under final decreets, they do not admit of being adjusted in the same way. I do not think that in this case there can be any application of the doctrine of *bona fide* perception and consumption.

Lord Shand—I am of the same opinion. One cannot help feeling as questions of this kind present themselves that cases of hardship must frequently arise from the long interval of time that elapses between the granting of the interim and final decreets of locality, and the omission, it may be, on the part of the heritor who is underpaying, to keep that in view and provide funds for his liabilities—cases in which, as we find here, the interest on the over-payments is almost three times the amount of the principal sum itself. At the same time, it is not to be forgotten that the remedy against such evils lies in the hands of the heritors themselves; for the parties who are nterested in such questions, or those who represent them in the profession, have the means of avoiding these hardships by taking steps to have the final locality adjusted on its proper basis and according to the true legal rights of the parties without undue delay. It is well that, the rule being fixed, the profession should see that this is the only way by which they can avoid hardships of this kind, and that the remedy is within their own power.

This interlocutor was pronounced:—

"Find and declare, in answer to the first question, that the second parties are bound to reimburse the first parties the sum of stipend overpaid by the predecessor of the first parties, and unpaid by the second parties, during the period between 1808 and 1825; and, in answer to the second question, that the third party is bound to reimburse the first parties the sum of stipend overpaid by the predecessor of the first parties, and unpaid by the third party, during the period between 1825 and 1833; and decern," &c.

Counsel for First Parties—Mackintosh—Asher. Agents—Mackenzie & Kermack, W.S.

Counsel for Second Parties—Kinnear—Pearson. Agents—Gibson & Strathearn, W.S.

Wednesday, July 18.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

JARVIE *v.* WHITE AND OTHERS.

Issue — Reduction—Fraud, Facility, and Essential Error.

Terms of issues adjusted for the trial of a reduction of a *mortis causa* deed of settlement on the grounds of fraud, facility, and essential error.

This was an action of reduction at the instance of Nedrick Jarvie, rope-spinner, Stobcross Street, Glasgow, of a deed of settlement which bore to be executed by Mrs Robina Jarvie or White. The defenders were Alexander White, the husband of the testatrix, and John and Alexander White, his sons by a former marriage, and others.

The pursuer averred, *inter alia*—"(Cond. 8) The said pretended deed of settlement was prepared by Mr Low, of the firm of Howie & Low, writers, Glasgow, who was then acting as agent of the defender the said Alexander White, on the employment and instructions of the said Alexander White. Neither Mr Low nor anyone on his behalf ever received any instructions, either written or verbal, from the said Mrs White, or indeed ever saw her. No draft of the said pretended settlement was submitted to the said Mrs White, and it was not read over to her, and she was in such a weak state of health, both in body and in mind, that she could not have understood it supposing it had. Neither was the draft nor the principal shown to, or read to or by, any of her relatives, though two of them were residing in the same house with her in Arran from the time she went to Arran till she returned home. At the date of the said deed of settlement the said Mrs White was not of a sound disposing mind, and was, from mental and physical weakness, incapable of writing or signing her name, and incapacitated from giving directions in regard to her affairs or the disposal of her estate after her death. The testing clause states that the said pretended deed was subscribed at Glasgow on the 21st June 1873. Mrs White was not at Glasgow on that day. If the pretended deed was signed by her at all (and the pursuer avers it was not), it was signed at Arran on a different day. The defender, the said Alexander White, after procuring Mrs White's signature to the pretended deed (assuming her alleged signatures thereto to be genuine), took it back to Glasgow, got the testing clause filled in, and then it was kept locked up till Mrs White's death, and she never had the opportunity of seeing it, and never knew of its existence. (Cond. 9) Even on the assumption that at the date of the said pretended deed of settlement the said Robina Jarvie or White was not so mentally weak as to make her wholly incapable of executing a settlement, she was yet so weak and facile in mind as to make her easily imposed on, liable to circumvention, and incapable of resisting importunity; and the said pretended deed (assuming her alleged signatures thereto to be genuine) was procured from her by the defender the said Alexander White taking advantage of her said weakness and facility and obtaining the said deed from her, to her prejudice and lesion, and to the prejudice and lesion of the pursuer, by fraud and circumvention and undue influence, or one or other of them, on the part of the said Alexander White. (Cond. 10) Assuming that the said Robina Jarvie or White was capable of understanding the said pretended deed of settlement, and that her alleged signatures thereto are genuine, the pursuer alleges that the said pretended deed was signed by her under essential error as to its nature and effect, induced by fraudulent representations in regard to, or fraudulent concealment of, its true meaning and effect on the part of the defender the said Alexander White."

The issues, as approved of by the Lord Ordinary, were as follows:—"(1) Whether the signatures 'Robina White' to the deed No. of process are not the geniune signatures of the deceased Mrs Robina Jarvie or White? (2) Whether the said

deed is not the deed of the said Mrs Robina Jarvie or White? (3) Whether at the date of the said deed the said Mrs Robina Jarvie or White was weak and facile in mind and easily imposed upon; and whether the defender Alexander White, taking advantage of the said weakness and facility, did by fraud or circumvention impetrate and obtain the said deed from the said Robina Jarvie or White, to her lesion? (4) Whether the said deed was executed by the said Mrs Robina Jarvie or White under essential error as to its nature and effect?"

The defenders reclaimed, objecting *in toto* to the last issue; and the Court altered the issues to the effect of deleting No. 1 on the ground that any case that could be tried under the first issue could be tried under the second, although it might be necessary that the jury should return a special verdict. The Court also caused to be added to the last issue "induced by the fraudulent misrepresentations of the said Alexander White."

Counsel for Pursuer — Rhind. Agent — W. Officer, S.S.C.

Counsel for Defenders — Kinnear. Agents— Dove & Lockhart, S.S.C.

Thursday, July 19.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

WILSONS *v.* BRYDONE.

Nuisance—Property—Mutual Gable.

The proprietor of a tenement built as a dwelling-house in a street in Edinburgh put up a steam-boiler and engine in his premises for the purposes of a printing business, and introduced the flue of the furnace of the boiler into one of the ordinary chimneys of a mutual gable wall. The owners of the adjoining tenement raised an action to have the flue removed and the defender interdicted from again inserting it. Evidence was led that the heat was excessive, and rendered the pursuers' house almost uninhabitable.—*Held* that the gable was used in a way inconsistent with the ordinary use of a mutual wall, and that a nuisance existed which must be removed, but defender allowed to put in a minute stating how he proposed to obviate it.

Counsel for Pursuers—Fraser—Rhind. Agent —William Paul, S.S.C.

Counsel for Defender—Guthrie Smith—R. V. Campbell. Agents—H. & H. Tod, W.S.

Thursday, July 19.

FIRST DIVISION.

PETITION—JAMIESON (OFFICIAL LIQUIDATOR OF THE GARBEL HÆMATITE COMPANY, LIMITED).

Public Company—Application of an Official Liquidator for Leave to Resign.

An official liquidator, who had been appointed by the Court to wind up a company incorporated under the Companies Acts 1862 and 1867, applied under section 91 of the Act of 1862 for leave to resign. It was stated that there was nothing to recover from the bankrupt estate, and the application was concurred in by, and appearance made for, all the original petitioning creditors, who were substantially the whole creditors of the company. The application was not opposed. *Held* that in the circumstances it might be granted.

Counsel for the Liquidator—Guthrie Smith. Agent—H. Buchan, S.S.C.

Thursday, July 19.

FIRST DIVISION.

BURRELL *v.* SIMPSON & COMPANY AND OTHERS.

(*Ante*, p. 120.)

Expenses—Shipping Law—Petition for Limitation of Liability in a Collision Case—Principles of Taxing Claimants' Accounts.

In a petition for limitation of liability by the owner of the offending ship in a collision *held*—"(1) That where several claimants have the same interest and ground of claim they ought all to concur in lodging one claim and appear by the same counsel and agents, and cannot be allowed any expenses for separate claims or appearances; (2) that claimants whose claims are unopposed are to be allowed only the expense of preparing and lodging their claims, and of one appearance by counsel to take decree,"; and (3) that where the master of a vessel and the crew present claims they should do so together.

This case, in which an appeal had been taken by some of the parties to the House of Lords, now came before the Court with reference to the accounts of the different claimants upon the fund, and the reports of the Auditor thereon after taxation.

It was stated that £2, 2s. only were allowed as expenses in unopposed claims in the Admiralty Courts in England.

At advising—

Lord President—The object of the reports of the Auditor in this case is to obtain a general direction as to the principles on which accounts by claimants in a petition of the kind are to be