law of the country from which he came. He made his application for sequestration under a designation calculated to mislead his English creditors, and to conceal his identity from them. It appeared that his real designation was "John George Gifford, Clerk in Holy Orders," and he designed himself "Clerk, residing at Innerleithen;" but I did not discover what sort of clerk he really was until after I had read well through the printed papers. It appeared also that almost all the creditors reside in England, and a mere fraction of them in Scotland. It is therefore clear that England is the proper country in which to distribute any estate this bankrupt has. It was said that there was none in England, but it is not said there is any in Scotland. What he has he probably carries about with him. It was said there was no jurisdiction under which the bankrupt's affairs could be wound up in England; but if he wishes his affairs wound up, he can have no difficulty in replacing himself under the jurisdiction from which he has escaped.

The other Judges concurred, and the reclaiming-note was refused.

Agent for Petitioners—J. Y. Pullar, S.S.C.
Agent for Bankrupt—D. F. Bridgeford, S.S.C.

PETITION—J. R. FARQUHARSON.

Entail—Improvement of Land Act 1864 (27 *and* 28 *Vict. c.* 114). Procedure in a petition under the "Improvement of Land Act," one of the heirs of entail being a minor.

By the "Improvement of Land Act 1864" (27 and 28 Vict. c. 114), it is enacted that any landowner desirous of borrowing or advancing money under that Act for the improvement of his land shall make application to the Enclosure Commissioners to sanction the proposed improvements, in such manner and form and stating such particulars as the Commissioners shall from time to time direct. Sections 78 to 89 inclusive relate to the case where any landowner "shall be desirous of subscribing for any shares or stock in the capital, whether original or additional, of a company having power to construct a railway or navigable canal," and empower and enjoin the Commissioners to make all necessary inquiries, and, if satisfied that such railway or canal will effect a permanent increase of the yearly value of the lands exceeding the yearly amount proposed to be charged thereon, to grant provisional orders, and thereafter absolute orders, to the effect of constituting the price of such shares a real burden or charge on the lands by way of rent-charge.

On 28th October 1865 the petitioner, Mr Farquharson of Invercauld, presented an application to the Enclosure Commissioners, in virtue of the said Act, for their sanction to the improvement of his estates in Perthshire and Aberdeenshire. The petitioner proposed to invest £10,000 in the stock of the Aboyne and Braemar Railway Company, which passed for a considerable distance through his lands, and to charge the subscription price on the rents of the estate.

By section 18 of the said Act it is enacted that in case any person having any estate in, or charge or security on, the land to be improved, shall signify his dissent from the application, the Commissioners shall not sanction the improvements until authorised, in the case of lands in Scotland, by the Court of Session to do so; nor shall they sanction the same in any case where the landowner shall be the father of the person entitled either at law or in equity to any estate in such land, and such person shall be an infant or minor, unless or until authorised by the Court as aforesaid.

The application set forth that the three nearest heirs of entail were the petitioner's three younger brothers, and that the petitioner was not the father of the person or persons entitled either at law or in equity to any estate in the lands to be improved, or any part thereof, such person being an infant or minor.

After the application was presented—namely, in November 1865—a son was born to the petitioner, who is now the nearest heir of entail. He therefore now applied to the Court to authorise the Commissioners to proceed upon his said application, notwithstanding the circumstance that the petitioner is the father of a person entitled to an estate in the land to be improved under the application to the Enclosure Commissioners.

The Court appointed intimation of the petition and service upon the infant and on the petitioner, as his administrator-in-law. This having been done, the petitioner stated in a minute that as his interest might be adverse to that of the infant he craved the Court to appoint a curator *ad litem*

Mr James Webster, S.S.C., was appointed curator; and after some inquiry being made under a remit to Lord Mure, who made a report in favour of granting the prayer of the petition, it was today granted.

Counsel for Petitioner—Monro. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Curator *ad litem*—Shand. Agents—Webster & Sprott, S.S.C.

SECOND DIVISION.

M.P.—MURRAY'S EXECUTORS *v.* CARPHIN AND OTHERS.

Trust—Marriage-Contract—Husband and Wife—Jus crediti—Spes successionis. Held, on the construction of the terms of a marriage-contract, that the fee of an estate was effectually vested in the trustees, and that thereby a *jus crediti* was conferred upon children which was available to exclude the wife's creditors before marriage.

This is a question arising out of the antenuptial contract of marriage entered into between Miss Mary Jane Murray, daughter of the late James Murray, Esq., of Jamaica, and Robert Dawson Johnston, writer in Edinburgh. Under Mr Murray's will Mrs Johnston was entitled to a third share of his estate, which was declared to vest upon her marriage. Previous to her marriage, her husband having no means of setting up house, her father's executors consented that a sum of £400 should be withdrawn from her share of her father's estate, with the view of enabling her to purchase outfit and other necessary furnishings, including furniture. Her purchases, however, greatly exceeded the sum advanced, and the executors receiving more claims upon it than it was able to meet, stopped further payment. Mr and Mrs Johnston at the same time, previous to their marriage, entered into a marriage-contract in which mutual provisions were made on each side. The validity of this contract, on the intrinsic ground of effecting what it purports to do, was the question before the Court. The trustees under the marriage-contract failed, and a judicial factor was appointed in their stead. The dispute is between him on the one hand, and the creditors of Mrs Johnston before her marriage, and her husband's creditors, on the other hand. The judicial factor

contends that he is entitled to be preferred to the balance of Mrs Johnston's share, minus the £400, of her father's estate in the hands of his executors, on the ground that it was effectually conveyed by the marriage-contract to the trustees whom he represents, and which, reserving only a liferent to Mrs Johnston, conferred a *jus crediti* on any children that might be born of the marriage. The various creditors before and after the date of the marriage have disputes among themselves as to the priority of their arrestments, but they all concurred in challenging the marriage-contract. The grounds mainly relied upon were—(1) that the dispositive clause was qualified by a declaration "that the property and sums" were to "belong" to Mrs Johnston; and (2) a clause of apportionment of the provisions of children which, it was contended, postponed the interest of the children, and conferred upon them only a *spes successionis*, and not a *jus crediti*.

The following are the terms of the clause in the marriage-contract :—

"For which causes, and on the other part, the said Miss Mary Jane Murray, with consent foresaid, hereby assigns, dispones, conveys, and makes over to, and in favour of, the said John Robertson and Thomas Hutchison, Robert Walker and James Tait junior, and to the acceptors and acceptor, survivors and survivor of them, and to the heir of the last survivor, and to their assignees or disponees, her whole present right and interest in the estate left by the said deceased James Murray, her father, under and in virtue of his foresaid last will and testament, whereby he conveyed his whole estate to Mrs Jane Strachan or Tait, presently residing at 14 Grove Street, Edinburgh; Dr Hamilton Bell, Charlotte Square, Edinburgh, now deceased; William Hutchison, coachbuilder, Lothian Road, Edinburgh; and the said Thomas Hutchison, and the survivors or survivor of them, or behoof of his children, and all sums of money which may be due to her therefrom, in any manner of way, with all that has followed or is competent to follow thereupon; with power to them to call and sue for, uplift, and receive all sums that may now be due to her from her father's said estate, and generally to do everything concerning the premises which she might have done herself before granting hereof: Declaring always, as it is hereby expressly declared, that the foresaid conveyance by the said Miss Mary Jane Murray is granted in trust only for the purposes, and with and under the powers, conditions, and declarations after specified—That is to say, *primo*, that the said trustees or trustee, acting for the time, shall regularly pay over to the said Miss Mary Jane Murray during her life the free interest or annual proceeds of the property, and sums hereby conveyed: Declaring always, that the said property and sums, and the whole interest and income to arise therein, shall belong to the said Miss Mary Jane Murray, exclusive of the *jus mariti* of the said Robert Dawson Johnston, and shall not be affectable by his debts or deeds, legal or voluntary, nor by the diligence of his creditors, and that the receipts and discharges of the said Miss Mary Jane Murray alone, without the consent of her said intended husband, shall be sufficient for the said sums, or any part thereof. . . . . *Quarto*, That on the death of the longest liver of the said intended spouses the said trustees shall hold the property and sums vested in them as aforesaid, for behoof of the children of the said intended marriage, in the same manner, and subject to the like privileges to the spouses, under the declaration that the power of apportionment of the said provisions shall fall to be exercised, in the first instance, by the said Miss Mary Jane Murray alone, without the concurrence of the said Robert Dawson Johnston; and failing her doing so, by the said Robert Dawson Johnston, in the event of his surviving her."

The Lord Ordinary (Barcaple) sustained the marriage-contract as effectually divesting Mrs Johnston of the fee of her estate.

The creditors reclaimed.

J. M. DUNCAN, for one of them, argued—It is quite obvious from the terms of the marriage-contract that Mrs Johnston, in her conveyance to the trustees, intended to reserve control over the fee of her estate. But whatever her intention was, there is no doubt that the declaration, which qualifies the dispositive clause, is a bar to the construction put upon the marriage-contract by the Lord Ordinary, that she did so divest herself. Further, it is evident from the fourth provision of the deed, that it was intended to postpone the interests of the children until the death of the longest liver of the spouses. Till that event they had only a *spes successionis*, not a *jus crediti*. The general rule of law is, that in such a conveyance the fee remains with the granter of the deed, and that it is only upon the parents' death that the right of the children emerges. Erskine 3, 8, 39; Wilson *v.* Wight, 18th June 1819, Hume's Dec. 537.

The SOLICITOR-GENERAL and SCOTT, for other creditors, adopted Mr Duncan's argument.

GIFFORD and W. A. BROWN, for the judicial factor, were not called upon.

The Court unanimously adhered to the interlocutor of the Lord Ordinary; the Lord Justice-Clerk remarking that the declaratory clause was quite a proper one, as it was quite possible that there might be a fee resulting to Mrs Johnston on the failure of children and the death of her husband. Lord Neaves observed that he reserved his opinion on the question, whether in that event the fee would be atainable in Mrs Johnston's hands.

Agent for Judicial-Factor — John Henderson, S.S.C.

Agents for Creditors—A. K. Morison, S.S.C. J. & R. Macandrew, W.S.

Friday, July 13.

SECOND DIVISION.

MOIR *v.* REID.

Poor — Husband and Wife — Parent and Child. Held that a son-in-law is bound to support the indigent parents of his wife during the subsistence of the marriage.

This was an advocation from the Sheriff Court of Aberdeen. The inspector of the parish of Fordyce, in the county of Banff, brought an action against William Moir, advocate in Aberdeen, concluding for payment of £1, 15s. 5d., being the amount of aliment furnished to the parents of his wife who had become chargeable on the parish, and to be relieved of future advances. The facts were not in dispute, and the defender (advocator) put in a minute consenting that the case should be disposed of, as if he had admitted on record that his means were sufficient to enable him to meet the claim made. He maintained the following pleas :—

1. A son-in-law, who neither derived nor acquired any estate from his wife or her parents is not bound to maintain his wife's parents.