adhere to the findings of the Lord Ordinary's interlocutor.

I abstain from saying whether some of the claims submitted to the arbiter may not ultimately be found exigible from the estate under the factor's charge, or whether all are not claims merely involving personal liability on his part for acts outwith his factorial character. These are questions which remain to be decided in the competition, and therefore I will only say that the decreet-arbitral cannot be founded on to any extent as fixing a claim on the estate under the charge of the judicial factor.

LORD BENHOLME—After what your Lordship has said I think it unnecessary to express my opinion at any length. I concur with your Lordship in thinking that we are not called on to determine the general question whether a judicial factor has power to submit, for I am clearly of opinion that in the present case the matters submitted, and the terms of the submission, were *ultra vires* of the judicial factor. My opinion in this case rests on two grounds—(1)—That what was submitted was a claim of damages; and (2) that the damages were caused by the delinquency of the judicial factor, who could not thereby involve in liability the estate under his charge.

LORD NEAVES—I quite concur with your Lordship in thinking that the decreet-arbitral in this case must be set aside, and that it is not necessary to decide the general question as to the power of a judicial factor to submit. But I cannot help saying that the decision in the case of *M'Dowal* (whatever analogy it may have to the present case) was undoubtedly correct. A factor was appointed to manage a bankrupt estate, which had been brought into Court by a process of ranking and sale. Now, in such a case the factor represents the creditors and not the proprietor; his power of administration is of the simplest description, and may be brought to an end at any moment by a sale taking place. Though the price and the intermediate rents are paid over to him, it is not for him but for the Court to decide what creditors shall be ranked on the estate. It would be simply absurd to allow such a factor to withdraw the claims of the creditors from the cognizance of the Court, and submit them to a private person as arbiter.

The general question which has been discussed in this case is certainly attended with great difficulty. I am not prepared to say that factors of any kind possess an unlimited power of submission. Perhaps a factor *loco tutoris* is privileged in this respect, on the ground that greater powers are required by a factor who represents a proprietor incapable of acting for himself. The character of the submission may also afford a ground for distinction. Thus, a submission of an existing *lis* is in quite a different position from an executorial clause of submission in a contract. If in the course of a factor's administration he finds it necessary to enter into a contract, requiring for its extrication from day to day a reference to a standing arbiter, —if that be the only practicable way of carrying out such a contract, and if it is so usual that contractors will not bind themselves to a contract without such a clause—I should be sorry to say that the power of administration, which justifies the contract, does not also justify the arbitration, so essential to its execution.

As far, then, as I see just now, I am prepared to support the reference to Mr Gibb, the object being to save litigation and expedite the execution of the works. But this goes a very small way indeed to support the reference to Mr Marquis. We must judge of the claims which led to that submission by the claims actually made under it. Now, these are of such a nature that I very much doubt whether it was possible for any one to submit them in that way. They are personal claims against Mr Munro, mixed up with allegations of delinquency and malversation of every kind. It seems quite impossible to hold that they could be made the subject of a just or valid arbitration as against the innocent estate under the factor's charge. *Tenet culpa suos auctores.* On that ground alone, and without giving an opinion on the general question, I think that this submission and this decreet-arbitral are null and void.

The Court accordingly adhered to the Lord Ordinary's interlocutor, but reserved any claim competent to Messrs Dean & Son, not founded on the decree arbitral.

Agents for John Dean & Son—Renton & Gray, S.S.C.

Agents for A. G. Smith—Tods, Murray, & Jamieson, W.S.

Agent for Aberdeen Town and County Banking Company—John Auld, W.S.

Wednesday, June 28.

FIRST DIVISION.

MUIR *v.* WATSONS.

Husband and Wife—Legitimacy. Children of a pretended marriage between a man and the daughter of his deceased wife *declared* illegitimate.

The pursuer, Mrs Muir, is the only child of the marriage between Alexander Watson and Margaret M'Arthur or Taylor. The marriage took place in 1847, and Mrs Muir was born in 1848. Margaret M'Arthur, the pursuer's mother, had been previously married to William Taylor, and thus was the mother of Isabella Taylor. Upon her mother's marriage with Watson, Isabella Taylor, who was then about eight years old, came to reside with Watson, and continued to do so after her mother's death, which took place about three years after her marriage. Watson subsequently seduced Isabella Taylor, and thereafter went through a form of marriage with her at Gretna Green. The defenders are the children of Isabella Taylor by this connection. The object of the action was to declare the bastardy of the children, and that they are not entitled to the legal rights of lawful children of Alexander Watson, who was drowned in 1866.

The defences were (1) that it was not proved that Isabella Taylor was the daughter, or at least the lawful daughter, of Margaret M'Arthur or Taylor; (2) that even if she was, she was not aware that she was, and consequently married Watson *in bona fide*, in ignorance of the affinity between them.

The Lord Ordinary (ORMIDALE) found the facts proved which have been stated above; and, in addition, that Isabella Taylor, at the time of her marriage with Watson, was in the knowledge that he had been previously married to her mother, which rendered any discussion on the legal effect

of *bona fides* on her part unnecessary. His Lordship consequently decerned in terms of the conclusions of the summons, with expenses to the pursuer.

The defenders reclaimed.

MAIR for them.

ASHER, for pursuer, was not called on.

The Court adhered.

MAIR, for the unsuccessful parties, moved for expenses, or at least that there should be no expenses found due to either party, on the ground that this was an action in which the defenders were called upon to defend their *status* as lawful children, which had been given to them by the father of the pursuer.

The Court, however, saw no reason to depart from the ordinary practice, and allowed the pursuer additional expenses.

Agents for Pursuer—J. R. & D. Ross, W.S.

Agent for Defenders—John Galletly, S.S.C.

Wednesday, June 28.

SPECIAL CASE—JOHN ROBERTSON AND OTHERS (MACLEOD'S TRUSTEES).

Succession—Heir and Executor—Relief—Entail. A testator conveyed certain estates to trustees, for the purpose of being entailed; and by a subsequent deed of settlement he conveyed the residue of his property to other trustees. At the date of his death the estates to be entailed were burdened with certain heritable debts. *Held* that the disponee of these estates was not entitled to be relieved of the burdens attached to them, at the expense of the testator's general estate, although the deed of settlement contained a general direction to pay the testator's debts.

Legacy—Implied Revocation. Circumstances in which a legacy was held to be revoked by implication.

Kenneth Macleod, Esq. of Grishornish and others, in the Isle of Skye, died unmarried on the 15th day of March 1869. He left the following testamentary writings:—(1) Trust-disposition, dated 5th September 1865, whereby he conveyed to trustees his lands of Grishornish and others, with directions to execute an entail in favour of a series of parties, of whom Kenneth Macleod Robertson Macleod is the institute. (2) Holograph deed of settlement, dated 24th October 1865. (3) Trust-disposition and deed of settlement, dated 6th March 1867.

The parties to this Special Case were:—*First*, the trustees under the deed of 1865. *Second*, the trustees and executors acting under the deeds of 1868 and 1869. *Third*, John Robertson, for himself, and as administrator-in-law for his son, Kenneth Macleod Robertson Macleod. *Fourth*, the trustees nominated for erecting and maintaining the "Gesto Hospital" by the said Kenneth Macleod, conform to the deed of 1869.

At the date of Mr Macleod's death the estates directed to be entailed were burdened with two debts of £5000 each, the bond and disposition in security in the first being dated 25th June 1861, and in the second, 5th October 1866.

The parties of the *first* and *third* parts claimed that the sums due under these heritable securities should be paid out of the residue of the truster's estate. The claim was opposed by the parties of the *second* and *fourth* parts, who claimed that the whole of the residue should be applied for the purposes of the Gesto Hospital.

The holograph deed of 1868 contained the following clause:—"My landed property in the Isle of Skye being already entailed—namely, Greshornish, Orbost, Cushletter, and Edinbane—it is my wish and will that all the stock of every description and denomination on the grounds of Greshornish, Orbost and Cushletter, should be succeeded to by the person who succeeds to the entailed property. It is also my wish and will that all the household furniture and plate of all descriptions, and pictures—in fact, all moveable and immoveable property within the walls of the houses of Greshornish and Orbost—should be succeeded to by same person who succeeds to the entailed property from time to time." Every provision in the deed of 1868 was repeated in the deed of 1869, with two exceptions—the one a mocking bequest of one penny to a lady, and that of the stock to the heir of entail. The bequest of furniture and inside plenishing was repeated.

Mr Macleod died possessed of a valuable sheep stock on the farms mentioned in the above clause of the deed of 1868. This was claimed by the party of the *third* part as bequeathed to K. M. R. Macleod by the deed of 1868; and the claim opposed by the parties of the *second* and *fourth* parts, on the ground that the bequest was revoked by implication by the later deed of 1869.

Certain expenses were incurred by the parties of the *first* part in executing the deed of entail and completing the titles of K. M. R. Macleod, including his entry with the superior. The party of the *third* part claimed that these expenses should be paid out of the rents of the lands from the date of the truster's death and the term of Whitsunday thereafter, which had been uplifted by the parties of the *second* part, or out of the residue of the testator's moveable estate in this country. It should be mentioned, in reference to this part of the case, that while the trust-deed of 1865 conveyed the estates to the parties of the first part for the purpose of being entailed, reserving the truster's liferent, the entail was directed to be made at the first term of Whitsunday or Martinmas after his death.

At the time of his death Mr Macleod was possessed of considerable moveable estate in this country, and also of large estates in India, subject however to outstanding claims. By the trust-deed of 1869 he conveyed his Indian estates to separate trustees, and directed that his property there should be administered separately from that in this country. For some time previous to his death Mr Macleod contemplated the erection and endowment of an hospital in the island of Skye, to be called the "Gesto Hospital." For this purpose various provisions were made in the deeds of 1868 and 1869. The Indian trustees were directed to transmit £10,000 from the produce of the estates there. A sum of £6000, secured over an estate in Skye, and the whole residue of his means and estate in this country, were also to be applied for the purposes of the hospital. It was stated that the value of the estates directed to be entailed was about £1100 a-year, including shootings. Parties were agreed that although, from the fact of all claims on the Indian estate not having been settled, it was not possible to state the figures with accuracy, in the event of the *third* parties' claim to the stock being sustained, there might not be sufficient residue in