has been brought to look upon her aunt's house as her home, the father seeks to alter this arrangement, apparently without good reason, and against the wishes of his daughter. In these circumstances I agree with your Lordship, there being no pecuniary question involved, that we cannot support this extreme exercise of the father's powers. We granted the prayer which he asked when the child was a pupil, but she has now attained minority, and that of course introduces a new element into the case, and entitles us to consult the wishes of the daughter herself. I agree that Miss Fisher, if she has not cleared herself of the imputation of having neglected to obey the orders of the Court, has at least so submitted herself to the authority and judgment of the Court as to be entitled to have the sequestration which was formerly granted as a compulsitor against her, recalled, and the factory terminated.

LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner—Lees—Salvesen. Agents — Macpherson & Mackay, S.S.C.

Counsel for the Respondent—Dickson—Christie. Agents—Simpson & Marwick, W.S.

Thursday, July 19.

FIRST DIVISION.

DOWIE AND OTHERS *v.* HAGART.

Judicial Factor—Petition for Appointment of Judicial Factor to Administer Estate Settled upon Children by Marriage-Contract—Allegations of Facility and Undue Influence—Competency.

A widow having made certain pecuniary advances to her youngest son out of the capital of her estate, of which she had been in uncontrolled possession for over twenty years, her other children presented a petition for the sequestration of her estate and the appointment of a factor to administer it, on the grounds (1) that by the terms of their parents' antenuptial contract and a mutual settlement executed by them, they had a *jus crediti* in their mother's estate, entitling them to equal shares thereof at her death, and that the gifts made to the youngest son were in fraud of their rights; and (2) that their mother's faculties were impaired by age, that she was facile, and that her youngest son had acquired a dominating influence over her which he exercised to his own pecuniary advantage. The petition was opposed by the mother, who denied the allegations on which it proceeded.

The Court *dismissed* the petition, in respect (1) that they were not satisfied that the deeds upon which the petitioners founded conferred upon them the rights which they claimed; and (2) that the other averments made by the petitioners did not afford a competent ground for the appointment craved.

Observations by Lord M'Laren upon the kind of case in which the Court will appoint a judicial factor.

Marriage-Contract—Mutual Settlement—Provisions to Children—Conveyance of Property then Belonging or which should Belong to Spouse at Time of Death—Conveyance of Acquirenda.

Observations by Lords M'Laren and Kinnear upon the case of *Wyllie's Trustees* v. *Boyd*, July 10, 1891, 18 R. 1121, and upon the effect of a conveyance of *acquirenda* in a marriage-contract.

Mr and Mrs Hagart were married in 1833. Mrs Hagart was then institute of entail in possession of the entailed estate of Glendelvine.

By antenuptial contract of marriage Mr Hagart assigned and disponed to Mrs Hagart in liferent, in the event of her surviving him, and to the children of the marriage, excepting the child who should succeed to Glendelvine, the whole estate, heritable and moveable, that might belong to him at the time of his death, subject to a power of apportionment reserved to himself, and failing such apportionment, then equally among them. These provisions Mrs Hagart accepted as in full of her legal rights, and they were declared to be in full of the legal rights of the children of the marriage. In consideration of the said provisions Mrs Hagart granted certain provisions in Mr Hagart's favour by way of annuity out of the entailed estate, in the event of his survivance, and she also granted certain provisions out of that estate to the children who should not succeed to her therein. Mrs Hagart further assigned and disponed to Mr Hagart in liferent, in the event of his surviving her, and to the children of the marriage in fee, the whole estate, heritable and moveable, that might belong to her at the time of her death, excepting always the rents of Glendelvine.

In 1861 Mr and Mrs Hagart executed a mutual trust-disposition and settlement. By this deed Mr Hagart conveyed to trustees, of whom Mrs Hagart was a *sine qua non*, his whole estate, heritable and moveable, in trust, after payment of debts and expenses, for payment to Mrs Hagart of the free revenue of the residue of his estate for her liferent use allenarly during her life, and to his childen equally among them in fee, excepting the child succeeding to Glendelvine. Mrs Hagart on her part, in addition to the annuity and provisions secured to her husband and children out of the rents of Glendelvine, disponed to Mr Hagart in the event of his surviving her, whom failing by his predeceasing her to their said children equally amongst them in fee, excepting always the child who should succeed to Glendelvine, her whole estate, heritable and moveable, then be-

longing or which should belong to her at the time of her death. Further, the spouses reserved to them or either of them during their joint lives power to alter or revoke their disposition in whole or in part so far as their respective estates were concerned, and also power to Mr Hagart, in the event of his being the survivor, to alter or revoke the foresaid trust conveyance as he should think fit.

Mr Hagart died in 1869. After his death the estate of Glendelvine was sold with the consent of the three next heirs of entail, and in security of the provisions which she had granted to the younger children out of the estate, Mrs Hagart assigned to trustees certain policies of insurance upon her life. After the disentail and sale had been carried through, the debts of both spouses paid, and the future premiums on the policies redeemed, a sum of £22,000 remained for investment, and this sum was left in the possession and control of Mrs Hagart.

In 1894, Mrs Hagart being then eighty-six years of age, a petition was presented by her surviving children (two sons and five daughters), other than her youngest son Francis, praying the Court to sequestrate the estates of the deceased Mr and Mrs Hagart, and to appoint a judicial factor to hold and administer them.

The petitioners set forth and founded on the terms of the marriage-contract and mutual disposition executed by Mr and Mrs Hagart. In articles 8 to 10 the petitioners averred that Mr Hagart had left estate exceeding his debts, and consisting in part of a claim for the amount of improvement expenditure laid out by him on the estate of Glendelvine, and of amounts assured by various policies on Mrs Hagart's life; that Mrs Hagart's estate at this time consisted solely of her interest in Glendelvine, and the interest, if any, she might have established in the said policies of insurance; that Mr Hagart's estate could not have been extricated from that of his widow without sacrificing her life interest in the entailed estate; that in order to provide a residuary fund for Mrs Hagart's benefit it was resolved to sell the estate; that to facilitate the same object her three eldest sons agreed to accept sums greatly less than the true value of their interests as consideration for consenting to the disentail; that it was a condition of their doing so, and of the transaction and argument between them and their mother that the equal division of their father's and mother's estates among the whole members of the family provided for by the marriage-contract and mutual disposition should be irrevocable; that on the same footing the younger children agreed to accept the insurance policies as security for the provisions made for them by their mother though these policies belonged to Mr Hagart's estate; that in consequence of the said transaction and agreement it became unnecessary to extricate Mr Hagart's estate from that of his widow, and the two estates were treated as one, and managed as such, Mrs Hagart enjoying the whole income, and Mr Hagart's trust being allowed practically to remain in abeyance.

The petitioners further averred (in articles 12, 13, and 14) that Mrs Hagart's health was impaired and her mind weakened and rendered facile by age, and that she had been for some time completely subservient to the will of her youngest son, a man of loose and disorderly habits, who had gained a dominating influence over her, which he used to obtain sums of money from her; that in this way a sum of £5000 out of the £22,000, which represented the joint estates of Mr and Mrs Hagart, had already been dissipated, and that Mrs Hagart had also incurred further pecuniary obligations on this son's behalf.

The petitioners submitted (1) that upon a sound construction of their parents' marriage-contract and mutual disposition, *et separatim*, in respect of the transaction and agreement and actings of parties narrated in articles 8, 9, and 10, the whole children of the marriage were entitled to equal shares of the capital of their mother's estate at her death, and that she was not entitled to dissipate said estate by gratuitous gifts *inter vivos*, particularly by gratuitous gifts in favour of one child to the prejudice of the other children; and separately (2) that in the circumstances set forth in articles 12, 13, and 14, the appointment of a judicial factor was necessary for the protection of their just rights and of their mother's interests.

Answers were lodged for Mrs Hagart. She claimed no right to expend any part of her husband's estate, but explained that her husband had left practically no estate; she denied that the deeds founded upon by the petitioners disabled her from dealing with her own estate as she might think fit, or that she had entered into any agreement with her children fettering her power of dealing with the same; she further denied the averments made as to the character of her youngest son, and the influence which he was alleged to exercise over her. She admitted that she had given this son pecuniary assistance to enable him to start in business, but stated that she had assisted her other sons to at least an equal extent.

Argued for the petitioners — Although there was no direct precedent for the application, the appointment craved was quite consistent with the powers vested in the Court, and was required by the peculiar circumstances of the case. The first question was, whether the respondent was entitled to interfere with the equal division of her estate among her children, which was provided for both by the marriage-contract and by the mutual settlement. If she was not entitled to make an unequal division by *mortis causa* deed, she was not entitled to disappoint their expectations by *inter vivos* gifts. Such gifts would be in fraud of their rights. The question above stated raised three other questions—(1) Was there anything in the marriage-contract which gave the respondent a power of apportionment as to her own estate? (2) Had she bound herself to an equal division by the mutual disposition?

(3) Had she so bound herself by the transactions which took place when Glendelvine was sold? If the petitioners' argument prevailed on any of these points, it would be established that the respondent had no power of interfering with the equal division of her estate among her children. (1) It was open to question whether the law would give to the wife by implication the power of apportionment which it gave to the husband, and it was also questionable whether there was anything in the marriage-contract to give rise to the implication. The provision in the wife's case was in marked contrast to that in the case of the husband. There was no reserved power of apportionment in her favour, and the most reasonable construction of the deed was to hold that though the provisions were testamentary the children's succession was protected, and that the wife was not intended to have the power of interfering with the equal division of her estate among them. (2) Even if it were held that the respondent had under the marriage-contract an implied power of apportionment, she had deprived herself by the mutual disposition of the right to exercise that power after her husband's death, for the disposition being a mutual deed, the death of the husband rendered its provisions irrevocable. (3) The respondent was barred by the transaction and agreement which she had entered into with her children at the time when Glendelvine was sold from interfering with the equal division of her estate among them. But even if it were assumed that the respondent could apportion the estate which she had settled upon her children, her power could not be greater than that of a father in like circumstances, and was limited to making a rational division among her children by *mortis causa* deed. She was not entitled to disappoint their expectations by *inter vivos* deeds. Gifts *inter vivos* would be held to be in fraud of the children's rights—Fraser on Husband and Wife, p. 1369; *Campbell* v. *Campbell*, 1738, M. 13,004; *Ponton* v. *Ponton*, February 14, 1837, 15 S. 554; *Arthur and Seymour* v. *Lamb*, June 30, 1870, 8 Macph. 928; *Greenoak* v. *Greenoak*, January 12, 1870, 8 Macph. 386; *Gillon's Trustee* v. *Gillon*, February 8, 1890, 17 R. 435; *Moir's Trustees* v. *Lord Advocate*, January 7, 1874, 1 R. 345; *Lowden's Trustees* v. *Lowden*, June 1881, 8 R. 741; *Champion* v. *Duncan*, November 9, 1867, 6 Macph. 17, *per* Lord Curriehill, p. 22; *Cowan* v. *Young*, 1669, M. 12,942; *Cairns* v. *Cairns*, 1705, M. 12,862; *Fraser* v. *Fraser*, 1677, M. 12,859. [Lord M'Laren referred to the following cases as showing that where a parent had by marriage-contract settled the estate then belonging or which might belong to him at the time of his death upon his children, he was free to dispose of property acquired by him in the interval—*Buchanan's Trustees* v. *Whyte*, February 25, 1890, 17 R. (H. of L.) 53; *Wyllie's Trustees* v. *Boyd*, July 10, 1891, 18 R. 1121; *Macdonald* v. *Scott*, L.R., 1893, App. Cas., *per* Lord Watson 655.] These cases no doubt showed marriage settlements might be so worded as to admit of gratuitous alienation by the parent to third parties of property acquired during marriage, but they did not support the view that a parent was entitled by *inter vivos* gifts to one child to defeat provisions made to the other children. If the contentions submitted on the deeds were sound the petitioners were entitled to have their rights protected, and protection could only be given by the appointment of a factor. But even if the petitioners' argument on the deeds were not sustained, their averments as to the respondent's facility and the dominating influence exercised over her by her youngest son were relevant, and would, if established, entitle them to the remedy they craved. A person who was facile and subject to impetration was not necessarily a person who could be cognosced or to whom a *curator bonis* could be appointed—*Morrison* v. *Maclean's Trustees*, February 2, 1862, 24 D. 625. The only remedy for the state of things which the petitioners alleged to exist was the appointment of a factor, and that remedy they were entitled to have if their averments were proved to be true.

Argued for the respondent—The application was incompetent and the petitioners' averments were irrelevant. Neither the marriage-contract nor the mutual disposition deprived the respondent of the power of dealing with her own estate as unlimited fiar, the provisions in favour of the children in both deeds being purely testamentary. A fiar could disregard a prohibition against alienation—*Michel's Judicial Factor* v. *Oliphant*, December 7, 1892, 20 R. 172. The mutual disposition was a revocable deed—*Mitchell's Trustees* v. *Mitchell*, June 5, 1877, 4 R. 800. The averments as to a transaction between Mrs Hagart and her children were irrelevant. The petition might be disposed of on the ground that it was incompetent. It was not alleged that the respondent was incapax. If it had been, the proper remedy would have been the appointment of a *curator bonis*. Such an appointment as was now craved was unprecedented, and to grant it would open the door to extraordinary applications being made to the Court.

At advising—

Lord Adam—This is a petition for the sequestration of the estates of the now deceased James Valentine Hagart and of Mrs Amelia Hagart Straton or Valentine Hagart, and the appointment of a judicial factor to receive the income of these estates. The petitioners are the whole of the children and the representatives of the children of Mr and Mrs Hagart except one, the youngest son Francis David Valentine Hagart, and the respondent is Mrs Hagart herself. Now, the estates which it is sought to sequestrate, it will be observed, are two estates. The first mentioned is the estate of the late Mr James Valentine Hagart, and the second is the estate of Mrs Hagart herself. With reference to the latter of these two estates it will be observed that Mrs Hagart has all along—

certainly from the death of her husband in 1866—been in the entire management and sole possession and disposal of the estate—that is to say, for some thirty odd years—and it is proposed that her estate should now *de plano* be sequestrated, and the management and disposal thereof taken out of her hands. The immediate grounds upon which this is sought are set forth in the 13th article of the petition. It is there said, stated shortly, that Mrs Hagart is a very old lady, now nearly eighty-seven years of age; that she is weak and facile and easily imposed upon; that her youngest son Mr Francis Hagart is a man of loose and disorderly habits, and that taking advantage of the dominating influence which he has acquired over her, he has obtained from her, through threats, fraud, and misrepresentation, large sums of money, which large sums of money are, it is said, much more than would be his proper share of the estates of his father and mother, because these estates are to be equally divided among the children. That is the immediate ground for making this application.

Now, it will be observed that that proceeds upon the footing that, apart from her being tampered with, she is in a perfectly able and fit state of mind to manage and administer her own estate. For if she had not been so—if there had been any averment that she was unable from her great age or otherwise to properly manage and administer her estates, the proper remedy would not have been the remedy which is sought to be adopted here. The proper remedy would have been the appointment of a *curator bonis* to her, who would in that case have administered and managed the estate for her benefit, just as she had been managing and administering it for her own benefit in the past. There is no such application here, and we were told there were no grounds for such an application, because it was impossible to say that she was not in a a perfectly competent state of mind to manage and administer her own affairs, apart from undue influence.

Now, I must say that I think that a petition for the appointment of a judicial factor in such circumstances would be altogether incompetent. No authority for such a proceeding was mentioned to us, and I know of none. But it is said that there are special circumstances in this case, arising from the state of the different parties in the past and the rights of the children, which would lead to a different conclusion. The circumstances and all the deeds which raised the question are set forth at length in this petition, but I need not go through them in detail, because the results of them as maintained by the petitioners are set forth and condensed in the 11th article of the petition. And what is there set forth is this—that, upon a just construction of the various deeds, which I need not particularise, the children were entitled "to receive payment of the capital of these estates in equal shares upon the death of their mother, and subject only to her proper liferent of the same. Further, that upon a sound construction of the said deeds, *et separatim*, in respect of the said transaction and agreement and of the actings of parties narrated in articles 8, 9, and 10 hereof, the whole children of the marriage or their representatives had and have a right to receive at the death of their mother, in equal shares, the capital of her said estate, and Mrs Hagart was and is not entitled to alienate or dissipate the said capital by gratuitous gifts *inter vivos* to one of her said children, in fraud of the said deeds and of the said transaction and agreement." It is said that if we do not give this remedy there would be no other; because, assuming that to be true, if proper means were not to be used against Mrs Hagart disposing of her property to this son Francis, it might be dissipated and could not be recovered. That may be so, but I would point out to your Lordships that these averments on the part of the petitioners are denied on the part of the respondent. On the contrary, the respondent's counsel maintains stoutly that Mrs Hagart is now and has been during the whole of her life, as she was entitled to be, the sole and unlimited fiar of her own property, and accordingly that is the question which is raised upon the construction of these deeds. One of the parties says that Mrs Hagart is unlimited fiar, and would be entitled to act on that footing till the day of her death, and that the petitioners will be entitled to a share equal or otherwise after her death of their father and mother's estates, and, as I have said, the opposite proposition is maintained on the other side. Now, if it had been clear upon these deeds that the petitioners were right in their construction, and had acted upon that footing, that would have been an important matter; but we heard a long argument upon the subject, and all I need say at present is that the position of Mrs Hagart and the rights of her children are by no means clear; they are anything but clear. Now, it appears to me that a proceeding of this kind and in this shape is not a proper proceeding for settling incidentally these important questions. I think we must look to the existing state of possession, because Mrs Hagart has for the last thirty years had undisturbed possession and management of her own estate, which has always been in her own possession, management, and administration, and I certainly see no reason whatever, upon the suggestions which have been made, and a sufficient consideration of the deeds which passed between the parties to this case, for saying that Mrs Hagart is to be in this manner ousted from the possession which she has so long retained. I do not think that there is any ground for disturbing her possession of the estate, and therefore I am of opinion that, so far as her estate is concerned, we should dismiss the petition.

But then, as your Lordships will see, there is the estate of her husband which has been for thirty years and more mixed

up and administered by her along with her own. Her position in regard to it is not the same as in regard to her own. No doubt she has been in possession of it all along, but she is in possession of it apparently by the consent and with the approval of the beneficiaries of the estate, and of the trustees whom Mr Hagart appointed. In that way her position with reference to this estate is different from her position with reference to her own. I did not understand the petitioners to say that if we were to award sequestration of the whole estates, both hers and his, they would desire a separate appointment of a judicial factor over his estate. In fact I understood the contrary, and I also understood—but as to this I am not quite sure—that we were informed that the surviving trustees have already taken possession in order to vindicate that estate if necessary. In these circumstances I am of opinion that we should pronounce no order unless we are told that there is a separate ground for appointing a judicial factor on Mr Hagart's estate.

LORD M'LAREN—The power which the Court has exercised, and as to which there is no longer any doubt, that of appointing factors for the administration of estates, is a very comprehensive power. It would certainly apply to any case where there is an estate for which no owner can be found, or where the owner is not capable of administering his estate, and it also applies to cases where there is disputed possession, or where the owners are unable to agree in regard to the administration of their estate, as sometimes happens in cases of joint-ownership. But whatever be the nature of the case which necessitates the appointment of a manager by the Court, it is always in its nature an interim appointment. I do not think that there is any case in which that power has been exercised unless upon grounds which would eventually entitle the party for whose benefit the appointment was made to succeed in an ordinary action in vindicating the property. I do not say that there may not be cases where the Court would appoint a factor upon an estate which was subject to marriage-contract obligations. We may suppose, for example, that a parent had bound himself by antenuptial marriage-contract to convey certain lands to trustees in order that they might take infeftment in his lifetime, and thereby secure the estate to the heirs of the marriage in such a way as would prevent it being carried off by the parent's creditors. If that obligation were unfulfilled, and if there was a danger of the estate being carried away or made over by gratuitous alienation, that would be a case where an application for sequestration would deserve the most favourable consideration, but the ground there would be that the children would have had a right by action in which they would eventually succeed, according to the hypothesis of the case, in compelling the parent to grant and deliver a conveyance to the trustees. But then in the present case, not only is there no obligation to infeft trustees in the lifetime of either parent, but, so far as relates to Mrs Hagart's property, the subject of the obligation is only such estate as the lady was then possessed of, and such as she might have at her death—whatever might pertain to her at her death.

It was argued in support of the application that this was equivalent to a general conveyance of *acquirenda*, and I think it was felt by counsel that the establishment of that proposition was—if not a necessary element—at least a very important element—in their case. Now, it is of course possible that a question arising upon this destination may arise after the death of Mrs Hagart, and nothing that we say now could prejudice that question. But at the same time it is quite necessary, in considering whether a case has been made out for the appointment of a judicial factor, that we should also consider whether any grounds have been shown in support of the position taken up by the children, that this is their property—a property to which they have a *jus crediti*. When the authorities are examined they appear to be all clear in the opposite direction. I may refer especially to the judgment delivered by Lord Kinnear in the case of *Wyllie's Trustees* v. *Boyd*, 18 R. 1121, in which this very point was distinctly raised, and where his Lordship, with the concurrence of the other members of the Court, laid down that under such a destination the children have right only to the property of the parent at the date of the marriage, and to whatever might be found to be his property at the date of his death, which of course implies that the parent is free to deal with his estate as he pleases during his lifetime. I may perhaps take occasion to qualify my adherence to that opinion upon another point—I refer to the sentence immediately preceding the one to which I have adverted, where Lord Kinnear, in distinguishing the destination that we were dealing with from a general conveyance of *acquirenda*, characterises the effect of a conveyance of *acquirenda* as if it deprived the father of all right of property and all power of control over property that might come to him during the intermediate period. Now, I think his Lordship there had in view the case of a conveyance to trustees which was intended to take effect during the subsistence of the marriage, and if so I assent to the proposition. But if the plan of the contract is that the obligation is not to be perfected by a conveyance until after the dissolution of the marriage, then I should hesitate to say that the father even in such a case could be deprived of the control and administration of his estate during his lifetime. I make this observation because it appears to me to be relevant to the other branch of the present case—that relating to Mr Hagart's conveyance—which is a conveyance in more comprehensive terms than that made by his wife. I think that the opinion of Lord Kinnear would support this proposition, that a parent who makes a general conveyance of *acquirenda* is liable to be restrained from acts of gra-

tuitous alienation which would prejudice the heirs of the marriage, but that in all other respects, unless he has bound himself to infeft trustees or to put them in possession of moveable subjects, he is the uncontrolled owner of his estate.

On the first question I am clearly of opinion that no ground has been shown for appointing a judicial factor to administer Mrs Hagart's estate, because the children have not satisfied me that they have any right to the estate, or what is substantially the estate in question—the proceeds of the sale of the heritable property—until their parents' death.

Then as to Mr Hagart's estate, if there were here a body of trustees administering the estate, I should say that they ought to be left to carry out the will, there being no reason for displacing them. It is said that the trustees have never acted, and that with the consent of the family the two estates have been massed together and left in the hands of Mrs Hagart during her viduity. Well, if that has been done with the consent of the family—and I think that consent may be presumed—so long a period has elapsed without challenge of Mrs Hagart's right, that I do not think we ought to interfere in this summary mode to alter the existing state of possession.

We are given to understand that there is an action in dependence for constituting this trust, and it may be that if the trustees were to refuse to act it would be necessary to appoint a factor, but that case has not yet arisen. Therefore I am of opinion that the application ought not to prevail even in regard to the father's estate, in which apparently the children have a certain immediate interest. I agree with Lord Adam that the petition ought to be dismissed.

Lord Kinnear — I am of the same opinion. I think it clear that we cannot deprive this lady of the administration of her estate upon the grounds alleged by the petitioners, which are personal to herself —that is to say, upon their statement that she is of great age and in impaired health, and ready to give way to the importunities of one of her children. If it had been said that she was incapable of managing her affairs in consequence of her age and infirmity, the proper course would have been to apply for the appointment of a *curator bonis*, by whom her affairs would be managed for her; but that is not alleged, and it was made very clear by the statement of counsel at the bar that they did not intend to aver that this lady was incapable of managing her own affairs in any such sense as would justify the appointment of a curator. Now, if she is capable of managing her affairs, then I am unable to see any ground which would justify the Court in depriving her of the administration of her estate. And I confess that I see very great difficulty, even if there were such grounds, in giving effect to the prayer of the petition for the appointment of a judicial factor, because I am unable to tell—and counsel were unable to tell me—what the powers and duties of a judicial factor would be. The duties of a *curator bonis* are perfectly well fixed, and they are founded upon the incapacity of his ward. The duty of a judicial factor who holds estate vested in somebody else for her, and I suppose for her only, except in so far as her children have certain greater or lesser rights of succession, would appear to me to be a very difficult thing for one to understand. If Mrs Hagart is entitled, notwithstanding the conditions of her marriage-contract, to dispose of her estate during her life at her pleasure, then I am unable to see how a judicial factor could prevent her doing so, or could refuse to give effect to her conveyances if she granted them, unless the appointment were made on the footing of her being incapable of managing her own affairs for herself. I am therefore of opinion that that part of the petition cannot possibly be granted.

With reference to the other ground, I agree with Lord Adam and Lord M'Laren, and I do not think it necessary to add anything at all except with reference to what Lord M'Laren has said upon the case of *Wyllie*, and as to that I quite concur in his Lordship's observations. I do not think we intended in that case to lay down any rule in opposition to the settled rule that a conveyance—a general gift of *acquirenda* —in a marriage-contract would not deprive the husband of the power of administration during his life. The point which required attention in that case was the distinction between a conveyance of profits — of *acquirenda*—and an undertaking to give not everything that the husband might acquire or the wife might acquire during their life, but only what might be left at the time of his or her death. Therefore I quite agree with what Lord M'Laren has said.

The Lord President concurred.

The Court dismissed the petition.

Counsel for the Petitioners—H. Johnston —Dundas. Agents—Hagart & Burn Murdoch, W.S.

Counsel for the Respondent—Jameson—Salvesen. Agents—Bruce & Kerr, W.S.

Friday, July 20.

FIRST DIVISION.

[Sheriff of Edinburgh.

MACRAE *v.* ASSETS COMPANY, LIMITED.

Teinds—Payment of Arrears of Teinds—Bona Fide Consumption.

Held that the plea of *bona fide* consumption is irrelevant on the part of a proprietor of lands who admits that he has never paid teinds because he thought they were exhausted by the stipend, but who does not aver any