

prayer of the note, except in so far as it prayed the Court to interdict the respondent from attending and voting at any meeting of the heritors for the purpose of considering any motion, proposal, or resolution relating to the alteration of the site of said schoolhouse; found neither party entitled to expenses up to the date of the interlocutor of the Lord Ordinary, and the respondent (the minister) entitled to expenses since that date.

Agent for Complainers—William Kennedy, W.S.
Agents for the Rev. J. G. Tainsh—Meuzies & Coventry, W.S.

Friday, January 29.

MRS CECILIA HATTON OR BAIRD—
PETITIONER.

Petition to fix allowance for maintenance of pupil.

A boy nine years of age became entitled on the death of his father to a landed estate of £15,000 a-year, and about £1,000,000 of personal property, which was directed to be held in trust for his behoof till he should attain the age of twenty-five years. Circumstances in which the Court (*diss.* Lord Deas) fixed the allowance to be paid to his mother out of his estate for his maintenance, education, and residence, at £3000 a-year.

The late George Baird of Strichen and Stichill died on 24th August 1870. At the time of his death he was possessed of landed estate to the amount of £15,000 a-year, and personal property to the amount of £1,000,000.

In the year 1858 the petitioner was married to the deceased. By antenuptial contract between him and the petitioner she was provided with an annuity of £1500 a-year in case of her survival.

There was only one child of the marriage, George Alexander Baird, born 30th September 1861.

In December 1868 Mr Baird executed a trust-disposition and settlement, by which he conveyed to trustees his whole estate, heritable and moveable. The trustees are directed to pay to his wife a free life-annuity or jointure of £2000, over and above the £1500 a-year secured to her by the antenuptial contract, the additional annuity to be increased to £4000 in the event of George Alexander Baird dying before majority and without leaving issue, and to be forfeited in the event of her second marriage. The trustees are further directed to deliver over to his wife, as her absolute property, such of his carriages and carriage horses, with their harness, as she might select, and to allow her the free use of the mansion-house, offices, and garden of Stichill, with the whole household plenishing and effects situated in or belonging to the said mansion-house at the time of his death, and to pay her an allowance of £150 sterling per annum towards the cost of keeping up the garden of Stichill, but that only so long as she shall occupy the mansion-house, and with no power to let the mansion-house to others; and it is declared that when George Alexander Baird, or any other child born to the truster, who shall succeed to his lands and estates under the disposition and deed of entail directed to be executed by the trustees as after mentioned, shall attain the age of twenty-one years, he or she shall be entitled to take up his residence at Stichill house, if so inclined, in which

event an allowance of £500 yearly is to be made to the petitioner to enable her to provide herself with another place of residence. The truster directs his trustees to execute a strict entail of his lands of Strichen, Stichill and others, in favour of his son George Alexander Baird, whom failing, in favour of a series of heirs named in the deed. Provisions follow in favour of younger children of the truster, if any should exist. After providing for the whole other purposes of the trust, the trustees are directed to hold the whole residue of his estate for behoof of George Alexander Baird, and the heirs of his body, whom failing, for behoof of any other son or sons thereafter born to him, in order of seniority, whom failing, for behoof of any daughter or daughters thereafter born to him, equally among them if more than one, but under the declaration that the residue should not be made over to George Alexander Baird, or any other son thereafter born, until he should attain the age of twenty-five years complete, it being expressly stated to be the truster's intention that his whole means and estate, including the lands directed to be entailed, should continue under the exclusive management and direction of his trustees, without any right of interference or control on the part of his said son or sons.

In the event of George Alexander Baird and any other child of the truster dying before attaining majority and without issue, the trustees are directed to divide his estate according to a certain scheme. Very ample powers are given to the trustees, and among others, to restrict at their sole discretion the share given to any of the beneficiaries under this part of the deed to a bare alimentary life-annuity of the share provided to them.

The trustees were appointed to be tutors and curators of such of the truster's children as might be in pupillarity or minority at his death.

The trust-deed contains no express directions with reference to the allowance to be made on behalf of the truster's son during his minority.

Mrs Baird accordingly presented a petition to the Court to fix an allowance for her son's maintenance.

The petition, after a narrative of the facts mentioned, proceeds:—"When not absent for the purposes of education, the pupil has resided with the petitioner.

"The petitioner has since her husband's death, when not absent on account of her health, which renders it necessary for her to live in England, or some more southern climate, during the winter months, resided at the mansion-house of Stichill, where her son has also resided during his holidays. It is the desire and intention of the petitioner to continue her residence at Stichill along with her son. It was the wish and intention of her husband that the pupil should reside at Stichill, and the petitioner is satisfied that it will be greatly to his advantage that he should do so.

"The petitioner has received from the trustees the jointure of £3500 provided for her by her antenuptial contract and the trust-disposition and settlement, and the free use of the mansion-house of Stichill, along with an allowance of £150 towards the cost of keeping up the garden, but this sum has been wholly inadequate and insufficient to enable her to maintain and educate her son according to his fortune and station, and to keep up the necessary establishment, and defray the expense of living at such a house as Stichill, unless a reasonable and fair allowance is made to her by

the trustees for behoof of her son. The trustees have hitherto allowed only £1000 a-year for the maintenance, education, and residence of the pupil; but in consequence of representations made to them by the petitioner as to the inadequacy of such an allowance, the trustees have intimated to her that an allowance of £1500 will be made for the year commencing 11th November 1871, and ending 11th November 1872, and thereafter an allowance at the rate of £2000 per annum.

"This allowance, which along with the petitioner's jointure, will amount to £5000 for the year preceding 11th November 1872, and £5500 per annum thereafter, is quite insufficient, having regard to the station and fortune of the pupil, and the necessary expenses of the petitioner on his behalf, including a reasonable sum to assist her in keeping up the establishment at Stichill as a family residence.

"The mansion-house of Stichill is a very large one, being one of the finest houses in the south of Scotland. It was recently built for Mr Baird, at a cost, including offices, of not less than £36,000. It requires an establishment of at least twenty-four servants in connection with the house and stables to keep them in proper order, and in a becoming manner. The late Mr Baird furnished the house in a handsome and expensive style, and placed in it many valuable pictures and statues, which still continue there. The petitioner cannot live at Stichill, keep the necessary establishment there, and defray the costs of her own maintenance, and of her son's maintenance and education, at a less cost than £7000 per annum.

"The personal expenses of the pupil, incurred by the petitioner for his education and clothing during the past year, have amounted to about £500, and they will be considerably larger when he is removed to Eton, as he probably will be when he arrives at the age of twelve.

"The petitioner submits that, in the circumstances, £3500 per annum is a moderate and proper allowance to be made to her on account of her son, and that it should commence as at the term of Martinmas 1870, and be payable in future quarterly in advance.

Answers were lodged for the trustees of George Baird, in which they admitted generally the facts as stated by the petitioner. They made the following statements:—"The respondents were all intimately acquainted with the truster, and had acted with him in various family trusts and affairs of great magnitude, and three of them had long been his partners in business. The truster did not nominate the petitioner either to the office of trustee or of tutor or curator to their son. . . . The respondents also maintain the mansion-house and offices of Stichill in repair, keep up the avenues, walks, and grounds, and relieve the petitioner of all public and local rates and taxes leviable in respect thereof. . . . The respondents fixed the allowance to be paid to Mrs Baird for her son's education and maintenance at £1000 for the first year, then £1500 for the second or current year, and £2000 per annum thereafter; the allowance for the past year was paid quarterly. It is the intention of the respondents to pay such sums as may in their opinion be suitable when it becomes necessary to provide him with an establishment. The respondents have fixed these allowances after due consideration, and in accordance with what they believe to be their duty as tutors and trustees with reference to the upbringing of the truster's son. In conclu-

sion, the respondents have respectfully to submit to your Lordships that there are no competent or valid grounds for interfering with their action in this matter, and that the prayer of the petition ought to be refused."

LORD ADVOCATE and MACKAY for the petitioner.
SOLICITOR-GENERAL and WATSON for the respondents.

At advising—

LORD PRESIDENT—Mr Baird died on the 24th August 1870, leaving a widow (the petitioner) and one son. He left very large estate, landed estate to the value of £15,000 a-year, and about a million pounds of money. By marriage-contract the petitioner was provided with an annuity of £1500 in event of her survival. By his trust-disposition and settlement he provided her with an additional annuity of £2000, so that the lady's income derived from her husband's estate is £3500 a-year.

It is pretty clear that for a lady with such an income Stichill is far too expensive a place. It is a house which contains sixty rooms, and requires not less than twenty-four servants as an establishment for the house and stables. She would be more comfortably and more suitably settled in a smaller house and smaller establishment. But it must be observed that it was the clear wish and intention of Mr Baird, expressed in his settlement, that she should live at Stichill. It is clear from the same source that the reason of this intention was for the sake of his son. The settlement gives no direction as to the provision to be made for the maintenance of her son. If Mr Baird had fixed the aliment to be paid it is doubtful whether we could have interfered. Had he even expressly left the amount of the aliment to the discretion of the trustees, there would have been considerable difficulty in interfering with their discretion; and we should not have done so unless it was distinctly shown that they had acted very unwisely or inexpediently. The entire silence of the truster on the point lets in the discretion of the Court much more fully than it could have been exercised in either of the cases which have been supposed. The trustees are to exercise their discretion in the first place, but subject to the control of the Court; and we must suppose that such was Mr Baird's intention.

The only question is, What course is best for the heir? This is the single consideration that must influence the Court. The trustees, in compliance with the intentions of the testator, have arranged that Mrs Baird shall take up her residence at Stichill, as the boy's home. For the purpose of maintaining the establishment, the trustees are of opinion that an addition of £1500 a-year to the lady's income is sufficient—making her whole income £5000 a-year. Mrs Baird suggests that the sum ought to be larger—that it is not possible to maintain a place like Stichill with a suitable establishment on this sum.

Various circumstances have to be taken into account. In the first place, the great wealth of Mr Baird, which is all to be inherited by this only child. The income of the estate may be moderately estimated at £55,000 a-year. If the proposition of the trustees is sustained, and Mrs Baird's income limited to £5000 a-year, there will be a balance of surplus income of £50,000 accruing each year. The boy being only ten, and not being entitled to the possession of his inheritance till twenty-five, this surplus income will in fifteen years, without reckoning accumulated interest, amount to £750,000. But suppose that Mrs Baird's

proposal is admitted, and her whole income increased to £7000 a-year, the surplus income of the estate will then be £48,000; and that in fifteen years again, without reckoning accumulated interest, will amount to £720,000. The boy's fortune, when he comes into possession of it, will thus in one case be increased by £750,000, and in the other by £720,000. In either case he will have a fortune of something approaching to two millions in money. The difference between the two is not worth a moment's consideration. If any interest secured under the settlement were sacrificed, that would be very different—for instance, if there were any necessity for accumulating for younger children's provisions. But the only effect of restricting the allowance would be to increase the already enormous fortune of the heir. We must lay out of consideration the interest of those who are to succeed in the event of the boy not reaching twenty-five. The son is the only person to be considered at all. Again, it is sufficiently peculiar that Mrs Baird's income would be very considerably increased on the death of her son. I am not disposed to throw this out of view. Her additional annuity is in that event to be increased to £4000, and she is to be entitled to leave Stichill, receiving an allowance of £500 a-year for a residence. If her son should die, she would thus have £6000 a-year clear in her own right. It is not desirable that the income of this lady should be liable to be increased by such a calamity as the death of her son.

Still, with all these considerations, we must avoid anything like extravagance merely because the estate is so large that it will not be missed. It is argued by the trustees, in support of the resolution to which they have come, that the mere expense of education and maintenance of the boy will not much exceed £500 a-year, and that to allow more than £1500 a-year would be extravagant. This is not quite a fair view. It is very true that his mere maintenance and education at school will not cost much more; but the education of a young man with prospects like his is not confined to that obtained at school. One part of the education is to be received at home. We cannot lay out of view the position in society which he will necessarily assume when he comes into possession. He will be a landed proprietor to a considerable extent. It is desirable that he should be familiar with the interests of his estate, and of those who cultivate it. It is desirable that he should have a taste for field sports. It is impossible to attain this result without a considerable expense in stables and kennel. The expense suited to the capacities of such a place as Stichill is a very proper expense out of this large estate. It is still more desirable—in fact it is of paramount importance—that he should be associated with those whose example will engender pure, upright, and manly tastes, in order that he may take a suitable part in society, and perhaps advance the civilisation of this country. These advantages cannot be directly purchased by wealth alone. But the want of wealth is not unfrequently a great obstacle to the acquirement of such tastes and habits. The surest way in which that high cultivation can be reached is by wealth, in combination with other circumstances. It is in the hope that such a result will be realised that we shall be justified in giving this lady such an allowance as she asks. It will be the duty of Mrs Baird to surround herself with the best society she can command, and for that

object to make Stichill as attractive a place as possible. I am so satisfied with the importance of the duty on her part, that I am not disposed to refuse her the means necessary to discharge the duty.

I am of opinion that while the demand of Mrs Baird may be somewhat in excess, it is not very much so. I propose that Mrs Baird should have £3000 as an allowance.

LORD DEAS—We have nothing to do with the provisions made by Mr Baird for his widow. The question is, Whether the £1500 a-year allowed by the trustees to her for the maintenance and education of her son is so inadequate as to entitle us to step in and double the allowance? Nobody doubts that, in the first instance, the question is for the trustees to judge what shall be the allowance. The present expense of the boy's education is about £500 a-year. He can only reside with his mother during the holidays, and as Mrs Baird's health requires her to live in a more southern climate in winter, it is only in the summer holidays that he can live with her at Stichill. The trustees are persons selected by the testator, in whom he had confidence, and to whom he has given the very largest powers—(His Lordship then examined the trust-deed at great length, to show that Mr Baird and his advisers had given the most careful attention to its provisions, and that discretionary powers to a most unusual extent were by the deed vested in the trustees). I cannot doubt that one of the requisite powers given to the trustees is to do what they have done, viz., to fix the allowance for the maintenance of the heir. The position of matters is precisely the same as if powers to fix the allowance had been expressly given. My difficulty is to interfere with the discretion vested in the trustees. I concede that if they had gone extravagantly wrong, or even if there be anything excessively inexpedient in what they have done, we might interfere. I do not doubt our abstract power of interference; but to entitle us to exercise that power it is not sufficient that they have done something which we would not have done. My difficulty is to see that they have gone so palpably wrong as to justify our interference. Your Lordship says that it is right for the boy to be brought up with respect to his future position. I fail to see how it is so palpably necessary for a boy of eleven when he comes to Stichill that there should be £1000 a-year more spent in entertainments and the like. What the trustees will do the year after next we do not know. When he comes to seventeen or eighteen the propriety of the expenditure may be very different. There is no doubt a very large fortune here, and there will be a very large accumulation, but the question affects the present not the future. I do not think we are to proceed on communistic ideas that large fortunes are inexpedient. We have only to consider whether the trustees have failed in their duty in such a palpable manner as to entitle us to step in.

LORD ARDMILLAN—It is unnecessary for me to refer in detail to the very peculiar and unusual facts of this case. It is enough to say that the petitioner is the widow of Mr George Baird, who died on 24th August 1870, leaving an only child, a boy, now ten years old. Mr Baird left landed estates, of which the rental is £15,000 a-year, and also property, exclusive of his landed estate, of great amount, yielding annual returns of not less than £40,000 a-year.

Mrs Baird had a jointure of £1500 a-year secured by her marriage-contract, and a life rent annuity of £2000 a-year provided by Mr Baird's trust-settlement, of date 3d December 1868. She has also a small allowance of £150 towards keeping up the garden.

The trust-deed contains no direction, and gives no indication of intention, in regard to any allowance for support and education of the only child of Mr Baird. The respondents (trustees of Mr Baird) have, however, hitherto allowed £1000 a-year, but it is arranged to be £1500 during the present year, and £2000 a-year for the year commencing 11th November 1872, and thereafter.

It appears that the cost of education and clothing of the boy last year has been £500; and when he leaves the preparation school and goes to Eton the expense will be increased.

In the event of the death of the boy before majority and without issue, the life rent annuity conferred by the trust-settlement on Mrs Baird is to be increased from £2000 to £4000. Taking the allowance as it stands at present, it is obvious that by the death of her son before majority the income of Mrs Baird would be augmented. It may be reasonably suggested that this is of itself a ground for increasing her present allowance. I agree with your Lordship in the chair on this point. The petitioner Mrs Baird claims from the Court an award, or a direction to the trustees to pay her an allowance on account of her son of £3500. The respondents (trustees of Mr Baird) resist this claim, and maintain that no additional sum should be allowed.

On consideration of the whole circumstances of the case, I am of opinion—(1) That it is within the power of the Court, in the exercise of a sound judicial discretion, to sanction and direct an increased allowance, if your Lordships think it just and right to do so. Mr Baird has not himself disposed of this matter. If he had, the Court would not have disturbed his directions. Nor has he afforded the means of ascertaining, even by implication, his intentions. He has not even left, by express direction, the disposal of the matter to his trustees. If he had done so, nothing but a strong case, involving serious, and I may say gross, departure from a sound discretion would induce the Court to interfere. But it is not so. There is in the deed nothing to indicate Mr Baird's wish on the subject, either in the form of direction or of special committing to discretion. In these circumstances, I think that the application to the Court is competent and legitimate, and that the interposition of the Court, if we are satisfied on the merits of the petition, is quite within the power of the Court. I do not think that on this point there is difference of opinion.

(2) I think that in the exercise of judicial discretion the first and paramount consideration must be the welfare, the health, the happiness, the improvement of the boy. The claims of the widow in this matter can only be taken into account, and we only now view them, as affecting the interests and prospects of her son.

It is certainly possible for Mrs Baird to live on even less than her present allowances. But looking to the immense fortune which this boy has inherited, and to the enjoyment of which he will succeed if he reaches majority, and looking to the fact that Mrs Baird's residence at Stichill was contemplated by Mr Baird as maintaining a home for the boy, your Lordships will consider the ques-

tion as affecting him; and, if you think it better for his interests that this allowance shall be increased, then it is not only competent but right to increase it.

(3) I am of opinion that, being called to compare the advantage to the boy of the two proposals before us—increase or no increase of allowance—there is little doubt or difficulty in the choice.

These proposals are, first, The proposal of the trustees to continue to Mrs Baird her present allowance for her son of £1500, to be raised next year to £2000, which, with her jointure and annuity, will amount to £6000 in all this year, and £5500 next year; and to accumulate for the boy the income of these great estates, to the extent of above half a million, in addition to his £55,000 a-year. I do not feel that I am expressing any communistic sentiment when I say that I do not think that this enormous accumulation, limiting the present allowance, is for the good of this youth.

Second, The proposal of Mrs Baird to encroach slightly on this immense accumulation, and to increase her allowance for her son to £3500, so as to enable her to maintain a home at Stichill for herself and her son, where he may return and enjoy himself, and, as I think, improve himself during his holidays,—a cheerful, tasteful, noble, hospitable home,—suitable to the position and prospects of this youth, whose great wealth must place him in a position of temptation and peril, against which his mother must desire to protect him by home influence, home attractions, and home feelings, so that the acquirements of school and college may be enhanced by the refinement of tastes cultivated in good society, and crowned by the worth and manliness and courtesy of a Scottish gentleman.

That the mother should desire this for her son, and desire it not for her benefit but for his own, appears to me natural and right.

I do not think that the money, taken out of the great fund for accumulation, could be better applied. Looking only to the interests of the boy, but using that term in its comprehensive sense, I think that Mrs Baird's allowance should be increased. Lord Deas has said that Mr Baird was liberally disposed towards his wife and son. In now dealing liberally by the widow and the son of Mr Baird, in a matter on which he has left no direction, we are acting in the spirit which Mr Baird would have desired.

In regard to the amount of increase, I have had some hesitation. I do not think Mrs Baird's demand by any means extravagant. But the boy is very young. The cost of his education will increase, even before he goes to the University; and another application may be made, if the petitioner is so advised.

At present I think that an allowance of £3000 a-year ought to be awarded to Mrs Baird for the maintenance, education, and residence of her son; and, under all the circumstances, I think that allowance moderate.

LORD KINLOCH—The question raised by this petition is, what is the amount of the allowance proper to be made to the petitioner Mrs Baird for the maintenance and education of her son George Alexander Baird, now above ten years of age, and who is admittedly in receipt of an income of at least £55,000 per annum? There can be no doubt of the competency of the Court to fix this allowance, if it shall appear to them that the trustees of the deceased (to whom the duty fell in the first

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. Howa, 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 decreed 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-