

Counsel for the Petitioner—Maconochie.
Agents—Maconochie & Hare, W.S.
Counsel for the Respondent—M'Lennan.
Agent—J. Murray Lawson, S.S.C.

Tuesday, January 30.

FIRST DIVISION.

[Lord Low, Ordinary.

WATSON v. MORISON & OTHERS.

Reclaiming-Note—Competency—Court of Session Act 1868 (30 and 31 Vict. c. 100), sec. 52.

The Court of Session Act 1868, by sec. 52, provides that—"Every reclaiming-note . . . shall have the effect of submitting to the review of the Inner House the whole prior interlocutors of the Lord Ordinary." *Held* that it is not competent for a person to reclaim against an interlocutor pronounced on his own motion for the purpose of submitting prior interlocutors to review.

In October 1893 Mrs Ann Cowans or Watson, Windygates, Fife, brought an action against Robert Morison, accountant, Perth, and others, for the purpose of having a trust-disposition and settlement and relative codicils and a holograph letter of instructions reduced.

On 23rd November 1893 the Lord Ordinary (Low) held the production satisfied by the production of an extract of the trust-disposition and codicils and of a draft of the holograph letter.

Upon 5th December 1893 the Lord Ordinary approved of issues lodged by the pursuer.

Against this interlocutor the pursuer reclaimed for the purpose of having that of 23rd November submitted to review.

The defenders argued it was incompetent for a person to reclaim against an interlocutor pronounced on his own motion.

The pursuer argued that she desired to bring a prior interlocutor under review, and was enabled to do so by reclaiming against a subsequent interlocutor by virtue of the 52nd section of the Court of Session Act 1868 (31 and 32 Vict. cap. 100), which provides that "Every reclaiming-note, whether presented before or after the whole cause has been decided in the Outer House, shall have the effect of submitting to the review of the Inner House the whole of the prior interlocutors of the Lord Ordinary of whatever date, not only at the instance of the party reclaiming, but also at the instance of all or any of the other parties who have appeared in the cause, to the effect of enabling the Court to do complete justice without hindrance from the terms of any interlocutor which may have been pronounced by the Lord Ordinary.

At advising—

LORD PRESIDENT—The claimer has not satisfied me of the competency of her re-

claiming-note, the objection to which is palpable. The interlocutor against which the reclaiming-note is presented was pronounced on her own motion, as is evidenced by the fact that the issues which the Lord Ordinary approves of, are those very issues which were lodged by the pursuer as the issues proposed by her for the trial of the cause.

Apart from the 52nd section of the Court of Session Act 1868, no argument was advanced in support of the proposition that a party is entitled to reclaim against an interlocutor pronounced on his own motion, and good sense forbids the idea. Now, the 52nd section does not purport to enable a party to reclaim against a particular interlocutor, who formerly could not have reclaimed against that interlocutor. It merely says, so far as the claimer is concerned (and therefore so far as this question is concerned), that every reclaiming-note shall have the effect of submitting to review the whole of the prior interlocutor, instead of merely the interlocutor primarily and directly reclaimed against. The hypothesis of the section is that there is a competent reclaiming-note against the interlocutor purporting to be reclaimed against, and the criteria of that competency are not altered by the 52nd section.

I am therefore of opinion that this reclaiming-note should be refused as incompetent.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent at the hearing.

The Court refused the reclaiming-note as incompetent.

Counsel for Pursuer and Reclaimer—Young—Clyde. Agents—Reid & Guild, W.S.

Counsel for Defenders and Respondents—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Tuesday, January 30.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CARRUTHERS v. EELES.

Succession—Trust—Vesting—Condition.

A trustor directed his trustees after the death of the survivor of him and his wife to make provision for the education of any of his children under twenty-one at that time, and to pay and convey his moveable and heritable estate to his four children equally, share and share alike, "and the survivor or survivorsequaly, and that at the term of Whitsunday or Martinmas immediately following the death of the survivor of my said wife and me, or the majority of my youngest child, whichever of these events shall last happen, on the following conditions—the share of the premises of each child shall be a vested