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

cation of final judgments are to contain a copy of the summons or petition and defences or answers with the interlocutors, and without any other narrative or without argument, and such bills are to be at once passed by the Lord Ordinary on the bills on caution for expenses both in the Inferior Courts and in the Court of Session, or on juratory caution.

"By the Act of Sederunt (11th July 1828, sec. 25), following on that statute, it is ordered that in advocations of interlocutory judgments and in every suspension at the lodging of the letters for calling, articulate reasons of suspension or advocation shall be lodged, and the answers are to be in corresponding form.

"The next statute to be noticed is the Advocations and Suspensions Act of 1832 (1 and 2 Vict. cap. 86, sec. 3.), which enacts that advocations of interlocutory judgments are to be by note in the Bill Chamber prefixing the interlocutor, and praying for relief or remedy, with articulate statements of reasons of advocation and note of pleas in law. Answers may be ordered, and the note if passed is to be called, and the record closed in note and reasons, or on revised reasons and answers, or on condescendence and answers, and the cause is thereafter to proceed before the Lord Ordinary and the Court of Session in common form; and by the next section it is enacted that in suspensions of Inferior Court decrees *in foro*, except removings, the procedure is to be by note reciting the import and effect of the decree, and praying for relief; and on caution for implement of the decree and expenses in the Court of Session the note is to be passed, but 'when a party is desirous to have such decree of any Inferior Court pronounced *in foro* suspended without caution, or on juratory caution, and also in suspensions of decrees of removing, there shall be annexed to such note of suspension an articulate statement of the facts on which the suspension is founded, and a note of pleas in law, and such note shall be laid before the Lord Ordinary on the Bills, who may pronounce such order as shall be just; and where answers shall be ordered, such answers shall be in a similar form to the reasons of suspension; and in case the Lord Ordinary shall pass the note, the same procedure shall take place as is hereinbefore provided in the case of advocation of interlocutory judgments,' that is to say, the record is to be made up by the Lord Ordinary, and the cause proceeded with as an ordinary action in the Outer House.

"By the Act of Sederunt (24th Dec. 1838, sec. 3) following on that statute, it is provided that suspensions shall still be competent on consignation and that the same procedure is to be observed in such suspensions as in suspensions without caution, or on juratory caution: in other words, as in advocations of interlocutory judgments.

"The next statute is the Act 11 and 12 Vic., c. 36, the 9th and 32d sections of which have been already recited.

"By the Act of Sederunt, 5th February 1861 (sec. 6), it is provided that where by the existing practice notes of advocation or suspension require to be lodged in the Bill Chamber containing an articulate statement of facts and pleas in law, and are followed by answers prepared in a similar form, and such notes are passed by the Lord Ordinary, the complainer shall lodge revised reasons of advocation or revised reasons of suspension, as the case may be, when the cause is called, either in time of Session, or on any box day in vacation or recess, and on the other hand the respondent or charger shall lodge revised answers when he returns the process as aforesaid; and by sec. 7 it is provided that every record which is closed in the Outer House shall, unless the Lord Ordinary otherwise appoint, be printed, and the interlocutor closing the record or holding the same to be closed shall in all cases be held to be an appointment to print the same, unless the contrary be expressed in the interlocutor.

"By the Court of Session Act 1868 (31 and 32 Vict. c. 100), it is enacted that in all proceedings in the Bill Chamber, as soon as an interlocutor passing the note has become final, and caution has been found or consignation has been made when ordered, the cause shall become for all purposes an action depending in the Court of Session, and may immediately be enrolled by either party in the Motion Roll of the Lord Ordinary to whom it is marked.

"It appears to me that by the minute lodged by the complainers before the answers were lodged, the present process became a note of suspension on consignation, which requires an articulate statement of reasons of suspension and note of pleas in law, and as it contained these when presented, and as answers were ordered and lodged, and as the note has been passed by interlocutor, now final, the record must be closed and the case proceeded with in the Outer House. I have therefore refused the motion of the respondent to report the cause to the Inner House."

This judgment has become final.

HOUSE OF LORDS.

Thursday, February 25.

M. P. GALT (ALEXANDER'S FACTOR) *v.* MILLER (FINLAY'S TRUSTEE) AND OTHERS.

Succession—Vesting—Trust—Remit.

A took the title to heritable subjects which he had purchased in the names of certain persons, who, by deed of declaration of trust, declared that they held the subjects in trust *inter alia* for the payment of the free yearly proceeds to A during his life, for his liferent use allenarly, and after his death to his wife, if she survived him, her liferent to be restrictable to such extent and in such manner as might be fixed by A; and after the determination of the foresaid liferents, in trust for A's children, in such shares and proportions as might be fixed by A, and failing such apportionment, share and share alike; declaring that the fee of the shares should be payable after the determination of the said liferents, and after the whole children who should have survived A and his wife, and who should be alive, had attained majority, or at such other times after the determination of the said liferents as should be fixed by A. A died, survived by his wife, and without fixing the shares of the children. *Held* (reversing the judgment of the Second Division of the Court of Session) that the children's shares of the estate vested before the death of the widow. Cause remitted to the Second Division to review generally the interlocutors complained of.

The late John Henry Alexander, proprietor and