animadverted strongly on the delay which had taken place in the Inferior Court, the proof having been adjourned day after day for a period of three months, as if the case had been one of intricacy and importance.

Agent for Advocator—D. Forsyth, S.S.C.

Agents for Respondent—Morton, Whitehead, & Greig, W.S.

Wednesday, July 10.

MACKAY *v.* EWING AND OTHERS.

Trust—Failure of Trustees—Judicial Factor—Annuity—Discretion to Increase—Petition—Competency. A person by his trust-deed provided an annuity to his daughter of £50, which the trustees if they thought right were empowered to increase. The trustees declined to accept, and the daughter served to her father, and took possession of the estate. A judicial factor was afterwards appointed. Held that a petition by the daughter for increase of her annuity was incompetently brought, the proper course being to apply to the factor, who might, if he thought fit, apply to the Court for special powers to that effect. Question, whether the factor or the Court, on an application from the factor, could exercise the discretion reposed by the truster in his trustees.

This case came before the Court on a petition at the instance of Mrs Mackay, wife of Captain Mackay, and daughter of the late John Russell, Esq., of Balmaad, praying the Court to award her an annuity out of the trust-funds, and to authorise the judicial factor on the estate to pay it to her. Mr Russell died in 1819, leaving considerable property, both heritable and moveable, and also a trust-disposition and settlement appointing trustees to carry out the purposes of the trust. The truster, among other provisions, appointed his trustees to pay his daughter a free yearly annuity of £50 during her life, "or until she comes eventually to have possession of the trust-funds in virtue of the succeeding clause of the deed;" with power to his trustees, "if his funds would admit, and if they should think she has occasion for it, eventually to make some addition to said annuity, according as their own good judgment and discretion should suggest." The trustees declined to accept, and the petitioner served to her father, and entered into possession both of the heritable and moveable estate. She appointed her husband factor, and she remained in possession until 1840, when a judicial factor was appointed on the estate. Since that date four judicial factors have been appointed by the Court, and the estate is now under the management of Mr John Allan, solicitor, Banff. Answers were put in by Mrs Ewing, the petitioner's daughter, the leading beneficiary under the trust, who opposed the petition, on the ground that the petitioner and her husband were due large sums to the estate, on account of their intromissions, during the nineteen years of their management, and by the judicial factor, who, without opposing the petition, stated certain considerations that were proper for the Court to hold in view in disposing of it. The leading one of these was, that the petitioner had never accounted to him for her intromissions.

Last year, the Lord Ordinary (MURE) appointed the factor to pay the petitioner an annuity of £50, and this judgment was acquiesced in by Mrs Ewing. The petitioner afterwards moved for an increase to her annuity, which was again opposed by Mrs Ewing, on the same grounds as before. The Lord Ordinary, proceeding on a calculation as to what might be the probable results of an accounting between the factor and the petitioner for a period of her intromissions with the trust-funds, increased the annuity by £100, and appointed the factor to pay her a yearly annuity of £150. Against this interlocutor Mrs Ewing reclaimed; and maintained, in addition to the reason relied upon in the Outer-House, that the petitioner was indebted in large sums to the estate; that it was beyond the jurisdiction of the Court to grant the prayer of the petition, because it was incompetent either for the factor, or for the Court on an application from the factor, to exercise the discretionary power conferred by the truster on his trustees to raise the petitioner's annuity above £50, if they thought proper. The Court felt this to be a question of considerable difficulty and delicacy, but were saved consideration of it by holding that the prayer of the petition was altogether incompetent either as a step in the factory or as a separate proceeding. The proper course for the petitioner to have followed was to apply to the factor, who would consider the case, and who might apply to the Court for special powers to increase the annuity if he thought proper. If the factor refused the application, and declined to ask powers from the Court, the petitioner might then perhaps directly apply to the Court, but her course, in the first place, was to apply to the factor. The interlocutor of the Lord Ordinary awarding the additional sum of £100 was accordingly recalled. As to the sum of £50 which the Lord Ordinary had ordained the factor to pay under the petition which was now found to be incompetent, the Court did not think it necessary to interfere, as that sum was provided as an annuity to the petitioner by the trust-deed; and Lord Curriehill expressed a hope that no difficulty would be made by the factor as to the payment of that sum.

Counsel for the Petitioner—Mr Inglis. Agents—H. & A. Inglis, W.S.

Counsel for Mrs Ewing—Mr Shand and Mr Thomson. Agent—A. Morison, S.S.C.

Counsel for the Judicial Factor—Mr W. A. Brown. Agent—J. C. Baxter, S.S.C.

Wednesday, July 10.

MACALISTER, PETITIONER.

Entail—Improvement—Expenditure—10 Geo. III., c. 51—9 *& 10 Vict., c.* 101—11 *& 12 Vict., c.* 36. Held that money borrowed by an heir of entail, and expended and charged on the estate under the Drainage Act 1846 (9 & 10 Vict. c. 101), cannot be constituted a burden on the estate, under the 16th sect. of the Entail Amendment Act.

This was a petition under the Entail Amendment Act (11 and 12 Vict., cap. 36) for leave to constitute and charge certain improvements executed by the petitioner on the entailed estate of Glenbar. By the 16th section of the Act it is provided—"That where an heir of entail in possession of any entailed estate, holden by virtue of any tailzie dated prior to the 1st day of August 1848, shall, whether prior or subsequent to the passing of this