the child so long as it is unable to maintain itself, on the ground that it is a debt. It does not matter whether it is a debt or a right arising out of natural law. It is a debt incurred on proof or admission of his having begotten the child. I do not think that this is a rule confined to the circumstances of this particular case. It must hold good as a general rule, and accordingly I think the mother is entitled to rank upon his estate." Lord Shand says —"The claim for the aliment of an illegitimate child lies against both parents. The claim arises from the father and mother being the cause of the child's existence. Primarily it is the child's claim, but as the mother is bound to maintain the child, she has a claim against the father for contribution. Whether the claim is the claim of the child or the claim of the mother, it is the claim of a creditor, and accordingly I am of opinion that the mother is entitled to rank on the bankrupt estate of the admitted father of her illegitimate child." This case again was the case of a mother suing, but for the reasons I have previously stated, that can make no difference.

It will be observed that in the cases of *Gairdner* and *Downes* the claims were claims on sequestrated estates, in which legitimate children could have had no claim, but in both the claims of illegitimate children were sustained.

In *Clarkson's* case there would appear to have been no legitimate children.

However inequitable, therefore, it may appear to be that in a case like the present the claim of an illegitimate child should be preferred to that of legitimate children, the law would appear to be clear on the subject.

We were referred to the case of *Reid* v. *Moir*, in which it was said that the late Lord President threw doubts on the authority of the case of *Clarkson* v. *Fleming*.

In the case of *Reid* v. *Moir* his Lordship had occasion to consider the reciprocal obligations of parents and their legitimate children, and in the course of his opinion referred to those of parents and their illegitimate children. I do not, however, gather from his opinion that he intended to express any dissent from the decision in *Clarkson's* case. It appears to me that he merely gave expression to some criticisms on the terms in which some of the Judges had expressed their opinions, which he thought were somewhat loose and indiscriminating. But however that may be, the observations there made were entirely *obiter*, and it appears to me that as the case of *Clarkson* cannot be distinguished in principle from that of *Downes*, his Lordship's opinion in the latter's case must be taken as his final decision on the subject.

Assuming the claim of the child in this case to be well-founded, the question is as to the sum which ought to be retained by the judicial factor to meet the claim. The Accountant of Court is of opinion that £750 is the proper sum, and I see no reason to doubt that he is right.

LORD KINNEAR and the LORD PRESIDENT concurred.

LORD M'LAREN was absent.

The Court authorised the judicial factor to set aside the sum of £750 for the maintenance and support of Reimers, and expenses connected therewith, and *quoad ultra* granted authority as craved in the second and third conclusions of the prayer.

Counsel for the Petitioner—D.-F. Balfour, Q.C.—Salvesen. Agent—John Rhind, S.S.C.

Counsel for the *Curator ad litem*—A. O. M. Mackenzie.

Thursday, December 3.

SECOND DIVISION.

[Sheriff of Lanarkshire.

HUGHES *v.* THE CLYDE COAL COMPANY, LIMITED.

Reparation—Mine—Manholes on Road of Mine—Coal Mines Regulation Act 1887 (50 *and* 51 *Vict. cap* 58).

The Coal Mines Regulation Act 1887 (50 and 51 Vict. cap. 58), General Rules, No. 15, provides—"Every road on which persons travel underground, where the load is drawn by a horse or other animal, shall be provided at intervals of not more than fifty yards with sufficient manholes or with places of refuge, and every such place of refuge shall be of sufficient length and at least three feet in width between the waggons running on the road and the side of such road."

A miner sued his employers for damages for personal injury caused as he averred by the fault of the defenders in not having manholes along the sides of a working road of the mine. It was proved that although there were no manholes at the place in question, the road was crossed by other two roads which were within 50 yards of each other and were wider than manholes were required to be. The pursuer while walking on this road saw a horse attached to some hutches coming towards him. He ran forward to endeavour to gain the cross-road opening which was between him and the horse. He saw however that he could not do so in time, and turned back and ran to reach the cross-road opening he had passed. The horse bolted, overtook him, and knocked him down, with the result that he was severely injured.

Held that as the pursuer had not proved that the accident resulted from the want of manholes, he was not entitled to recover damages from the defenders as being in breach of the Coal Mines Regulation Act 1887.

Question—Whether a cross-road can be considered a manhole within the meaning of the Coal Mines Regulation Act?

The Coal Mines Regulation Act 1887 (50 and 51 Vict. cap 58), General Rules, No. 15, provides—"Every road on which persons travel underground, where the load is drawn by a horse or other animal, shall be provided at intervals of not more than fifty yards with sufficient manholes or with places of refuge, and every such place of refuge shall be of sufficient length and at least three feet in width between the waggons running on the road and the side of such road."

Upon 19th October 1889, Bernard Hughes, miner, residing in Hamilton, was injured in a pit belonging to the Clyde Coal Company, Limited, owning and working several pits at Hamilton, and carrying on business at 4 Dixon Street, Glasgow.

He brought an action against the company for £300 damages, or alternatively for £273 under the Employers Liability Act 1880.

He averred fault on the part of the defenders, because (Cond. 6) "there were no manholes or places of refuge in said main level. This was a distinct breach of the Coal Mines Regulation Act 1887, General Rule 15."

The defenders averred—(Ans. 6) "Denied. There were sufficient manholes or places of refuge in terms of the said Act and Rules. These were the mouths of branch roads leading off said main level at various intervals from each other but not exceeding 48 yards at the utmost. The mouths of these branch roads were open and free to a much greater extent than required by the said Act and Rules."

The defenders pleaded—"(2) In respect the accident was caused or was at all events materially contributed to by the pursuer's own fault, the defenders should be assoilzied."

The Sheriff-Substitute allowed a proof, the result of which was to show that at the part of the main level road where the accident occurred, two cross-roads, marked C and D upon a plan, opened off the main road and led to other parts of the mine; these openings were each about 10 feet broad, and were about 47 yards distant from each other. Traffic passed over both these roads, and rails were laid down upon road D.

The pursuer upon the occasion in question had started with some companions for the pit shaft in order to leave the mine; he left them to get some articles he had left behind at his working-place and having got them was going back to the shaft. He had passed road D, and was nearing C, when he saw a horse attached to two hutches coming towards him. The horse and hutches had come out of a trap door a few yards on the other side of C. The pursuer started to run in order if possible to get into C before the horse reached there, at the same time shouting to the driver to stop. The driver called to the pursuer to get out of the way but did not stop, and the pursuer seeing that he could not get to C in time turned and began to run back to D. By this time, however, the horse had got frightened and bolted, overtaking the pursuer and knocking him down so that the hutches passed over his body. The pursuer suffered severe injuries.

Upon 17th June 1890 the Sheriff-Substitute (SPENS) pronounced this interlocutor—"Finds that upon the 19th October 1889 the pursuer was in the defenders' employment, and on that day was injured while in No. 3 pit by a horse and hutch which was being used in connection with the working of said pit: Finds under reference to note that pursuer was mainly if not wholly responsible for the accident: Therefore sustains the second plea in-law-stated for defenders, and assoilzies them from the conclusions of the action and decerns, &c.

"*Note.*—It was contended that the defenders were in fault because it was argued there were no manholes in terms of the statute. It is proved that there were cross roads within the statutory limits laid down for manholes. Now I regard cross-roads as manholes. The greater includes the less, and a manhole is simply a means of escape. The universal practice seems to be only to place 'manholes,' in the sense the pursuer desiderates, where there are no cross-roads within the statutory distance. The result of the whole evidence to my mind is this, that the pursuer took the risk of trying to get into the end C in the knowledge that the horse was coming, which a moment's reflection on his part, knowing the vicinity of the trap-door through which the horse had come to this end, would have shown him the impossibility of doing, rather than adopting the ordinary and safe rule of turning back to a cross-road behind him until the horse had passed."

Upon 24th March 1891 the Sheriff (BERRY) adhered to the Sheriff-Substitute's interlocutor stating in the note to his interlocutor that he considered the openings made by the cross-roads were sufficient compliance with the statutory enactment regarding manholes or places of refuge.

At advising—

LORD JUSTICE-CLERK—In my opinion the judgment which the Sheriff has pronounced in this case is right.

The Coal Mines Regulation Act requires that in all mines where the hutches are drawn by horses, in every road where this is done there shall be placed at intervals of not less than 50 yards manholes of a certain depth and breadth, where the men can go for safety while hutches are passing. The meaning of that provision is plainly this, that where there is a stretch of road on which the miners working at the face would not be able to escape from the hutches except by going a distance of more than 50 yards, then there shall be places of refuge provided in that stretch. In my opinion, however, that provision does not apply in places where no such stretch of road exists. That this is so appears to me to be all the more likely because while we were told by Mr M'Clure that in the whole district where this mine in which the accident happened is situated, no manholes at all exist in the workings, it does not appear that any complaint has been made of the want of them, or that the mining inspectors have ever required they

should be provided. I do not doubt that this is on the ground that the mode of working provides refuge at the necessary intervals without manholes.

In the case before us the pursuer, who had been leaving the mine with his companions, had gone back for some article he had forgotten, and was again on his way to the bottom of the shaft, when in the space between two roads running into the road upon which he was walking, a space of 47 yards in length, he saw a horse dragging hutches coming towards him. At first he attempted to run forward and get to the cross-road marked C upon the plan, but seeing he must fail to get there before the horse reached it he turned to go back. He had, however, got so far forward that the horse, seeing the light in his cap, and being excited by the shouting of the pursuer and of the driver of the hutches, got frightened and ran off. The pursuer turned and ran back, running in front of the horse, so as to reach the cross-road marked D as a place of refuge, but while he was running he also tried to stop the horse, with the result that he was thrown down, and the hutches ran over him, and he sustained the injuries of which he complains.

It was a very unfortunate accident, but I do not think that the pursuer has proved that any blame attaches to the owners of the mine for what has happened, and in my opinion that is sufficient for the decision of this case without any reference to the provisions of the Coal Mines Regulation Act. I do not say that any blame attaches to the unfortunate man at all. It was a pure accident resulting from his mistaken view that he could reach C before the horse came up.

Had he reached C in time it would have been a refuge such as the Act contemplates. And as there was only a distance of 47 yards between the cross-roads there was no necessity for a manhole.

Lord Young—I concur in the result, but I am not prepared to commit myself to the opinion that cross-roads are to be taken as manholes in the meaning of the Coal Mines Regulation Act.

My opinion rests on this entirely, that the accident to the pursuer has not been shown to be attributable to any want of care on the part of the owners of the pit. The pursuer, when he first heard the horse coming towards him was making for the cross-road marked C upon the plan, and if he had reached it it seems he would have found refuge there. It might have been otherwise; there might have been traffic upon that road also. I think, however, it is according to the evidence that when the pursuer saw the horse approaching he ought not to have run forward but ought to have turned back. The driver of the hutches says it was impossible for him to have reached the road C, because the horse was past it, and the Sheriff-Substitute says it is according to the custom of the mine that a man meeting a horse and hutches in the roadway ought to turn back to find a place of safety. Again, when he had reached the road D he might have found it obstructed by traffic also, and that might have been a clear case against the defenders, but it is plain that he never reached the cross-road, and so it could not be said that the accident happened because he could not find a place of refuge. I wish, however, to reserve my opinion as to whether cross-roads can be held to satisfy the requirements of the statute as to manholes.

Lord Rutherfurd Clark—I also think we should abstain from deciding any general question. I think it is not proved that the accident happened from want of manholes.

Lord Trayner—It appears to me that this accident cannot be attributed to any fault on the part of the defenders. I think it is proved that the accident resulted mainly because the horse bolted, but the defenders are not to blame for that. I also think that we should not decide any general question as to what may constitute a manhole in the meaning of the Act.

The Court pronounced this judgment—

"Find in fact in terms of the finding in fact in the interlocutor of the Sheriff-Substitute: Therefore dismiss the appeal: Affirm the judgments of the Sheriff and Sheriff-Substitute appealed against: Find the pursuer liable to the defenders in expenses in this Court," &c.

Counsel for Appellant—M'Clure. Agent—Charles T. Cox, W.S.

Counsel for Defenders—Dickson—Burnet. Agents—Winchester & Ferguson, W.S.

Thursday, February 4.

SECOND DIVISION.

[Sheriff of Aberdeen.

GRANT AND OTHERS (LOW'S EXECUTORS) *v.* WHITWORTH AND OTHERS.

(*Ante, Low's Executors and Others*, June 21, 1873, 11 Macph. 744.)

Succession — Vesting — Conditio si sine liberis — Division per Stirpes or per Capita.

A testator directed his trustees to pay the income of his whole estate to three annuitants—his two sisters and a sister-in-law—"the families of the annuitants to get the interest of their mother until the death of the last annuitant, when at the ensuing money term the residue of my estate is to be divided into two parts, the one for the families of my two sisters (excluding the *jus mariti* of their husbands), and the other half to the treasurer of" a church, equally.

At the death of the last annuitant the grandchildren of one of the testa-