courts the Sheriff holds that the new appointment must be made, not in the subsisting factory, but in a new petition altogether in the Sheriff Court of that part of the country where the ward is resident. In others the Sheriff holds that the appointment should be made in the original petition in the Court where the first appointment was made, even though the ward has gone to reside elsewhere.

Now, it appears to me that we have perfect authority to decide this matter, and that it is entirely for us to say what should be done. Mr Strachan has stated reasons of convenience why the practice should be to have the new appointment made in the Sheriff Court in which the original appointment was made, and that appears to me to be the right course. It is to be noted that with regard to orders required in existing and going factories this rule is already recognised. That is shown by the fact that by an Act of Sederunt regulating that matter, even though the ward has changed his residence and gone to reside in another jurisdiction, all the proceedings are to take place in the original existing factory. That being so, it appears to me that the proceedings for the appointment of a new factor should also take place in the Sheriff Court in which the original appointment was made, for the reasons stated by Mr Strachan, and also because one of the first duties of a new factor will always be to audit the accounts of the old factor, and that must necessarily take place in the old factory and original jurisdiction. I am therefore of opinion that we should lay down the rule in the way proposed by the Accountant.

LORD M'LAREN—Under the Judicial Factors Act of 1880, which was intended to lessen the expenses of management of estates of small value, jurisdiction is determined by the residence of the person whose property is to be taken care of. It does not appear that when jurisdiction is once constituted by a factor being appointed, and the funds or property being placed under judicial supervision, that a change of residence on the part of the ward makes any difference. It would be no ground for transferring the factory proceedings that the ward had been sent to reside in a different county. Now, I cannot see, if that be so, why the death or resignation of the person in administration should make any difference. The jurisdiction over the ward himself when once constituted being in no way dependent on his continued residence within the county, I do not think that a change in the administration, when that is necessary, should affect the jurisdiction.

LORD KINNEAR and the LORD PRESIDENT concurred.

The Court pronounced this interlocutor:—

"The Lords of Council and Session (First Division), in pursuance of the powers vested in them by section 4, subsection 7 of the Judicial Factors (Scotland) Act 1880, upon a report made to them by the Accountant of Court dated 8th March 1893, direct and appoint that in every factory where the factor has died, been removed, resigned, or become incapable, and where the ward has removed outwith the jurisdiction of the Sheriff who made the appointment, all applications for a new appointment of a factor shall be presented in the Sheriff Court in which the original appointment was made."

Counsel for the Accountant of Court—Strachan. Agents—Gill & Pringle, W.S.

Saturday, March 18.

FIRST DIVISION

WHITE, PETITIONER.

Sequestration — Petition for Discharge—Report by Trustee not Obtainable—Bankruptcy Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 146.

Section 146 of the Bankruptcy Act 1856 provides that it shall not be competent for a bankrupt to present a petition for his discharge until the trustee in his sequestration shall have prepared a report with regard to the conduct of the bankrupt and his compliance with the provisions of the Act.

Where the trustee in a sequestration had disappeared, and his address could not be ascertained, the Court, in a petition by the bankrupt for his discharge, accepted a report of the Accountant in bankruptcy in place of the report by the trustee required by the above section.

Andrew Aiton White, whose estates were sequestrated in June 1885, presented a petition for discharge in October 1892.

The petitioner stated that he was "now desirous of being finally discharged of all debts due by him before the date of the said sequestration, in terms of the 146th of the Bankruptcy (Scotland) Act 1856. . . . That no dividend has been paid out of the estates of the petitioner, but this has arisen from circumstances for which he cannot justly be held responsible. That the petitioner believes that the trustee left this country some time ago, and that if alive he is now resident in America or elsewhere abroad. The petitioner has made extensive anxious inquiries with the view of procuring his address, but he has hitherto been unsuccessful. He has, therefore, been unable to obtain from the trustee the statutory report specified in the said 146th section of the Bankruptcy (Scotland) Act 1856."

The petitioner craved the Court to appoint the petition to be intimated on the walls and in the minute-book, and to be served edictally on David Rollo, the trustee on the petitioner's sequestrated estates, and to ordain him to lodge answers if so advised within eight days; thereafter to ordain the said trustee within six days to prepare and deliver to the petitioner a

report with regard to the conduct of the petitioner, and in the event of his failing to do so to remit to the Accountant of Court, or other fit person, to supply a report in lieu of that falling to be furnished by the trustee, and on such report being lodged to appoint the petition to be intimated by advertisement in the *Edinburgh Gazette*, and by circular posted to each of the creditors on the petitioner's sequestrated estates, and after the necessary *inducice* and procedure to find the petitioner entitled to his discharge, and to discharge him.

On 18th October the Court ordered the petition to be intimated on the walls and in the minute-book, and to be served on the commissioners in the sequestration, and edictally upon the trustee. No answers were lodged, and on 3rd November the Court pronounced this interlocutor:—"The Lords, in respect of the statements as to the absence of the trustee from this country, and the petitioner's inability to obtain a report from him, remit to the Accountant of Court to inquire and report on the matters set forth in the petition."

The report of the Accountant was to the following effect—"The trustee had disappeared, communications to him from the Accountant being returned through the Post Office marked 'not found.'" The Accountant had called upon the bankrupt's agent to exhibit to him the sederunt book, but he was informed that it could not be found. The sequestration process, however, showed that in the state of affairs submitted by the trustee to the creditors the bankrupt's assets were stated at £21, 19s. 4d., and his liabilities at £326, 11s. 8d., that the trustee had realised £15, 19s. 4d., which was insufficient to meet the law expenses and the trustee's commission, and that no dividend had been paid to the creditors. "In the circumstances the Accountant reports that there is no evidence that the bankrupt has failed to comply with the provisions of the Bankruptcy Act, or that he has fraudulently concealed any part of his estate. . . . From the information before him the Accountant is unable to say whether or not the failure to pay 5s. per £ has arisen from circumstances for which the bankrupt can justly be held responsible."

On 13th December 1892 the Court pronounced this interlocutor — "The Lords having resumed consideration of the petition, with the report by the Accountant of Court, and heard counsel thereon, Remit to the said Accountant to report with regard to the conduct of the petitioner, and as to how far he has complied with the provisions of the Bankruptcy (Scotland) Act 1856, and in particular, whether the petitioner has made a fair discovery or surrender of his estate, and whether he has attended the diets of examination, and whether he has been guilty of any collusion, or whether his bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct."

The Accountant thereupon reported as follows—"So far as there is evidence, the bankrupt complied with the provisions of the Bankruptcy (Scotland) Act 1856; there is nothing to enable the Accountant to form an opinion as to whether or not the bankrupt made a fair discovery and surrender of his estate; the trustee, from his report to the second meeting of creditors, appears to be satisfied that he had done so. From the state of affairs, signed by him as relative to his statutory oath, it appears that the bankrupt attended the diet of examination. There is nothing to enable the Accountant to report as to whether or not the bankrupt was guilty of collusion, or as to the cause of his bankruptcy; but so far as there is any evidence, the trustee appears to have been satisfied with the bankrupt's conduct in both respects."

Section 146 of the Bankruptcy Act 1856 provides, *inter alia*, that a bankrupt may present a petition for his discharge "on the expiration of two years from the date of the deliverance actually awarding sequestration without any consents of creditors; and the Lord Ordinary or the sheriff, as the case may be, shall, in each of the cases aforesaid, order the petition to be intimated in the *Gazette* and to each creditor; and if, at the distance of not less than twenty-one days from the publication of such intimation, and on evidence being produced of concurrence as aforesaid, where such concurrence is required, there be no appearance to oppose the same, the Lord Ordinary or the sheriff, as the case may be, shall pronounce a deliverance finding the bankrupt entitled to a discharge; but if appearance be made by any of the creditors or by the trustee, the Lord Ordinary or the sheriff, as the case may be, shall judge of any objections against granting the discharge, and shall either find the bankrupt entitled to his discharge, or refuse the discharge, or defer the consideration of the same for such period as he may think proper, and may annex such conditions thereto as the justice of the case may require: Provided that . . . it shall not be competent for the bankrupt to present a petition for his discharge, or to obtain any consent of any creditor to such discharge, until the trustee shall have prepared a report with regard to the conduct of the bankrupt, and to show how far he has complied with the provisions of this Act, and in particular, whether the bankrupt has made a fair discovery and surrender of his estate, and whether he has attended the diets of examination, and whether he has been guilty of any collusion, and whether his bankruptcy has arisen from innocent misfortunes or losses in business, or from culpable or undue conduct." . . .

At advising—

LORD PRESIDENT—This petitioner alleges in his petition that the trustee on his sequestrated estate "left this country some time ago, and that if alive he is now resident in America or elsewhere abroad. The petitioner has made extensive anxious inquiries with the view of procuring his address, but he has hitherto been unsuccess-

ful." The bankruptcy took place in 1885, and the petitioner is now desirous of obtaining his final discharge, but he finds himself not in a position to offer strict compliance with section 146 of the Bankruptcy Act of 1856. Upon these statements we pronounced this interlocutor—"The Lords, in respect of the statements as to the absence of the trustee from this country, and the petitioner's inability to obtain a report from him, remit to the Accountant of Court to inquire and report on the matters set forth in the petition."

The Accountant, among other things, reported—"The trustee subsequently disappeared, communications to him from the Accountant being returned through the Post Office marked 'not found.'" We then required the Accountant to report on the matters specially arising under section 146. The report is necessarily more or less imperfect, as the trustee was the sole custodier of a certain amount of information, but so far as it goes it is favourable to the petitioner. According to a letter sent to the Accountant it appeared that it was known to someone where the trustee was, but the petitioner states, through his counsel, that inquiry has been made without success, and that letters sent to the address indicated have been returned marked "not found." In these circumstances I think that we are justified in taking the report of the Accountant in bankruptcy in place of that of the trustee, who cannot be found, and that the petition should be intimated in terms of the latter part of the prayer.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court appointed the petition to be intimated by advertisement in the *Gazette*, and by circular posted to each of the creditors.

Counsel for the Petitioner—M'Lennan. Agent—D. W. Paterson, S.S.C.

HOUSE OF LORDS.

Friday, March 17.

(Before the Lord Chancellor (Herschell), and Lords Watson, Ashbourne, Field, and Hannen).

MENZIES *v.* MENZIES AND ANOTHER.

(*Ante*, vol. xxix., p. 677.)

Reduction—Family Arrangement—Father and Son—Representations Inducing Consent—Ignorance of Legal Rights and Powers—Law-Agent's Duties and Responsibilities.

The only son and heir-apparent of a baronet and heir of entail, an officer in the army, and dependent on his father except for his pay, had for some years lived beyond his allowance, and had more than once to apply to his father to pay his debts. His father did so. The son again fell into debt, and consulted the family agent, his most pressing liability being a bill for £3000 granted to a money-lender, on which he feared he might be made bankrupt, and so ruined in his profession. The son, if he survived his father, became absolutely entitled to the fee of the estates, which were worth upwards of £300,000. After much correspondence and consultation, it was arranged that the estates should be disentailed and conveyed to trustees to hold for the father in liferent, and the son in liferent alimentary allenarly, and for the heirs of the son's body, whom failing the heir to the baronetcy in fee. As part of the arrangement the son's debts were to be paid, and an increased allowance secured to him by charges on the estates. The son about three years afterwards raised an action against the trustees and his father for reduction of the deeds by which the arrangement had been carried out, on the ground that his father and the family agent, in pursuance of a joint scheme which they had laid some years before, to deprive the pursuer of the fee of the estates, induced him to enter into the arrangement by false and fraudulent representation and fraudulent concealment, and that the pursuer had consented to the arrangement (1) under essential error, (2) under essential error induced by the father and his law-agent, and (3) under essential error fraudulently so induced.

The House—*rev.* the decision of the Second Division, and restoring the interlocutor of the Lord Ordinary (Low)—while negativing all idea of fraud, set aside the family arrangement, on the ground that the son had been induced to enter into it by representations made by the agent as to a matter of fact, viz., the possibility of raising the necessary funds in some other way, he having no legal advisers, and being ignorant of his own rights and powers.

This case is reported *ante*, vol. xxix., p. 667.

The pursuer appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, this action was brought to obtain reduction of an agreement entered into between the pursuer and his father Sir Robert Menzies, and a trust-disposition dated 10th December 1886, granted by Sir Robert Menzies in favour of the other defenders.

At the date of the agreement and trust-disposition, Sir Robert Menzies was heir of entail in possession of the family estates, the pursuer, his heir-apparent, being entitled to the estates in fee-simple in case he survived his father. The effect of the trust-disposition which it is sought to reduce was to convey the estates in trust for Sir Robert Menzies in liferent, and after his decease for the pursuer in liferent for his alimentary use, with remainder to