deeds. The executors and the parties in whose favour the deeds have been granted say they are not subject to the jurisdiction of the Court. I think they are subject to the jurisdiction, on the ground stated by your Lordship. The trust-estate is vested in these parties. They are heritors in Scotland, owners of heritable property which is liable for satisfaction of this onerous claim on the trust-estate. The amount of the claim, no doubt, must be computed from the amount of the executry, but, the amount being once established, the claim may be enforced against the executry or against the heritage.

Lord Deas—I concur. It is necessary to attend to the shape of the question. This is an action of reduction, with certain conclusions for payment. By Statute, in actions of reduction, no defences can be lodged at the outset but preliminary defences, and those of two kinds, (1) pleading a title to exclude, and (2) pleas against satisfying the production. No other defence can be stated at this stage. Accordingly, what was done was to lodge preliminary defences, and the question is, Whether any of them is sufficient to prevent the usual order to satisfy the production. All the pleas hinge on the plea of no jurisdiction. It must be kept in mind that, in going on one ground in repelling the plea of no jurisdiction, it does not follow that there are no other grounds for coming to that result, but I agree in holding the one ground sufficient. Whether we are entitled or not to have the deeds produced, we are entitled to look at the narrative of them set forth on record, and that shows the substance well enough; and on the face of the narrative we see that whether these two deeds were separate or no, these trustees entered into an agreement with this lady on the footing of these being substantially one trust.

Lord Ardmillan—I am clearly of opinion that the objection to the jurisdiction argued *in hoc statu* is not well founded. The death of this gentleman took place in Scotland. His domicile was Scotch, and I am quite satisfied that the local situation of the funds of a party dying domiciled in Scotland, is of no consequence. In the next place, the confirmation was Scotch, and at that date four out of the five executors then alive were Scotchmen. The deeds themselves are relative, and are plainly intended to embrace a disposition of the trustee's whole estate. The trustees are the same in both, the parties interested in the residue are the same as those interested in the heritage, and that heritage, held by these trustees, is in Scotland. Putting all these things together, it is impossible to refuse to sustain the jurisdiction, especially at this stage when the only point is as to satisfying the production.

Agents for Pursuer—Dundas & Wilson, C.S.

Agents for Defenders—Hill, Reid, & Drummond, W.S.

Tuesday, May 19.

PATERSON *v.* BARCLAY.

Charge on Bill—Suspension—Trust-Deed for Creditors—Bankrupt. Terms of trust-deed for creditors which *held* not to bar a creditor, trustee on the estate, from diligence against the bankrupt.

For several years Barclay, a wholesale dealer, was in the habit of supplying Paterson with materials used by him in his business. Paterson got into difficulties, and in December 1867 executed a trust-deed in favour of Barclay. The deed conveyed only what then belonged to Paterson, and provided "that as the object of this deed is to effect a speedy distribution of my present means and effects among my creditors, without prejudice to their right to recover the balance of their claims by diligence against me, and any estate I may hereafter acquire, it is specially provided that my said creditors, or any of them, shall in no way, by their accession to these presents, or the claiming benefit under the same, be prevented or prejudiced from instituting any action, or using any diligence competent at their instance against me, or any property which I may hereafter acquire or become possessed of, for payment of their debts so far as not satisfied by the property hereby conveyed, or against any person or persons bound with or for me in payment of any of the debts owing by me to them; but that, notwithstanding their accession hereto, or the claiming under the same, it shall be in their power, at any time they think fit, to use all manner of diligence, real and personal, against me and my said other estate, or against such co-obligants, for payment of the debts due to them, as may by law be competent."

Barclay, in February 1868, charged Paterson on two bills, dated in May and June 1867, whereupon Paterson suspended and pleaded that the "complainer having executed in favour of the respondent the trust-deed above mentioned, and the latter having accepted of, and acceded to, the same, and having acted under it by collecting and discharging accounts due to the complainer, and selling off and realising the proceeds of the complainer's household furniture and effects, he is, in the circumstances stated, barred from resorting to summary diligence upon bills signed anterior to the date of the said trust-deed."

The Lord Ordinary (Mure) refused the note of suspension, adding this note:—"It is not without hesitation that the Lord Ordinary has refused this note. For it appears to him, as at present advised, that the clause in the trust-deed, relative to the reservation of diligence founded on by the respondent, when fairly construed, was intended to apply only to diligence for any balance that might be due after distribution of the effects made over to the trustee; and if, in this case, the respondent had allocated a dividend, under the powers given him by the trust-deed to that effect, of so much per pound on his own and the other claims, the Lord Ordinary would have been disposed to pass the note, even without caution, to the extent of the amount of the dividend effeiring to the bills charged on; because, to that extent the charge would, it is thought, have been bad, in respect that the dividend would have operated as the extinction of so much per pound on every pound of the bills; *Balmanno*, 24th Feb. 1826, 2 W. & S., p. 7. And had caution now been offered, the Lord Ordinary would also have been disposed to pass this note, in order that the precise amount due upon the bills might have been ascertained. But as there has not as yet been any allocation or declaration of a dividend, and there are bills produced tending *ex facie* to instruct that there may still be a balance due to the charger, after a dividend has been declared larger than the amount of the bills charged on, the Lord Ordinary, having regard to the terms of the reservation as to diligence in the trust-deed, does not consider that he

would be warranted in passing the note, except upon caution in common form."

The suspender reclaimed.

BLACK for reclaimer.

GIFFORD, for respondent, was not called on.

The Court unanimously adhered.

Agent for Complainer—L. Mackersy, W.S.

Agents for Respondent—Thomson, Dickson, & Shaw, W.S.

Tuesday, May 19.

MACANDREW, PETITIONER.

Trusts (Scotland Act) 1867—*Scheme for Administration of Charitable Endowment—Report by Lord Ordinary.* A petition by a judicial factor on a trust-estate for authority to make an interim division of the residue of the trust-estate among certain charitable institutions, according to a scheme suggested to the Court, *held* not to be a scheme for administration of a charitable or other permanent endowment falling to be reported to the Court by the Lord Ordinary under the 16th section of the Act 30 & 31 Vict., c. 97.

This was a petition presented by James Maclean Macandrew, judicial factor on the estate of the late John Mackenzie. Mackenzie died in Edinburgh in 1852, leaving a trust-disposition and various codicils, conveying his whole means and estate to trustees, who were directed, *inter alia*, to pay certain legacies to certain specified charitable institutions, "and the remainder of the residue of my said estate I appoint my trustees or quorum to pay to the charitable institutions of Edinburgh, or such of them as they shall think proper (other than those specified in the codicil of date 26th May 1849, subjoined to said trust-deed), equally and share and share alike, or in such proportions as they may deem to be right and useful; of all which my said trustees or quorum are hereby constituted sole and only judges." On the death of the sole surviving trustee, the petitioner was appointed judicial factor, and he now applied to the Court for powers in reference to interim distribution of the realised funds of the trust-estate, submitting a scheme of division for approval by the Court. The petitioner set forth the 16th section of the "Trusts (Scotland) Act 1867, 30 & 31 Vict., c. 97, which provides "that when, in the exercise of the powers pertaining to the Court of appointing trustees and regulating trusts, it shall be necessary to settle a scheme for the administration of any charitable or other permanent endowment, the Lord Ordinary shall, after preparing such scheme, report to one of the Divisions of the Court, by whom the same shall be finally adjusted and settled; and in all cases where it shall be necessary to settle any such scheme, intimation shall be made to Her Majesty's Advocate, who shall be entitled to appear and intervene for the interests of the charity, or any object of the trust, for the public interest." The petitioner craved, after intimation and service and advertisement, and answers by parties interested, for approval of the scheme suggested, and warrant to distribute the sum of £3000 in terms of the scheme. The Lord Ordinary (MURE) reported the petition on 13th March last, when the Court, after hearing counsel, indicated a doubt as to whether the petition came properly within the Act, and continued the case for further argument.

The case came again before the Court..

CLARK and THOMS for petitioner.

Their Lordships held that the petition was not a case of settling a scheme for the administration of a charitable or other permanent endowment falling to be reported under the Trusts Act 1861, and remitted the petition to the Lord Ordinary.

MUIRHEAD, for the Lord Advocate, craved the expenses of appearing, but the Court refused the motion.

Agent for Petitioner—D. J. Macbrair, S.S.C.

Tuesday, May 19.

SECOND DIVISION.

CROMBIE *v.* CROMBIE.

Husband and Wife—Aliment—Adherence—Separation—Incompetency—Expenses. In an action of aliment at the instance of a wife, which contained neither a conclusion for adherence nor separation, a sum allowed by the Lord Ordinary to the pursuer to meet the expenses of the case, pending the trial of the question of the competency of the action, *sustained.*

This was an action of aliment brought by a wife against her husband, and unaccompanied by any conclusion either for adherence or separation. The defender pleaded that, in respect of the absence of such conclusions, the action was incompetent; and, at all events, that the ground of action was extinguished by an offer made by the defender in his defences, to receive his wife and aliment her in his house.

The Lord Ordinary having appointed a debate on these questions, he decerned *ad interim* against the defender for £20 to meet the pursuer's expenses.

The defender reclaimed.

PATTISON and MACKAY for him.

STRACHAN in answer.

The Court adhered to the Lord Ordinary's interlocutor, holding that the absence of a conclusion for adherence on the one hand, or separation on the other, did not necessarily make the action incompetent, and that the question whether that was the result was one of some difficulty.

LORD BENHOLME expressed an opinion that no such conclusion was necessary in a case of this sort.

Agent for Pursuer—Andrew Beveridge, S.S.C.

Agent for Defender—Thomas Wallace, S.S.C.

Wednesday, May 20.

FIRST DIVISION.

STIVEN *v.* THOMAS.

Bankrupt—Cessio—Pursuit—Prescription—Bar. R. raised a *cessio* in 1858, and T., who was entered by R. in his state of debts as one of his largest creditors, was appointed trustee. T. litigated as trustee and as creditor for several years, for the purpose of ingathering R.'s estate, and, in an action at his instance, a jury found, in 1866, that T. was a creditor of R. for the amount set forth by R. in his state of debts. In 1867 the estates of R., who died in 1859, were sequestrated. T. claimed on the said debt, but the trustee in the sequestration rejected the claim as prescribed. *Held* that the trustee was barred in the whole circumstances