

against the pursuer for the market value of the potatoes. The Lord Ordinary's interlocutor right, and should be adhered to.

Agents for Pursuer—Scott, Bruce & Glover, W.S.

Agent for Defender—J. S. Mack, S.S.C.

Wednesday, July 20.

NISBET v. NISBET.

Separation—Aliment—Custody of Child—Pupil. The income of a man who had been judicially separated from his wife for adultery was estimated at £309 from his business and £71 from property. The Court fixed the amount of aliment at £80 per annum, and gave the father the custody of a pupil son 13 years of age.

In this case of separation and aliment (reported *ante*, vol. vii, p. 591), the Court remitted to Mr Carfrae to report the amount of the defender's income.

Mr Carfrae reported as follows:—

"The reporter having examined the books of the defender, and taken all other requisite means of satisfying himself as to the amount of his income from all sources, begs to report to the Court that in his opinion the sum of Three hundred and eighty pounds sterling (£380) is a fair average amount of the yearly income of the said defender.

"Humbly reported by

"ROBERT CARFRAE.

"Edinburgh, 77 George Street,
"16th July 1870.

"Of the above Three hundred and eighty pounds sterling, the sum of Three hundred and nine pounds sterling is from business, and Seventy-one pounds sterling from property. R. C."

The Court fixed the amount of aliment at £80 per annum, and gave the custody of the boy of 13 years of age, to the father.

Agent for Pursuer—William Mitchell, S.S.C.

Agent for Defender—Robert Mure, S.S.C.

Wednesday, July 20.

SECOND DIVISION.

WEIR v. OTTO AND OTHERS.

Inhibition—Declarator—Recal—Competency. Held that in an action of declarator containing no conclusion for payment of a pecuniary claim, or implement of any other obligation, inhibition could not be competently used.

This was a petition at the instance of Alexander Weir, joiner, Sanquhar, for the recal of an inhibition. The petition contained the following statements:—"The petitioner is proprietor of certain heritable subjects in the burgh of Sanquhar, and that the said subjects immediately adjoin certain other heritable subjects belonging in liferent and fee respectively to Mrs Susan Barker or Otto, residing at Newark, near Sanquhar; Mrs Margaret Crichton Otto or Barker, wife of David Barker, residing at Woodlands, in the parish of Terregles and stewartry of Kirkcudbright; and John Barker, eldest son of the said David Barker and Margaret Crichton Otto or Barker.

"That a dispute having, in the year 1861, arisen between the petitioner and these parties as to the

boundary between their respective properties, the boundary line was settled by arbitration to the satisfaction of both parties; and upon the line of boundary so fixed, the petitioner, at the sight of the arbiters, erected a wooden fence, which continued to be the march between the two properties until the month of May 1869, when the said David Barker, as acting for the said Mrs Susan Barker and others, illegally removed the fence erected by the petitioner as aforesaid, and erected another fence, which encroached to a considerable extent upon the petitioner's property. The said David Barker at the same time pulled down a portion of a small building which the petitioner was in the course of erecting on his own property, within his side of the fence which had bounded the two properties for years previously as aforesaid.

"That the petitioner then presented a petition to the Sheriff of the county of Dumfries for interdict against the said David Barker encroaching upon the petitioner's property, and to have him ordained to remove the fence illegally erected by him, and to restore the former fence and the petitioner's building to their former condition. The Sheriff-principal, after proof led by both parties of this date, decerned against the said David Barker in terms of the petition, and found him liable to the petitioner in expenses.

"That the said David Barker has appealed the said judgment to your Lordships for review, and an action of declarator has also been raised before your Lordships, at the instance of the said Mrs Susan Barker and others, against the petitioner and Janet Currie, another adjoining proprietor, for the purpose of settling the disputed boundary. To this action the petitioner, as the only defender interested in the question, lodged defences of this date."

After setting forth the conclusions of the action of declarator, the petition further states:—"That, in virtue of a warrant contained in the said summons of declarator, the pursuers used inhibition against the petitioner, and execution thereof being dated the 4th day of June 1870, and recorded along with the summons and execution in the General Register of Inhibitions at Edinburgh the 7th day of June 1870.

"That the conclusions of the said summons of declarator are not of such a nature as to form a competent or legal ground for inhibition, there being no conclusion for payment of a pecuniary claim, or implement of any other obligation, as the ground of action in security of which inhibition could competently be used. That the said inhibition was therefore incompetent and illegal, and, even if competent, was, in the circumstances otherwise of the case, nimious and oppressive. It is humbly submitted, therefore, that the inhibition ought at once to be recalled without caution."

Answers were lodged to the petition, and, *inter alia*, the following statements were made:—"The petitioner, who is by trade a joiner, has little or no business, and he is not possessed of any means or property other than the subjects in Sanquhar referred to in the proceedings. The respondents had reason to believe, from circumstances that came to their knowledge, that the petitioner intended to divest himself of this property, which is the only source the respondents had to look to for meeting any expenses which may be awarded to them in the action above mentioned. The respondents therefore deemed it necessary for their protection to use inhibition against the petitioner,