I make these remarks as one friendly to the cause of national education and hopeful of the results of this statute. On the question of power, my opinion is in favour of the Board, and my view is in accordance with that of Lord Young, whose interpretation of this statute cannot be otherwise than important. His Lordship's views have been clearly stated in a note to a recent decision. On the question of procedure by interdict I do not venture to differ from your Lordships; and I trust the result may be that time, and better consideration, and kindlier feeling, may lead to an amicable settlement.

LORD MURE—The question raised as to the powers, rights, and duties of School Boards by this application for interdict is a very important one; and I agree with Lord Ardmillan in regretting that it should have been raised in an application for interdict, and particularly in such a prayer as we have here before us. I think that the granting of this prayer, even with the amendment that has been allowed, would, by the vagueness of its terms, cause much inconvenience and annoyance, and not improbably lead to further litigation. If this question of right and duty were very clearly laid down in the statute it might be very proper for the School Board to seek to maintain it by interdict: but as it has, in my opinion, not been clearly defined, I think an action of declarator would have been the proper form of process for the trial of the question. I agree with your Lordship in the chair that, looking to the express abrogation of the right of the Presbytery, the mere declaration that the rights of the minister and heritors are transferred to the School Board does not of itself imply that the School Board are to have such a power of inspection as they here claim; for I am not aware of any such power having been conferred by Act of Parliament on the minister and heritors, or of such duty having formerly been exercised by them. Looking to the fact that the statute expressly gives the right of inspection to the Government Inspectors, and is silent as to the rights of the School Board in the matter, I am not prepared to say what their rights may be. But I am quite satisfied that these rights are not so clear as to entitle the School Board to the interdict here craved.

The Court pronounced the following interlocutor:—

> "Recal the interlocutor of the Sheriff-Substitute of 22d June 1874, and the interlocutor of the Sheriff of 31st October 1874; refuse the prayer of the petition, and decern: Find the appellants liable in expenses both in the inferior Court and this Court, Allow accounts thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for the Petitioners—Dean of Faculty (Clark), Q.C., and Darling. Agent—J. Stormonth Darling, W.S.

Counsel for the Respondent—Solicitor-General (Watson), Q.C. Agent—Baird Hunter, S.S.C.

Friday, December 18.

FIRST DIVISION.

JOCOBSON *v.* UNION BANK AND OTHERS.

Process—Cessio—*Competency*—6 *and* 7 *Will. IV.*, *c.* 56, *sec.* 2.

Where a debtor brought a summons of *cessio* before the expiry of the *inducicæ*, on a extract decree, and therefore before a warrant of imprisonment had issued—*Held* that the action was incompetent, in terms of Act 6 and 7 Will. IV., c. 56, sec. 2.

Counsel for Pursuer—Lancaster. Agent—John Wright, L.A.

Counsel for Defender—Robertson. Agents—J. & F. Anderson, W.S.

Friday, December 18.

FIRST DIVISION.

[Sheriff of Perthshire.

SPALDING *v.* SPALDING'S TRUSTEES.

Trust—Posthumous Child—Aliment—Debt.

A father executed a trust-deed whereby he conveyed his whole property to trustees. The purposes of the trust were—(1) To pay his debts; (2) To pay him during his life the whole free income of the estate; (3) To pay an annuity and a small sum for mournings to his widow; (4) To aliment, educate, and clothe, until the majority of the youngest, his three children, who were named in the deed; (5) On the majority of the youngest of these three children, to make over to the eldest child the heritable subjects conveyed by the deed, under burden of certain provisions to the other two. The truster left no moveable property. The deed was delivered during the lifetime of the granter, and the trustees took infeftment. *Held* (*diss.* Lord President) that a posthumous child of the truster was entitled to aliment out of the trust estate.

Mrs Mary Spalding, widow of the late Charles Spalding, raised an action in the Sheriff-court of Perthshire against her husband's trustees, concluding for £5 inlying expenses incurred by her in giving birth to a posthumous child, and £20 per annum in name of aliment to the said child. The principal provisions of the trust-deed, in virtue of which the trustees acted, were as follows:—"(1.) That the said trustees shall, out of the means and estate conveyed by said trust-disposition, pay all expenses incurred in the management and administration of the trust, and also pay all just and lawful debts due by the said Charles Spalding; (2.) That the said trustees, during the life of the said Charles Spalding, pay to him the whole free income, interest, and annual produce of the means and estate conveyed by said trust-disposition; (3.) That after the said Charles Spalding's death, the said trustees shall pay to the pursuer an annuity of £10 sterling, and that half-yearly, on 1st January and 1st July in advance, and also pay to the pursuer the sum of £10 sterling for mournings on the death of the said Charles Spalding, which annuity is to be in lieu of all terce of lands, legal share of moveables, and everything that the pursuer *jure relictæ* or otherwise could ask, claim, or demand at the death of the said Charles Spalding; (4.) That said trustees after the death of the said Charles Spalding, shall aliment, educate, and clothe his children, Mary Ann Spalding, James Mitchell Spalding, and John Spalding, in a manner suitable to their station and prospects in life, until the youngest

attain the age of twenty-one years; (5.) That said trustees shall, on the youngest child of the said Charles Spalding attaining the age of twenty-one years complete, make over and convey to the said James Mitchell Spalding the heritable subjects conveyed in said trust-disposition, under burden of certain provisions in favour of the younger children of the said Charles Spalding." And it contained the following power:—"With power to my said trustees to sell the said heritable property above specially conveyed, if they should deem it expedient, of which they shall be the sole judges, excepting that during my lifetime my consent must be first had and obtained; and declaring that the money so realised from the said estate shall be held by my said trustees on the like trusts and for the like purposes of the said estate."

The trustees resisted her claim, and the Sheriff-Substitute pronounced the following interlocutor:—

"*Perth, 7th May* 1874.—Having made avizandum with the process (parties' procurators dispensing with a hearing), Finds it admitted that the pursuer was the wife and is now the widow of Charles Spalding, and that it is not denied, but believed to be correct, that the child, the aliment of which is sued for, was born by the pursuer within less than four months after the death of her husband: Therefore finds that the said child must be held his lawful child until the contrary is competently established by declarator of bastardy, and repels the defenders' fourth plea:—Finds that the defenders, admitting that they were and are sole trustees, appointed by and during the lifetime of the said Charles Spalding, and that since his death they have sold his heritage, and now are in possession of the price or produce thereof, they therefore represent him, and are liable to pay his debts, and are not precluded by any directions contained in said trust-deed: Therefore repels the defenders' first, second, and third pleas in law, and orders the case to the motion roll, that parties may be heard on the amount of the sums claimed."

The defenders appealed, and the Sheriff pronounced the following interlocutor:—

"*Edinburgh, 29th June* 1874.—Having heard parties' procurators on the defenders' appeal, and made avizandum with the debate and whole process, finds that the defenders are the accepting and acting trustees under a trust-disposition executed by the late Charles Spalding, of date 10th March 1873: Finds that the said trust-disposition was delivered to the defenders of that date, and was recorded in the General Register of Sasines at Edinburgh on the 3d June 1873: Finds that under and in terms of the said trust-disposition the defenders are directed to pay all just and lawful debts of the said Charles Spalding due by him at the date when the said trust disposition was executed and delivered as aforesaid, but finds that they are not thereby directed to pay debts subsequently incurred by him: Finds that the alleged debt sued for was not due by him at the date when the said trust-disposition was executed and delivered as aforesaid; finds that the defenders do not represent the said Charles Spalding, and are not liable for debts and obligations incurred by him subsequent to the said date: Finds, further, that by the said trust-disposition the defenders are directed to aliment, clothe, and educate certain children of the said Charles Spalding therein specially named, but that they are not directed, and are not bound to aliment the child born on the 20th December 1873, of which he is alleged to be the father: Therefore assoilzies the defenders from the conclusions of the action; finds them entitled to expenses; allows an account thereof to be lodged, and remits the same to the auditor to tax and report; and decerns.

"*Note*—This action is directed against the defenders as trustees acting under a trust-disposition executed and delivered by the late Charles Spalding during his life, by which he divested himself, in their favour, of his whole estate, heritable and moveable, with the exception of his household furniture. By this deed his trustees are *inter alia* directed to pay 'all just and lawful debts at present due by me,' and to pay to him during his life the whole free income, interest, or annual produce of the trust-estate. It appears to the Sheriff that the defenders, who are the accepting and acting trustees under this deed, do not represent the truster generally, and are not liable for any debts or obligations which they are not directed to pay by the deed, under which they act. The debt sued for, assuming it to be due by the truster, was clearly not due by him at the date of the trust-deed, and it is not a debt which the trustees are directed to pay by the trust-deed. Further, by the trust-deed his trustees are directed to aliment, clothe, and educate certain of his children specially named, but there is no direction to aliment his children generally, and therefore the Sheriff does not think that the trustees are bound or entitled to aliment this posthumous child.

"The Sheriff thinks that the grounds above stated are sufficient for the disposal of this case, and he thinks also that there is a further difficulty in sustaining this claim, in respect that the claim of a child against its father's estate is, at law, and in the absence of special provision, a claim for *legitim*, and not a claim for debt,—and if the father has, as in this case, effectually divested himself of his property during life, it is not clear that his property can be made available for the child's claims in a process such as the present."

The pursuer appealed, and pleaded—"The pursuer's late husband, the deceased Charles Spalding, being the father of the child, aliment for which is concluded for, and the said Charles Spalding having died possessed of considerable means and estate, at all events having died leaving means and estate in the hands of the defenders, as trustees for behoof of his children, the pursuer is entitled to receive aliment for said child out of said estate, and the sum concluded for being fair and reasonable, decree therefore ought to be pronounced as concluded for, with expenses. *Additional plea in law*—The deceased Charles Spalding having conveyed his whole estate, both heritable and moveable, to the defenders, as trustees for behoof of his children, Mary Ann Spalding, James Mitchell Spalding, and John Spalding, the children alive and born of the marriage between him and the pursuer at the date he executed said trust-deed, these children, or the defenders as representing them, are bound to aliment the posthumous child, for whom aliment is claimed."

Argued for her—(1) The trust-disposition was simply a *mortis causa* conveyance revocable during the granter's life, though bearing *ex facie* to be an *inter vivos* deed. The provisions were not donations, and the trustees were to have no power to

deal with either the fee or the liferent of the estate until after the truster's death. The estate of the deceased was liable *ex debito naturali*. (2) Did the trustees represent the granter? If they did not they had no status at all. The deed was unquestionably a *mortis causa* one, but whether revocable or not the *conditio si sine liberis decesserit* applied to it. The case of *Turnbulls* v. *Tawse* showed that a *mortis causa* deed must be determined by its general character and provisions. If the deed was by law revocable by its own nature, no infeftment or anything else could alter its character, and this being a *mortis causa* deed was *sua natura* revocable.

Pursuer's Authorities—(Liability for Debts arising *ex debito naturali*)—*Lowther* v. *Maclaine*, Dec. 15, 1786, M. 435; *Buchanan* v. *Morrison*, Jan. 21, 1813, F.C.; *Riddell* v. *Riddell*, Mar. 6, 1802, M. App. 'Aliment,' 4; *Kerr & Hastie* v. *Hastie*, Nov. 10, 1671; M. 416; *Oliphant* v. *Oliphant*, Bell's Fol. Cases, 125; *Ormiston* v. *Wood*, Dec. 22, 1838, 11 Jur. 232; *Wright* v. *Hardie*, June 2, 1847, 9 D. 1151; *Keir's Trs.* v. *Justice*, Nov. 7, 1866, 5 Macph. 4. (*Mortis causa* Deeds)—*Somerville* v. *Somerville*, May 18, 1819, F.C.; *Millar* v. *Dickson*, July 11, 1826, 4 S. 822; *Barbour* v. *M'Minn*, July 8, 1826, 4 S. 813: *Fyfe* v. *Kedzlie*, Mar. 6, 1847, 9 D. 853. Bell's Comm. i, 35.

The defenders pleaded, *inter alia*—" (2) There being no power in the trust-disposition to pay the sums claimed, the trustees cannot apply the trust fund to purposes different than those specified in the deed. (3) The income of the trust being only sufficient to aliment the beneficiaries under the trust, and the pursuer being an able-bodied woman, she has no claim against the trustees."

Argued for them—The claim on behalf of the widow and child was based on natural obligation to support. The defenders did not represent Charles Spalding, the truster, and consequently were not liable. The trust-deed was intended to take effect from the date of its execution; it was an irrevocable *inter vivos* deed, not *mortis causa*. The deed conveyed only the property belonging to the truster at the time of its execution, and the children named in it had a *jus quæsitum* of which they could not be deprived. It might be conceded that the expenses incurred in connection with the birth of a posthumous child might be a charge against the moveable estate if there were any; but even if his child had been born during his father's lifetime, he could not have it admitted to the benefit of the trust. The definition of the subjects conveyed applied to *acquisita* only, and not to the whole of them. The entry to the whole subjects was *de præsenti* at the date of the deed, and it was delivered, which no *mortis causa* or testamentary deed is. The granter was divested irrevocably during his life of all his means. There was no construction by which the child could be admitted to participate; his claim was not a debt exigible at the date of the execution of the deed; the *conditio si sine liberis* does not apply to a revocable deed. If the condition does not apply where the testator does not revoke within a certain time, the same must be the case, at least as strongly, where he has not the power to alter. The present case was put rather upon implied will than on the *conditio si sine liberis*. If this were a proper *mortis causa* deed there would be no answer to the claim founded on *debitum naturale*; but it is not so. The child was not even *in utero* at the date of the execution of the deed, and in any view of the case the child had no claim against the heritage, of which exclusively the estate consisted.

Defenders' Authorities—M'Laren on Wills, i, 294-5; *Wright* v. *Harley*, June 2, 1847, 9 D. 1151: *Turnbulls* v. *Tawse*, April 15, 1825, 1 W. and S. 80 *Smitton* v. *Tod*, Dec. 12, 1839, 2 D. 225; *Collie* v. *Pirrie's Trs.*, Jan. 22, 1851, 13 D. 506; *Muirhead* v. *Muirhead*, Feb. 19, 1706, M. 5927; *Leckie* v. *Leckie*, Nov. 21, 1854, 17 D. 77.

At advising—

LORD PRESIDENT—This is an action raised by Mrs Mary Spalding, the widow of Mr Spalding, for the purpose of obtaining aliment for a posthumous child borne by her about four months after his death. The action is directed against certain trustees appointed by the late Mr Spalding under a deed dated 10*th* March 1873; and the trustees maintain, among other pleas, that the funds in their hands are specially appropriated by the trust deed to particular purposes, and that they have no funds which can be applied to the aliment of the child, or that can be in any way attached as liable for the debts of the late Mr Spalding, or at least for such debts as may have been incurred by the deceased since the date of the trust-deed. A very important question is thus involved, which depends, in the first place, upon the construction of the deed itself, and its effect upon the estate thereby conveyed. The pursuer has, however, farther and alternatively maintained that, assuming the estate to be not liable for this claim as a debt, the posthumous child is entitled to share in the benefit of the provisions conferred by the deed upon Mr Spalding's children.

As regards the first of the questions thus raised —viz., whether the estate in the hands of the trustees is liable for the aliment as a debt due by the deceased—there can be no doubt of the general rule that a posthumous child who is unprovided for has a right to aliment out of the executry estate of his deceased father. This was settled by the early case of *Hastie* v. *Muirhead*, and there are various other cases to the same effect. All of them, however, proceed on the assumption that the parties sued are the representatives of the deceased father. But the question here is whether the trustees or those for whom they hold are in any sense the representatives of the deceased, or liable for any debts incurred subsequently to the execution of the trust-deed. I here deal with the pursuer's claim as undoubtedly that of a creditor *ex debito naturali*, a favoured creditor, but still nothing more than a creditor. Now, it appears to me that the effect of the trust-deed was entirely to divest Mr Spalding of the fee of the heritable estate thereby conveyed, and to vest it irrevocably in the trustees for the purposes of the trust. The only estate now in the hands of the trustees is the price of the heritable estate, and I did not understand it to be maintained that they ever had any other estate or could have taken anything but the heritable subjects. No doubt, besides the conveyance of the heritable subjects, there are words of general conveyance as follows,—"as also the whole furniture." Now, if there was any moveable estate belonging to the truster other than the furniture, it might be carried by these words; but it is not said that there was any such estate. It has, however, been contended that this clause conveyed the estate belonging to Mr Spalding as it stood at the

time of his death. I do not so read the words "the estate heritable and moveable belonging to me," and there are no such words as generally occur in testamentary dispositions — viz., "or which shall belong to me at the time of my death." But even although the words were so construed, I do not think it would make any difference, because they do not apply to the only estate in the hands of the trustees. One part of a deed may vest an estate irrevocably, while another part may convey another estate testamentarily and revocably. Here, the only estate with which we have any concern is the heritable estate.

Now, it is not disputed that this deed was delivered, and that the trustees on 3d June took infeftment upon it, thus becoming feudally vested in the heritable estate thereby conveyed. The effect of that was to entirely divest Mr Spalding of the fee of that estate.

No doubt his liferent was reserved; but, strictly speaking, his right was not a liferent by reservation, but only the right of a beneficiary to receive from the trustees the income of the estate. The effect, then, of this deed being to divest the truster of his estate, I apprehend that that estate was not liable for his subsequent debts, and that he had no power of revocation.

There have been various cases bearing on this question, but I shall refer only to a few of them. [His Lordship then proceeded to refer to and comment upon the following cases:—*Leckie* v. *Leckie*, 21st Nov. 1766, M. 1,1581; *Somerville* v. *Somerville*, 18th May 1819, 19 F.C. 730; *Turnbull* v. *Tawse*, 15th April 1825, 1 W. and S. 80; *Smitton* v. *Tod*, 12th Dec. 1839, 2 D. 225.]

On a review of these authorities, I come then to the conclusion that this is not a revocable deed, and that subsequent creditors of the truster have no claim against the trustees.

But the second ground of the pursuer's claim is that the trust deed may be so extensively construed as to enable the posthumous child to participate, along with the other children of the same marriage, in the provisions in their favour therein contained. It has been contended that the ground of this claim is the doctrine of law involved in the *conditio si sine liberis decesserit*; but that is a misktae. The true ground of the claim is *implied will*, founded on *pietas paterna*—that is to say, that it was the implied intention or purpose of the truster that his posthumous child should be propepia for in the same manner as his other children. The only material authority in support of this contention is the case of *Oliphant*, Bell's Folio Cases, p. 126, which appears to have been decided on the authority of the previous case of *Anderson*, M. 6590. But it is a singular circumstance that the decision of this Court in the latter case was reversed by the House of Lords, and that this reversal was not known to the judges who decided the subsequent case of *Oliphant*. I am not surprised at the reversal in the case of *Anderson*; for it appears to me that in both of these cases this Court carried the doctrine of implied will so far as to render it quite inexplicable. This is well illustrated by the present case, where the provisions in favour of the younger children are in the form of a burden upon the right of the heir-at-law. If the pursuer's contention is well founded, whether is the posthumous child to be let into the provision to the younger children, to the effect of diminishing the share of each, or to the effect of increasing the burden on the heir? I do not think that implied will can ever convert a provision in favour of children *nominatim* into a provision embracing children who are born either subsequently or posthumously.

On both grounds, therefore, I have come to the conclusion that the Sheriff's judgment is right; and the only diffidence that I have in expressing my opinion arises from the fact that I understand myself to be in a minority of one.

LORD DEAS—The ground of the Sheriff's judgment is that the truster conveyed his estate to pay existing debts, and that this is a subsequent debt. In the first place, however, I do not think it is at all clear that this is a subsequent debt. A man is all his life under a natural obligation to aliment whatever lawful children he may beget. Besides, the posthumous child was born only 9 months and 10 days after the date of the deed, and only 6 months and 17 days after infeftment had been taken upon it; so that the child was certainly *in utero* at the date of infeftment, and may have been begotten before the date of the trust deed.

I think that is sufficient to dispose of the case; but I think it right, in the second place, to consider the nature of the deed.

I may say at the outset that I do not go upon the doctrine of the case of *Oliphant*, and I understand that none of us do so. I think that doctrine to be unsound, and, even if sound, inapplicable to the present case.

Apart from the dates to which I have referred, this case seems to me to turn on the question whether the children of the second marriage, for whom the trustees hold the deceased's estate, are or are not *mortis causa* gratuitous disponees. I do not think it makes any substantial difference whether or not a trust is interposed. I look to the whole terms of the deed and the particular circumstances connected with it, in order to ascertain whether it was revocable or irrevocable, testamentary or *inter vivos*.

Now, there was no beneficial interest conferred on any one during the lifetime of the truster, who substantially conveyed his whole estate for distribution after his death.

[His Lordship then went over the various clauses of the deed, pointing out that it was practically and substantially a *mortis causa* deed for behoof of the truster's children.]

Assuming, however, this deed to have been irrevocable *quoad* the beneficiaries, it by no means follows that it excluded creditors from and after its date, the beneficiaries being gratuituos disponees.

With the greatest possible submission, I do not think that any of the cases to which your Lordship referred are inconsistent with the view which I take of this case. The principle underlying them all is that you must look to the whole deed in order to see if it is a general *mortis causa* settlement.

LORD ARDMILLAN—I rest my opinion on this very difficult question on a ground which I think, is, apart from most of the difficulties of the case, I mean on the sacred duty and high legal, as well as moral, obligation, which rests on a father to support his child. I think that obligation is one which God lays on him, one which humanity appreciates, and law recognises and enforces (Ersk. i, 6, 56). I think, farther, that it is a just

and becoming extension of the same obligation that, in a certain sense, it exists from the date of marriage. The father is bound to look forward and to provide for the aliment—the support necessary to protect from starvation—of an expected child. Before the child is actually born, nature, with the sanction of law, recognises the right of the child to support from parents whenever it comes into the world; and if the right is with the child, the obligation is on the father. The duty of the father is very clear. The claim of the child is equally so. Both obligation and claim arise from the relationship, and *ex debito naturali.*

I am speaking of a lawful child, and we must hold this child to be the lawful child of Charles Spalding. It is a posthumous child, but I think the case before us is really the same as if the child had been born before the father's death, and the demand for aliment been made against himself—his defence being that by this deed he had denuded himself in favour of these trustees. I think that the father could not, on that plea, have successfully resisted that claim.

The child is a creditor to whom nature gives the right. The father is a debtor on whom nature lays the obligation *ex debito naturali.* The right of a favoured creditor—a highly favoured creditor—arises, when the claim is for bare aliment, for a few pounds a-year to keep the child from starving. That is the extent to which alone I would go. I go no farther. I do not proceed on the case of *Oliphant*, or on the principle of implied will. I do not think that this child is entitled to share as a beneficiary by appointment in the provisions of this trust. It is as a creditor for that support which is necessary to keep it alive, which is a debt of nature, that I am in favour of sustaining the claim. The principle on which the father's obligation to aliment a child rests is clear, and the extension of the principle to a posthumous child child has been long settled, and is not now disputed.

The trust-deed before us is a general—a universal — conveyance of heritable and moveable estate. In so far as regards the creation of the trust, the deed took immediate effect. But, except the payment to the truster of the whole proceeds during his life, and the payment of his present debts, the administration of the trust and the disposal and distribution of the estate is postponed till after his death. The deed was gratuitous, unilateral, and postnuptial. It is an attempt to set his estate aside, and protect it from his subsequent creditors, without parting with the benefit or enjoyment of it himself. Such an attempt to provide for children by a gratuitous deed, to the exclusion of creditors, but without excluding himself, is not equitable, and is not favourably viewed by law. If the trust-provision for the children named in the deed were ascertained to be reasonable, and could be sustained on that gronnd, then the reasonableness of the provision would equally apply to the aliment of the child subsequently born. If the question of the reasonableness of the provisions which only take effect after his death, is excluded, and they are held as unreasonable, and as exhausting the estate, then I should be disposed to share the doubt expressed more than once by Lord Fullarton—whether subsequent onerous creditors would be excluded by such a deed,—a deed saving the interest of the granter and gratuitously disposing of his whole estate.

I quite admit that this trust-deed could not be revoked by the truster gratuitously or at his pleasure.

But the point now before us, involving only the claim of a child for necessary aliment, is different. The claim which has arisen, during his life though after his deed, peculiarly strong.

I appreciate the weight of the authorities of which your Lordship has favoured us with a most instructive exposition, and these authorities, supported by your Lordship's opinion, certainly prevent my holding with any confidence that this trust-deed was generally revocable by the granter. Lord Deas thinks this a *mortis causa* deed, and therefore revocable. There is much force in his observations, but I am disposed to rest my opinion on the ground of the peculiarity of this alimentary debt.

The debts of Mr Spalding were to be paid. This child, which we must hold as lawful, must be held as truly a creditor, and Mr Spalding himself as truly a debtor, to the extent of necessary aliment.

As an illustration I may suggest the case of a claim for deathbed and funeral expenses of Mr Spalding. Of course these expenses were a debt subsequent to the deed. But the debt, the obligation imposed, as Mr Bell says, "by nature and by decency" to furnish from his estate, if he had any, the means of decent burial, existed at the date of the deed, and continued till he died.

So also, in my opinion, did the debt, the obligation to aliment the children he had and the child to be expected, and which was afterwards born. We must deal with this case just as if the child had been born before Mr Spalding's death. The child, before the truster died, had reached a maturity of gestation which indicated life. It must be held *pro nato*, and the obligation to aliment which is the debt of the father existed in binding force, pressing on him before the time for its enforcement emerged.

On this ground, and to no further extent than necessary aliment, I think the claim of the child should be sustained.

Lord Mure concurred with Lord Deas and Lord Ardmillan.

The Court pronounced the following interlocutor:—

> "Recal the interlocutor of the Sheriff-Substitute of 7th May 1874, and the interlocutor of the Sheriff of 24th June 1874; repel the defences, and decern against the defenders for payment to the pursuer of five pounds of inlying expenses, and farther, decern in terms of the libel for payment of aliment at the rate of fourteen pounds per annum; find the pursuer entitled to expenses, both in the Inferior Court and this Court; allow accounts thereof to be given in, and remit the same when lodged, to the Auditor to tax and report."

Counsel for Pursuer — Scott and Jameson. Agent—George Begg, S.S.C.

Counsel for Defenders — Balfour and A. J. Young. Agents—Drummond & Reid, W.S.