

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 successioneis.* 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