the statute as to advertisement within the applicant's constituency are intended to enable any elector to appear and watch the case, and to see that the application is fully scrutinised before being granted.

LORD ADAM and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Allow the amendments on the petition proposed at the bar, and the same having been made, remit the cause to Lord Kyllachy to proceed as may be just: Find the respondent Alexander Dugald Mackinnon entitled to his expenses," &c.

Counsel for the Petitioner—Ure—Cooper. Agents—M'Naught & M'Queen, S.S.C.

Counsel for the Respondent Mackinnon—Crole. Agents—Duncan Smith & Maclaren, S.S.C.

Counsel for the Respondent Sutherland—Will. C. Smith. Agents—A. & F. Sutherland, S.S.C.

Friday, December 4.

OUTER HOUSE.

[Lord Kyllachy.

YOUNG AND ANOTHER (CHANCELLOR'S TRUSTEES).

(Sequel of Chancellor's Trustees *v.* Chancellor, January 24, 1896, reported *ante*, 33 S.L.R. 313.)

Succession—Family Provisions—Provisions to Younger Children out of Entailed Estate—Construction.

In his contract of marriage an heir of entail, under an entail limited to heirs-male, provided that a sum of £2000 should be held by trustees "in trust for behoof of the children of the said intended marriage not succeeding to the said entailed estate," in such proportions as he should appoint, and that failing such appointment the said sum should be held "for behoof of the younger children who shall be alive at the death" of the truster, "in equal shares or proportions, the issue of such other child or children as may have predeceased always coming in place of their parents, and being entitled to the share that would have fallen to the parent had he or she been alive." *Held* (by Lord Kyllachy, Ordinary) that in the provision the phrase "younger child" was to be construed as equivalent to "child not succeeding to the entailed estate," and that the daughter of a predeceasing eldest son was entitled to take, under the survivorship clause, notwithstanding that her father, had he survived the truster, would have succeeded to the entailed estate, and could therefore have taken no benefit under the trust.

Subsequent to the judgment of the Second Division a condescendence and claim was lodged for Mrs Florence Julia Kelleher or Fitzgerald, residing at Aysgarth, Rawul Pindi, Punjaub, India, as guardian or administrator-in-law of her pupil child Isabella Blanche Dora Chancellor.

The claimant stated that the said Isabella Blanche Dora Chancellor is the only child of her first marriage with Major Alexander Chancellor, the eldest son of John George Chancellor of Shieldhill, and who but for his predecease would have succeeded him in the entailed estate.

The claimant explained that being resident with her daughter in India, and being unacquainted until recently with the legal rights of her daughter, she did not timeously lodge a claim on her behalf so as to be disposed of in the previous competition, but that she now did so in the discharge, as she believed, of her duty to her child.

She therefore claimed, as tutor or administrator-in-law of her said child, to be ranked and preferred to the balance of the fund *in medio* equally along with the claimants Elizabeth Blanche Chancellor and the marriage-contract trustees of Mrs Chadwick, after deducting the proportion thereof forming the subject of specific appointment; and she pleaded, that the said Isabella Blanche Dora Chancellor, being the sole issue of one of the children of the marriage of the said John George Chancellor and Mrs Isabella Adolphus Ross or Chancellor, not succeeding to the entailed estate, was, upon a proper construction of their marriage-contract, entitled to be ranked and preferred in terms of her claim.

The clauses of the marriage-contract bearing upon the question raised by the claim appear in the previous report.

The claimant relied on M'Laren on Wills, ii. 1072-1074, and Jarman on Wills, 5th ed. 1058, and referred to *Wemyss*, November 23, 1810, F.C., and the case of *Smollett*, reported *ibi* in footnote; *Ellison* v. *Thomas*, 32 L.J., Ch. 32, 1862; *Davies* v. *Huguenin*, 32 L.J., Ch. 417, 1863; and to the opinion of Lord Young, *ante*.

The claimants Miss Elizabeth Blanche Chancellor and Mrs Chancellor's Trustees resisted the claim, and argued that as the pupil's father was the first-born and eldest son of John George Chancellor, he could not be regarded as a younger child in the sense of the marriage-contract, and further that the issue of predeceasing children were only given the same rights in the entail provision as their parents would have taken in survivance, and that in this case the claimant could not succeed, as the child's father could never have taken any share of the provision in his own right.

The Lord Ordinary sustained the claim of Mrs Fitzgerald, and gave the following opinion:—"The question in this case arises upon the construction of the marriage-contract of the late Mr J. G. Chancellor of Shieldhill, and particularly that part of it by which he bound himself to pay to the marriage-contract trustees certain moneys to be held under certain trusts for behoof (speaking generally) of his younger children.

"Part of the money so provided consisted of the three years' rents of the estate of Shieldhill, with which Mr Chancellor had, as heir of entail, right to deal under the entail, and also under the Aberdeen Act. But I have to observe in the outset that we have in this case nothing to do with the question whether or not he had power as heir of entail to settle these children's provisions in the way he did. The marriage-contract trustees have got payment of the money from the entailed estate, and their duty is to divide it according to the trusts of the marriage-contract. Whether those trusts were within or beyond Mr Chancellor's powers as heir of entail—I mean his powers in a question with succeeding heirs—is a matter not *hujus loci*. It must be assumed for present purposes that the trusts of the marriage-contract were all of them within the truster's powers.

"I must also observe that, with respect to the present claim, there is no question of vesting. If vesting had taken place in the late Alexander Chancellor, his executors, and not his child in her own right, would have been the proper claimants; but as I read the recent judgment of the Inner House, the only children of the original marriage in whom vesting took place before the truster's death were the children to whom during their lives shares were appointed; and it is not suggested that Alexander Chancellor was one of those children. If, therefore, the present claimant has a claim at all, it is, I think, clear enough that she correctly claims in her own right—that is to say, as being the issue and representative of a person who was a predeceasing younger child in the sense of the contract.

"The sole question accordingly is, whether Alexander Chancellor (the claimant's father) was a younger child in the sense of the contract, in respect that, although the eldest born son, and so during his life heir-apparent, he yet died before his father, and so did not succeed to the entailed estate. Now, on this question I think there is authority for holding that in construing the entail provisions the expression 'younger children' is not to be taken literally, but—unless the contrary appears—may be read as equivalent to 'children not succeeding to the entailed estate.'—See cases cited in M'Laren on Wills, ii. 1072-1074; Jarman on Wills, 5th ed. 1058.

"I think also that in the present case the argument for this construction is especially strong, because in the clauses of this marriage-contract which have to be construed, the two expressions 'younger children' and 'children not succeeding to the entailed estate' are both of them used, and used convertibly. It is of course true that Alexander Chancellor never was a younger child, being in fact the eldest born son; and that the case therefore is different from that figured in argument, viz., that of a younger son, or a succession of younger sons, becoming successively eldest sons and heirs-apparent, and yet dying one after the other before succession. But if it be once conceded that the expression 'younger children' admits of construction, it does not seem to me to be substantially more difficult to include in the class of younger children an eldest born son who does not succeed, than to include, *e.g.*, a younger born son who becomes an eldest son but does not succeed.

"It is also said that, taking the words of the destination-over to issue, on which destination the claimant founds, such issue can only take the share which would have fallen to their parent if he had survived, and that if Alexander Chancellor — the parent here—had survived he would have taken nothing. But this argument would apply equally to the issue of younger born sons becoming eldest sons and then predeceasing. And that this sufficiently bars the literal construction appears to have been the opinion expressed by at least one judge, and not dissented from by the others, in the recent judgment of the Inner House.

"On the whole, therefore, I consider that I am justified in sustaining the claim of Alexander Chancellor's daughter to participate in this marriage-contract provision."

Counsel for the Claimant Mrs Fitzgerald —William Campbell — Wilton. Agent—Robt. H. Wood, S.S.C.

Counsel for the Claimants Miss Chancellor and Others — Dundas — Pitman Agents—J. & J. Anderson, W.S.

Saturday, December 5.

FIRST DIVISION.

WOTHERSPOONS, PETITIONERS.

Company — Judicial Winding-up — Company in Process of Voluntary Liquidation—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *secs.* 79 *and* 80.

A petition was presented by debenture holders in a company, as creditors, for the winding-up of the company, on the ground that interest due on their debentures, amounting to £32, was unpaid, and that, as they believed and averred, the company was unable to pay its debts. The capital of their bonds was not due. It appeared that a special resolution had been passed to wind-up the company voluntarily with a view to reconstruction, and after the date of the present petition the liquidator presented a petition for authority to summon a meeting of debenture-holders for the purpose of considering the scheme. A motion for intimation and service in the winding-up petition was opposed by the company and liquidator.

The Court *ordered* intimation, on the ground that a debt due by the company had not been paid, and that the respondents had failed to show that it would be detrimental to the interests of the company to allow public intimation.