viz., to the widow £50 sterling, to Alexander and Margaret Collins £5 each, to Susan £10. to Thomas £15, and to each of Mary and Jemima Collins, £17, 10s. The children being all in pupillarity, application was verbally made to the Court for the appointment *de plano* of an uncle of the children to the office of factor *loco tutoris*, the fund being so small that the expense of an appointment in the ordinary way by petition in the Outer House was, it was pleaded, to be avoided if possible. The Court, when the application came before them on the Single Bills, *granted* the motion and made the appointment as craved.

Counsel for Pursuers—J. C. Smith. Agent—John Macmillan, S.S.C.

Counsel for Defenders—J. P. B. Robertson—Darling. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, February 22.

SECOND DIVISION.

M'AVOY *v.* YOUNG'S PARAFFIN LIGHT AND MINERAL OIL COMPANY.

(*Ante*, pp. 61 and 137.)

Judicial Factor — Appointment de plano *— Administration of Sum awarded in an Action for Damages.*

In this action the jury returned a verdict in favour of the pursuers, assessing the damages at £240. The defenders having obtained a rule on the pursuers to show cause why a new trial should not be granted, on the ground that the verdict was against the weight of evidence, the Court after hearing parties discharged the rule and applied the verdict, finding the pursuers entitled to their expenses in the cause. The pursuers' counsel then moved that in order to avoid the expense of an application for a judicial factor, the sum of £160, being that apportioned to the minor pursuers, be paid over to their uncle by marriage, to be administered by him for their behoof, he finding caution for the amount. The Court, following the case of *Collins*, *supra*, granted the motion.

Counsel for Pursuers—D-F. Macdonald, Q.C. —G. Burnet. Agent—John Macpherson, W.S.

Counsel for Defenders — Lord Advocate (Balfour, Q.C.)—Strachan. Agent—T. F. Weir, S.S.C.

Wednesday, February 22.

FIRST DIVISION.

[Lord Fraser, Ordinary.

M'GREGOR *v.* CALEDONIAN RAILWAY COMPANY.

Process—Jury Trial—Time and Place of Trial— 13 *and* 14 *Vict. c.* 36 (*Court of Session Act* 1850), *sec.* 40.

In an action against the Caledonian Railway Co. for damages sustained in an accident at Pennilee, near Glasgow, on their line, issues were adjusted before the Lord Ordinary on 31st January. Notice of trial was on 1st February given by the pursuer for "next Glasgow Circuit," which was in point of fact the Circuit subsequently held there on 21st February and following days. On 4th February the pursuer countermanded this notice. On 8th February the defenders enrolled the case to have a day fixed for trial before the Lord Ordinary. His Lordship was at that time unable to give parties a day, and the motion dropped. On 10th February the pursuer gave notice of trial for Glasgow Spring Circuit. The defenders then renewed their application to the Lord Ordinary to fix the trial before his Lordship, who found himself able to give the 10th of March for that purpose. The pursuer would not agree to this proposal, and the Lord Ordinary accordingly reported the case to the First Division.

The pursuer contended—There could be no allegation of urgency in this case, the accident at Pennilee occurred in September 1880, and the pursuer's injury was concussion of the spine, producing a diabetic affection, and the action, in which the summons was not signeted till 15th December 1881, was delayed until his condition should have time to manifest itself. Pursuer's notice of February 1st was meant for Glasgow Spring Circuit, it being at least a doubtful point whether the case could competently be tried at the intermediate Circuit, and hence his countermand on 4th February. The proposed day (10th March) was too soon, as a deposition would have to be taken at San Remo by commission on interrogatories, which were not yet adjusted, and as to place pursuer preferred Glasgow. He had never lost his original lead—*Macpherson* v. *The Caledonian Railway Company*, 6th July 1881, 8 R. 901.

The defenders argued—The trial should be before the Lord Ordinary on 10th March. There was urgency here, though the pursuer had already caused great delay. The company were desirous of having the claims arising from this action settled as soon as possible, as a special suspense account had to be kept in their books till such settlement was effected. The pursuer had lost his lead by countermanding his notice of 1st February. The policy of the statute was in favour of speedy despatch of business—*Moffat* v. *Lamont*, Jan. 7, 1859, 21 D. 212; *Campbell* v. *Caledonian Railway Company*, Dec. 15, 1881, 19 Scot. Law Rep. 187.

The Lords appointed the trial to proceed before the Lord Ordinary on 10th March, the Lord President remarking—"The point has been stated by my brother Lord Mure in a single sentence; it is a question between three weeks and three months, and I am for the three weeks."

Counsel for Pursuer — Mackintosh — Shaw. Agents—Cumming & Duff, S.S.C.

Counsel for Defenders—Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Wednesday, February 22.

FIRST DIVISION.

MORRISON AND OTHERS, PETITIONERS.

*Process—Sisting New Party to Petition—*44 *and* 45 *Vict. c.* 47 (*The Presumption of Life (Scotland) Act* 1881), *sec.* 9.

The Presumption of Life (Scotland) Act 1881 provides (section 9) that "Any number of persons entitled to succeed as aforesaid may be conjoined in one petition relating to the estate of the same absent person; and any person having a limited right of succession may appear as petitioner to the effect of having such right made effectual, subject to the provisions of this Act." In a petition under section 4 of the said Act, at the instance of three persons, who were respectively the father, brother, and sister of a fourth person who had disappeared, for authority to make up title to his moveable estate, after advertisement of the petition and proof taken on commission, the Lords *sisted* another brother as a party to the petition on his presenting a minute craving to be so sisted with a view to getting his share of the said estate.

Counsel for Minuter—R. V. Campbell. Agent—R. W. Wallace, W.S.

Friday, February 24.

FIRST DIVISION.

[Sheriff of Perthshire.

HAY *v.* HAY.

Sheriff—Jurisdiction—Husband and Wife—Aliment.

The Sheriff can only award aliment to a wife *ad interim* and in cases of immediate necessity.

Application of this rule in a case where the husband and wife had been judicially separated, and an award of aliment had then been made for the wife's support, the new application being for the maintenance of a child born after the separation.

In February 1881 Mrs Jessie Adam or Hay brought an action of separation and aliment against her husband James Hay, in which Lord Adam issued an interlocutor granting separation, and aliment at the rate of £40 per annum, and reserving to either party to apply to the Court for any further or other orders which might become necessary. On the 29th of March following Mrs Hay gave birth to a child, and in July she presented a petition in the Sheriff Court of Perthshire at Dunblane praying the Court "to grant a decree ordaining the defender to pay to the pursuer (1) the sum of £10 stg. of inlying expenses in connection with the birth of the said child, with interest thereon at the rate of 5 per cent. from 29th March 1881 till payment; and (2) the sum of £12 per annum for the period of ten years from said 29th March 1881 as ordinary aliment for said child."

The defender pleaded—That the action was incompetent, on the ground that it was only under the Court of Session action of separation and aliment already raised at the pursuer's instance, and the reservation contained in the Lord Ordinary's decree which followed thereon, that the pursuer's present claims could now be competently made.

The Sheriff-Substitute (GRAHAME) repelled this plea, and held that not only was it competent to the wife to bring an action for inlying expenses in the Sheriff Court, but that this was the only course by which her claims could be enforced, as the alimentary conclusions of the Court of Session action were limited to the personal aliment of the pursuer. The Sheriff (MACDONALD) adhered to this judgment, and on the 28th October 1881 the Sheriff-Substitute issued the following interlocutor:—Finds in point of fact that the pursuer gave birth on or about 29th March 1881 to a child of which the defender must be held to be the father: Finds in point of law that the pursuer's inlying expenses and the aliment of said child fall to be paid by defender; fixes the amount of the pursuer's inlying expenses at £4 with interest, as craved in the prayer of the petition, and the amount of aliment for said child at £12 per annum, with interest as craved."

Against this interlocutor the defender appealed to the Court of Session, and argued—Such an action in the Sheriff Court was without precedent and incompetent—Dove Wilson's Sheriff Court Practice, p. 346; *M'Donald* v. *M'Donald*, May 25, 1875, 2 R. 705. The Sheriff was wrong in holding that there was no difference in a question of his jurisdiction between an ordinary case of filiation and the claim of a married woman for the aliment of her children—*Corrie* v. *Adair*, 22 D. 897. The father might claim the custody of the child before the ten years were out—*per* Lord Kinloch in *Nicolson* v. *Nicolson*, July 20, 1869, 7 Macph. 1118; *Bourne* v. *Bourne*, December 8, 1880 (unreported); *Lang* v. *Lang*, January 30, 1869, 7 Macph. 445.

The pursuer argued—In the circumstances the action was competent—*Jackson* v. *Jackson*, March 3, 1825, 3 S. 610, 11 Geo. IV. and 1 Will. IV. c. 69, sec. 32; 1 Sheriff Court Reports, p. 154. Where a consistorial question did not arise, the Sheriff could give aliment to a wife—Fraser, Parent and Child, p. 117. No such question arose here, because separation had been granted to the wife, and therefore the action was competent.

At advising—

LORD PRESIDENT—The circumstances of this case are peculiar. On the 17th of February 1881 Lord Adam issued an interlocutor in the action of separation brought by Mrs Jessie Adam or Hay against James Hay, in which he "finds it proved that the defender James Hay has been guilty of grossly abusing and maltreating the pursuer, his wife; ordains the said defender to separate himself from the said pursuer *a mensa et thoro* in all time coming; ordains the said defender to make payment to the pursuer of the sum of £40 yearly of aliment to her; reserving to either party to apply to the Court for any further or other orders which may become necessary." Very soon after the decree was pronounced the respondent (the pursuer of that action) gave birth to a child on the 29th March 1881, and as that was a fact not