previous proceedings, which had been boxed more than two years ago, had not been again boxed or furnished to the Judges, as required by A.S. 24th Dec. 1838, *repelled*.

Counsel for Reclaimers—Mr Macdonald. Agents—Mr Thomas Ranken, S.S.C.

Counsel for Respondent—Mr Thoms. Agents—Messrs Lindsay & Paterson, W.S.

This was an objection to the competency of a reclaiming note founded on section 12 of the Act of Sederunt, 24th December 1838, which enacts as follows:—"As it is provided by section 77 of the Act of Sederunt, 11th July 1828, that when any of the proceedings or documents in a cause have once been printed and boxed to the Judges, it shall not be necessary at any subsequent stage of the cause to box the same again, but only to refer to them; and this regulation having been found inconvenient after a lapse of time, it is therefore enacted that this regulation shall be held to apply only to proceedings or documents which have been boxed within two years previous to the date at which they shall be again referred to, after which printed copies of the former proceedings shall be boxed or furnished to the Judges of the Inner House, before which the cause may be again brought." In this case no documents had been boxed for more than two years, and the reclaiming note was presented bearing a reference to the documents formerly boxed, but these had not been again boxed or furnished to the Judges of the Division. It was therefore objected that the note was incompetent, The cases of Thomson *v.* Forbes (9 D. 1061) and Fraser *v.* Lovat (20 D. 1185) were cited. It was answered that the enactment founded on was a mere provision for the convenience of the Judges with which the opposite party had no concern; and the reclaimers were ready, if necessary, to furnish the Judges with fresh copies of the previous documents.

The Court repelled the objection. It was observed that the two cases cited seemed inconsistent with each other; but in the latter case the general question raised by the present objection had been fully considered and disposed of. The respondent was found liable in £5, 5s. of expenses.

RANKIN *v.* BUCHANAN.

Proof—Reference to Oath. Opinions that where it had been finally held that a defence of compensation could not be established in an action, the defender in referring the remainder of the case to the pursuer's oath, should notwithstanding refer the whole cause, *i.e.*, the whole of the cause that then remains.

Counsel for Pursuer—Mr Gloag. Agents—Messrs Wilson, Burn, & Gloag, W.S.

Counsel for Defender—Mr J. C. Smith. Agent—Mr Alex. Morison, S.S.C.

This was a question as to the competency of a reference to oath. The action was one for payment of a bill. The defences were—(1) that no value was given; (2) that the pursuer was due to the defender a counter-claim; and (3) that the pursuer had granted to a co-obligant on the bill a discharge of the debt contained in it. On 23d December 1865, the Lord Ordinary (Barcaple) found (1) that the averment of no value was too vague and indefinite to entitle the defender, for proving the same, to get access to the books and papers of the pursuer by means of a diligence; (2) that the counter-claim averred was illiquid, and cannot be established in this action, but must be constituted in a separate action; and (3) that the defender was entitled to a diligence for recovery of writing to prove the discharge averred. The defender thereupon lodged a minute referring the whole cause to the oath of the pursuer. This reference the Lord Ordinary refused to sustain. He then lodged another minute referring to the pursuer's oath the whole cause, "in so far as the same has not been disposed of by interlocutor dated 23d December 1865, now final." The Lord Ordinary refused to sustain this reference also. The defender reclaimed, and explained that he never intended that the counter claims alleged, and which it had been held finally he could not establish in this action, should be referred to the pursuer's oath. The pursuer argued that the reference should be of the two defences of no value and discharge. The object of the pursuer seemed to be to exclude questions as to statements by the defender to the effect that the bill was one of a series of transactions betwixt him and the pursuer. After considerable discussion the interlocutors of the Lord Ordinary were recalled, and the first minute of reference was sustained, the defender having added to it, on the suggestion of Lord Deas, the words, "the defender, admitting that his counter-claims cannot be constituted or inquired into in this action."

The Court, however, thought that the general reference was sufficient without this addition. The proper and only competent reference after a cause was decided was a reference of the whole cause. Under such a reference it was only competent to ask questions as to what was the cause, and, of course, the defence as to counter-claims which a final interlocutor had decided could not be established in any way in this action was now out of the cause. It was difficult to see that the circumstance that this reference was tendered before the decision of the cause made any difference. The defender might wait until the action was decided against him, and then tender a reference of the whole cause, but the pursuer had no interest to insist that he should take this course. If the matter as to the bill sued for being one of a series of transactions was properly averred on record, then the defender might ask the pursuer questions about it. If it was not, then he could not do so.

PET.—W. R. MONTIGNANI AND HIS WIFE.

Nobile Officium—Judicial Factor. Certain funds belonging to a married woman in liferent, and her pupil child in fee, having been lent to her husband on the security of heritable property belonging to him, and the husband desiring to repay the money, a judicial factor was (alt. Lord Benholme) appointed over the fee of the money in order that the husband might be discharged and the money re-invested.

Counsel for Petitioners—Mr Donald Mackenzie. Agent—Mr John Stewart, W.S.

This was a petition for the appointment of a judicial factor over the fee of three sums of money belonging to a party's wife and child, but which had been lent to him on the security of certain heritable property belonging to him. It was now intended to repay a portion of the money, and the object of asking the appointment was to reinvest it under the same destination as at present. The petition was refused by Lord Benholme, and the petitioners having reclaimed, they were ordered on 24th November 1865 to give in a minute stating the grounds on which they support their application.

A minute was accordingly given in, in which it was argued—The destination in each of the said three bonds and dispositions in security is to the said Mrs Jane Dobson or Montignani in liferent, for her liferent use allenarly, and exclusive of the *jus mariti* and right of administration of the petitioner, the said William Robert Montignani, and of any future husband she may marry, and to Maria Louisa Montignani, only child, and to such other lawful child or children as may thereafter be born of the said Mrs Jane Dobson or Montignani, in such proportions as she shall appoint, and failing such appointment, equally amongst them, and their heirs and assignees, in fee. In virtue, therefore, of the said three bonds and dispositions in security, the petitioner Mrs Montignani, for her liferent use allenarly (expressly exclusive of the *jus mariti* and right of administration of the said William Robert Montignani, or of any future husband she may