to us under this reclaiming-note, was the amount of the annual allowance which the defender should be entitled to credit herself with for the upkeep of establishments and the maintenance of the heir during his minority.

The defender claims a sum of £4000 per annum on this account. The Lord Ordinary has allowed her a sum of £2000 per annum during the first three years of her guardianship, and a sum of £2500 thereafter. The pursuer does not object to this, except as regards the time of his residence at Cambridge, when, for the reasons which I shall afterwards mention, he suggests that the sum allowed should be £2000 per annum, as fixed by the Lord Ordinary for the first three years.

In consequence of the refusal of certain other persons (who had been named by the late Sir Charles Ross as guardians to the pursuer along with Lady Ross) to accept of that office, she became his sole guardian at his father's death. He was then about twelve years of age, and was an only child. He then became entitled to the entailed estates, but his father had left him without a sixpence of money. He left his whole personal estate to the defender Lady Ross, including the furniture in Balnagown Castle and in the various shooting lodges, and the valuable sheep stock on the Forest Farm, which his father had had in his own hands. He had also left to Lady Ross the liferent of the unentailed lands, and a jointure of £2000 a-year, charged on the entailed lands. From these sources she seems to have had an income of £4000 a-year. The free income from the entailed lands to which the pur-

suer became entitled appears to have been about £5000 a-year—but the rents did not become payable to him until about eighteen months after his succession—having been backhanded rents, I suppose. Such were the relative positions of the pursuer and defender at the commencement of the tutory. Lady Ross had the sole control of the property and person of her son, and it is obvious that she was in a position of great difficulty and delicacy. She was well-advised of this by her law-agents, and of the necessity of keeping the strictest accounts of her curatorial management, as it was her duty to do. She, however, did nothing of the kind. She kept no account whatever. She made no distinction between her own and her son's affairs—with the result that they became apparently inextricably confused and intermingled, and hence the necessity of the present proceedings. In such circumstances I agree with the Lord Ordinary that she must be held to a strict accounting,

It lay with Lady Ross to determine as to the future upbringing of her son. She resolved to reside at Balnagown Castle, and to keep up an establishment there that he might have a home to come to during his vacations. That was a matter, it appears to me, within her discretion to decide. Whether it was a prudent resolution or not — looking to the hampered circumstances in which her son was placed—being absolutely without money—may be questionable; but it is not challenged by him, and it is on that footing that the present accounting has taken place. But it appears to me that it was a resolution which could only reasonably be arrived at on the footing that Balnagown should be kept up at the joint expense of his mother and himself. Any use or enjoyment he could have out of Balnagown was comparatively small. He was either at school or college during the whole period of the guardianship, and could only be at Balnagown for about three months in the year—during his holidays. As far as his personal requirements were concerned, a very different establishment would have been necessary from that which was in fact kept at Balnagown. I altogether demur to the proposition that Lady Ross was entitled to keep up a large establishment at Balnagown at her son's expense, consisting of numerous male and female servants, carriages and horses, and six or eight gardeners. The large establishment which was maintained at Balnagown was in fact primarily maintained for Lady Ross's use, and she had almost the entire enjoyment of it. It appears to me that the establishment must be regarded as a joint establishment, kept up for the mutual benefit of mother and son, to the maintenance of which both were bound to contribute; and it appears to me, without going into detail, that the sum of £2000 a-year, which the Lord Ordinary has fixed as the son's contribution to the expense thereof, is amply sufficient.

It will be observed that the Lord Ordinary has allowed Lady Ross an additional sum of £500 a-year after her son went to Eton, in respect of the increased cost of his education. The pursuer did not object to this, although he considered the allowance large. It will be observed, however, that the Lord Ordinary has continued this sum during the two years while the pursuer was at Cambridge, and has also allowed Lady Ross to credit herself with a sum of £2205 during that time. It appears that the pursuer had then a bank account of his own, into which Lady Ross paid this sum for which she thus receives credit. The pursuer does not object to Lady Ross receiving credit for this sum, but he maintains that out of this account he paid the whole of his expenses at Cambridge, and that his education there cost his mother nothing, and that therefore his annual contribution should be reduced during these years to the original sum of £2000. I think the pursuer is right in this, and that the interlocutor should be altered accordingly.

The next finding in the Lord Ordinary's interlocutor which was objected to by Lady Ross was that in which he finds that she is not entitled to take credit for any interest in the furniture in Balnagown Castle. I agree with the Lord Ordinary as to this. I think that this furniture is fairly to be considered as part of Lady Ross's contribution to the joint establishment, of which she had herself the principal use and enjoyment. . . .

As regards the Scotsburn shootings and the rate of interest to be allowed on the amount ascertained to be due by Lady Ross, I agree with the Lord Ordinary, and do not desire to add anything.

LORD M'LAREN and LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The defender appealed to the House of Lords.

The respondents relied on the case of *Baird's Trustees*, 10 Macph. 482.

At delivering judgment—

LORD CHANCELLOR—My Lords, the question with which your Lordships have to deal in this case does not admit of very precise treatment. How much money belonging to a ward may be spent upon his bringing up must in each case depend upon the circumstances of the case, and no rule applicable to every case can ever possibly be laid down so as to bring out a definite sum.

In the case now before your Lordships a mother was left sole guardian of her only child, who would be possessed of ample means upon his attaining his majority. In this action he now complains that too much has been spent by his mother during the period of the guardianship. It appears to me, that not only can no rule be laid down which will bring out a definite sum, but I think no sum in particular can be pointed out of which it can be affirmed absolutely that it was proper to spend it, though it is possible in respect of some

sums to say that they were beyond the authority of the guardian. A broad view is all the case is susceptible of, and that may be thus stated—whatever it was proper under the circumstances for a prudent guardian to spend, is proper to be allowed, and whatever is beyond that line ought to be disallowed.

The only rule that can be laid down in such a case is that the boy should be brought up in such a way as is appropriate to the position which he is afterwards to fill. This is simple enough, but it is obvious that it opens a wide field of inquiry, so that it is impossible to say what ought or ought not to have been spent without having the circumstances of each case before one. It is plain that the disposition and tendencies of the boy himself must be considered by a prudent guardian who intends having the goal which is to be reached before him, that the boy should be properly fitted for the station in life which he is afterwards to fill; that he should neither be lavishly supplied according to his own will, nor, on the other hand, so treated with false economy that he might, and probably would, have an entirely erroneous view of his responsibilities when he attained his majority.

My Lords, I confess for myself it would be to my mind absolutely impossible to go through each of the leading topics which have been made the subject of inquiry at your Lordships' bar, and to affirm or to deny as to those items which had been contested that they were properly debited to the mother, or were properly expended by the mother in the course of her guardianship.

My Lords, I take in the first place the education of the boy, and I think it is necessary to give to that word "education" a very wide signification. It is not a question simply of what literary accomplishments he may become the master of, but he is to be fitted for life as a gentleman inheriting ample means, and having duties in the place in which he is to exercise his functions afterwards, and it may be (I am only speaking now generally) appropriate and proper that apart from keeping up the house, which it can hardly be denied could not be abandoned without injury to the estate, he should also be accustomed to the amusements and habits of those with whom he has afterwards to associate, and among whom he is to live, and that he should be as his mother, I think, in one place says, acquainted with the tenants among whom he is to reside, and upon whom he is to exercise an influence.

My Lords, passing on to another matter, one cannot help thinking that during his education at Eton (still using the word "education" in a very extended sense) it may have been very proper and appropriate that he should be familiar with the amusements which are there in vogue, and also that he should be as much as possible associated with his own mother at that time. I confess there is one passage of the Lord Ordinary's judgment with which I cannot say that I feel myself in harmony. The Lord Ordinary, speaking of an argument which had been urged by the mother or by those who were representing her, that it was at the boy's own desire, says, "I think there has been too much of this sort of thing in the defender's case. Her argument repeatedly has been that the boy wanted her to do this or that; therefore she did it; and therefore he must pay for it. It was no part of her duty as his guardian, to gratify every whim of a rather headstrong lad, and if she did so out of good nature, or for the sake of making things pleasant at the time, it by no means follows that he should be compelled to bear the cost." My Lords, I think that is an inadequate view of this question. Assuming the part which the mother has to play is that of a person who is really actuated, and only actuated, by a desire for the heir's good, including in that not only the mere increase of his temporal wealth, but that which is invaluable to a young man, namely, that he should have the associations and interests belonging to his class, that he should have the advantage of association with his own mother, and the influence of a mother, the value of which to a young man is inestimable; and assuming that if she had not herself been the guardian, but some other person had been the guardian, and he was considering what would be the best for the lad's real interest, I cannot doubt that a prudent guardian would have said to himself, "It may be that I can get a person for pay to look after this young man; it may be that he would live cheaper in a place that I should appoint, and by associating with a person who would, at much less expense than his mother, maintain the common home in which the two were to live;" but I cannot help thinking the guardian would also say to himself, "No person can be so useful a guardian, no person can be so likely to bring up the lad well, and look after him, and associate with him in a way calculated for his permanent benefit, as his own mother;" and therefore one would think that a prudent guardian would be quite justified in paying a much larger sum, in drawing much more upon the funds at his disposal as a guardian for what I have described as the inestimable advantage of the boy living with his mother in the style and manner which it would become proper for him to maintain afterwards.

My Lords, it seems to me that, taking that view, it is impossible to put your finger upon a particular piece of expenditure and say it was not proper that he should have this or that—it was not proper that the mother should have a summer residence for herself in the immediate neighbourhood of Eton. Taking that item by itself, as if it were the only thing you were to regard, I can quite well understand that a great many of those things might be rejected as extravagant and improper. It seems to me, with submission to the Lord Ordinary, that that is not the real question we have to determine. The question is, what, under the circumstances as they have turned out, was proper expenditure.

I do not reject the teaching of experience. We have to look at the matter now after the fact. I believe it to be perfectly legitimate to say that if this had been a question which the Court were considering beforehand as to what would, could, or might be appropriate expenditure for this boy, it may be that one would not have been able to anticipate that this or that sort of expenditure ought to be incurred; but I do not reject the teaching of experience, and I do not reject the fact which the Lord Ordinary himself refers to, that the boy with respect to whom these inquiries arise was a headstrong boy very desirous of having his own way. The question of how a boy of that character ought to be treated is a matter which is eminently a question for a prudent guardian to consider, and if the associations with which the mother was able to surround him at Eton, and if the fact that he was amply supplied with money—more amply perhaps than *a priori* would be considered the proper thing to do—involved a certain amount of expenditure, when we are looking at the question in the light of experience, it appears to me that a great deal of that expenditure was most appropriate, most wise, and conceived not only in the spirit dictated by the love of a mother for her son, but that it is what a prudent guardian who stood in no relation of blood or kindliness would advise to be done.

My Lords, under these circumstances, as I say, it is impossible, taking a broad view of this case, to do more than to say that the style of living, and the mode in which he was being brought up, and the circumstances with which he was surrounded, undoubtedly disclose a state of things in which it was a prudent course for a mother as guardian to do many things which *a priori* one might have said would have been beyond the ordinary mode in which one would treat a boy of that age.

My Lords, with respect to some part of the case your Lordships are not called upon to form any judgment, because the candour of the learned counsel who has ably argued on behalf of the defender at your Lordship's bar has admitted that it is impossible to maintain some of these specific items as sums which ought to be allowed; for instance, the claim in respect of Forrest Farm, as to which it cannot be denied that it is hardly susceptible of being sustained. Though, as I said just now, one cannot lay one's finger always upon a particular form of expenditure, and say, this was undoubtedly authorised and proper, there are some things which one can say certainly they were not. I think your Lordships have been very fairly treated by the learned counsel in the arguments they have addressed to us in eliminating as far as possible what really was not susceptible of argument on behalf of the appellant.

My Lords, the history of the case seems to me in some respects a very painful one. I cannot help thinking that many of the things which are now made subject of complaint and are susceptible of argument after the event, are matters which undoubtedly were done for her son at the time by a loving and devoted mother who would probably have given anything to him.

Now, my Lords, while I say that, I cannot help feeling that there are some lines which must be sharply drawn, and notwithstanding that the defender is a mother, one must not diminish if one can help it the obligation upon a person who is managing the estate and effects of another, to be able to render an account afterwards of what he or she has done. I cannot help feeling therefore, with respect to a great many of these things, that when the mother is challenged (whether one would have expected the son to raise the point or not is another question), she has only herself to thank for the consequences of disregarding the very wise advice of those whom she had at first consulted, to keep accounts. She was bound to keep accounts, and if in any respect she had suffered—and I cannot help feeling that she must have suffered very bitterly in having to defend an action of this sort against her son—she had to some extent brought it upon herself by her neglect to follow the wise advice that was given to her by keeping accounts so as to be able to show what in fact she had spent, and in respect to what matters she had spent it.

I do not propose to go into details. As I have said, I do not think the matter is susceptible of being treated as if one could go through every item of this account or even heads of the account, and say what was spent, or what ought to have been spent, in a particular month or in a particular year. Speaking generally, it appears to me that her mode of treatment of her son, regarding her simply as a guardian, was not only most kind, which might be expected, but also most wise. The particular disposition and tone which the son adopted, and which may be seen both from his own correspondence and from the reports of his tutors at Eton, show that questions of great difficulty arose as to the mode in which he should be kept from borrowing money by supplying him with money amply, and the mode in which he should be kept away from certain associations which might be injurious to him in after life; all the efforts were dictated, I have no doubt, not only by affection, but by wisdom. Still, having said all that, the question remains—and a very puzzling question it would be if one were to strive to go into it as a matter of minute detail—whether or not the allowance that has been hitherto made by the Courts below has been exactly what your Lordships would desire. My Lords, I cannot help thinking that they have drawn the line too narrowly; that the amounts which have been allowed in respect of upkeep and education have been too strictly limited. Therefore I have to move your Lordships that the judgments, so far as they have drawn too narrow a line, should be reversed, and that your Lordships should take a somewhat more liberal and wider view. I propose that the interlocutor of the First Division should be varied to the following extent and effect—that the appellant shall be entitled, in lieu of the yearly allowances

made to her by the interlocutor in the name of upkeep of establishment and maintenance of the heir, to take credit in account of an allowance at the rate of £3000 per annum, such allowance being in addition to the sums advanced by her to the heir, amounting to £2205, which are specified in the Lord Ordinary's interlocutor of the 22nd of April 1895. That is the substance of what I shall move your Lordships. Then one has to deal with the costs. As I have said, I think the circumstances show that there has been a considerable departure from what I would call the accurate business keeping of accounts by the appellant, and I think in respect of that matter it is impossible to say that your Lordships could visit altogether upon the heir the costs which have been incurred in these somewhat painful proceedings. I think therefore that the interlocutor of the Lord Ordinary, dated the 13th of November 1895, and the interlocutor of the First Division, should be reversed, first, in so far as they relate to or decern for the expenses of process; and secondly, in so far as they fix or decern for the balance due by the appellant; that each of the parties shall bear the expenses of process hitherto incurred by them in the Court of Session, and that the respondent shall pay to the appellant her costs of this appeal; that the interlocutor appealed from, except in so far as hereby varied or reversed, be affirmed, and the cause remitted to the First Division of the Court.

LORD WATSON—My Lords, this case comes before us in a very unsatisfactory shape. The appellant acted for nearly ten years as the guardian of the respondent, who is her only child. During that period she did not, as it was her plain duty to have done, keep tutorial or curatorial accounts showing the precise sums which from time to time were spent out of the income of the minor's estate upon his education and maintenance. Unfortunately the kindly relations which had previously subsisted between the mother and son ceased about the time of his attaining majority, shortly after which he raised the present action of accounting. The investigations which have been made in the course of the action afford sufficient materials for ascertaining the amount of the expenditure upon the minor's estate, which entirely consisted of land, and also the amount of the net income derived from it. But the family expenditure of guardian and ward have been massed together, and there are no materials for determining with anything like absolute precision whether some of the outlays were or were not, at the time when they were made, meant to come out of the funds of the minor. I have difficulty in resisting the conclusion that there are some charges for which the appellant now seeks to take credit, which at the time when they were incurred were not intended to fall upon the minor, and would in all probability never have been placed to his debit had it not been for their subsequent disagreement.

I agree with the learned Judges below in thinking that the presumption must *in dubio* be against a guardian who has failed to keep regular accounts, but I am of opinion at the same time that a guardian who has in other respects done her duty by the ward is entitled, even in the absence of such accounts, to a fair and reasonable allowance out of the income of his estate. In estimating the amount of the allowance the only test which occurs to me is to consider what sums would in the circumstances of this case have been allowed by the Court or by an independent guardian to the mother in respect of the minor being educated by her, and occupying along with her the principal residence upon his own property.

Keeping that principle in view I have come to the same conclusion with your Lordships in regard to the increased allowance which ought to be made to the appellant in substitution for the annual sums with which she has been credited by the judgment of the First Division. After the observations which have been made by the Lord Chancellor, in which I concur, I do not think it necessary to state the considerations which have led me to that result. I only desire to explain that the allowance has been estimated with reference to the whole period of minority and then distributed, and that it does not necessarily represent what ought to have been the amount allowed for each particular year.

LORD HERSCHELL—My Lords, I am entirely of the same opinion, and I desire only to add a word or two. I agree with my noble and learned friends that it is impossible to lay down any rigid rule in a case of this sort, but I think the test is that which my noble and learned friends have pointed out; the sum allowed ought to be such as it would be reasonable for an independent guardian or curator to allow to the mother for the maintenance of the child and of the establishment; and in determining what is reasonable all the circumstances of the case must be taken into account, the leading consideration—in fact one may say as regards the amount the governing consideration—being the interest of the heir.

LORD SHAND—My Lords, concurring as I do not only in the judgment proposed, but in the views which your Lordships have stated as the ground of that judgment, I think it unnecessary to add anything to what has fallen from your Lordships.

Their Lordships ordered that the interlocutor of the First Division be varied to the following extent and effect:—That the appellant shall be entitled, in lieu of the yearly allowance made to her by the said interlocutor in the name of upkeep of establishment and maintenance of the heir, to take credit in account for an allowance at the rate of £3000 per annum from 26th July 1883 to 4th April 1893, such allowance being in addition to the sums advanced by her to the heir, amounting to £2205, which are specified in the Lord Ordinary's interlocutor of the 22nd of April 1895: That the interlocutor of the Lord Ordinary dated the 13th of November 1895, and the interlocutor of the First

Division, be reversed, first, in so far as they relate to or decern for expenses of process; and secondly, in so far as they fix or decern for the balance due by the appellant: That each of the parties shall bear the expenses of process hitherto incurred by them in the Court of Session, and that the respondent shall pay to the appellant her costs of this appeal: That the interlocutor appealed from, except in so far as hereby varied or reversed, be affirmed, and the cause remitted to the First Division of the Court.

Counsel for the Appellant—R. B. Haldane, Q.C.—Clyde. Agents—Martin & Leslie, for Keith R. Maitland, W.S.

Counsel for the Respondent—The Lord Advocate (Graham Murray, Q.C.) — Sol.-Gen. C. S. Dickson, Q.C.—Pitman. Agents —Grahames, Currey, & Spens, for J. & F. Anderson, W.S.

COURT OF SESSION.

Friday, September 11.

OUTER HOUSE.

[Bill Chamber.

M'LAGAN, PETITIONER.

Entail—Process—Deed of Consent—Clause Imported by Reference—Destination—A.S. 18th November 1848—*Titles to Land Consolidation (Scotland) Act* 1868, *secs.* 3 *and* 9.

In a deed of consent by a next heir to a petition under the Entail Statutes, it is not necessary to set forth the destination under which the entail is held, provided the destination be referred to as set forth in the deed of entail duly recorded in the register of tailzies, or in any deed so recorded and forming part of the progress of titles to the lands.

Peter M'Lagan of Pumpherston presented, on 21st April 1879, a petition to the Sheriff of Linlithgow for authority to feu certain entailed lands in the parish of Uphall and County of Linlithgow. On 16th June 1879 the Sheriff granted authority as craved, and ordained the said feus to be executed in accordance with draft feu-charter approved by him. By the draft feu-charter it was provided that the feuar should be bound to erect buildings on the feu of the capital value of not less than double the feu-duty at four per cent.

Under the authority so obtained, the said Peter M'Lagan granted a feu-charter in favour of John M'Knight, quarryman, Uphall, dated 10th January, and recorded in the division of the General Register of Sasines applicable to the County of Linlithgow, 12th February 1880. In the feu-charter, though in other respects the draft charter approved by the Sheriff was followed, the sum to be expended on buildings was inadvertently stated at less than the minimum allowed by the Sheriff. The title of the said John M'Knight having in consequence been objected to, after the feuing powers granted by the Sheriff had expired, the said Peter M'Lagan presented a petition to the Court of Session for authority to grant a deed of ratification of the said charter in terms of the Act 11 and 12 Vict. cap. 36, 16 and 17 cap. 24, 38 and 39 Vict. cap. 61, 45 and 46 Vict. cap. 53, and relative Acts of Sederunt.

The Lord Ordinary officiating on the Bills (KINNEAR) on 24th August 1896 remitted to Mr P. H. Don Wauchope, W.S., to inquire into the circumstances set forth in the petition, and the regularity of the procedure adopted. A deed of consent by the then nearest heir of entail was lodged in process.

Mr Don Wauchope presented a report, in which, after narrating the circumstances above set forth, and the regularity of the procedure in other respects he proceeded as follows:—"This deed (*i.e.*, the deed of consent) although otherwise in the form prescribed by the Act of Sederunt of 1848, does not contain the destination at length, which the reporter considers to be requisite. The petitioner's agents consider that it is unnecessary to insert the destination at length in view of the provisions of section 9 of the Titles to Land Consolidation (Scotland) Act 1868. The reporter is inclined to the view that this section does not apply to deeds of consent, and he does not think that such a deed is covered by the terms 'deed' and 'conveyance' which are defined by section 3 of this Act. The reporter therefore begs to leave this point for your Lordship's decision."

By Act of Sederunt of 18th November 1848, to regulate the forms of consent under the Act 11 and 12 Vict. cap. 36, it is provided—"That all consents required by the said Act to instruments of disentail, deeds of conveyance or security, leases, feus, or excambions of any entailed estate, or part thereof, or the disposal of any money, or of other property, real or personal, invested in trust for the purpose of purchasing land to be entailed, or of land directed to be entailed, or any other act or deed to which the statute requires consent, shall be in the form, or as nearly as may be in the form of the schedule hereto annexed."

By the schedule it is provided that the destination of the entail is to be inserted in the deed of consent.

By section 9 of the Titles to Land Consolidation (Scotland) Act 1868 (31 and 32 Vict. c. 101) it is provided as follows:—"It shall not be necessary in any conveyance or deed of or relating to lands held under a deed of entail, or of or relating to lands obtained by excambion in exchange for lands held under any deed of entail," "to insert the destination of heirs, or the conditions, provisions, and prohibitory, irritant, and resolutive clauses, or clause authorising registration, in the register of tailzies, contained in any such deed of entail, provided the same shall in such conveyance or deed be specially referred to, as set forth at full length in such deed of entail recorded in the register of tailzies, if the same shall have