perty and the position of the children, in which it is very desirable that the estate should be increased during minority.

But, on the other hand, what are the duties of the trustees to the children at present. Mrs Douglas has a jointure of £500 a-year; a very liberal allowance considering the size of the estate; and the allowances to the children are above what are usually given in similar circumstances. The trustees have given these large allowances on account of the peculiar circumstances in which the children are placed, owing to the critical state of their health. I think that the trustees have taken a sound view of the application for still further increase of their allowances when they say in their answers that, "after the most careful inquiry, and repeated and most anxious consideration, the respondents consider that they could not, in the proper discharge of their duty, and having regard to the terms in which they are instructed to act by Mr Douglas' settlement, make to the petitioner higher fixed allowances in respect of the children; and they are convinced that, with the exercise of ordinary prudence, everything essential or even advantageous for the children could readily be supplied upon the said allowances, and such additional allowances as the respondents have all along been and still are ready to grant for the purpose of meeting special emergencies. These allowances they have expressed their willingness to continue under such precautions as shall ensure, as far as possible, that the money so given is really applied for the benefit of the children." The trustees would be exercising a very delicate discretion in giving extra allowances, for if they were induced by the mother's over anxiety to do so, they might have great difficulty in justifying their disbursements.

The minute of meeting of the trustees of 3d June, when they considered Mr Douglas' application for increase of allowance to her children is as follows:—"The trustees present having carefully considered Dr Sieveking's report, are of opinion that the sum of £300 now paid to Mrs Douglas annually on account of her two children, is an ample allowance for their proper maintenance and education. But they will be prepared to consider, as they have hitherto done from time to time, any application which may be made for an extra allowance, in order to give the children the benefit of such climatic changes as are indicated by Dr Sieveking, which their physician may from time to time enjoin. It must, however, be understood by Mrs Douglas that any expense on this account must not be incurred without previous sanction and authority of the trustees. Should the physician of the children be able to point out beforehand the climatic changes which the children may require during any year, or other stated period, the trustees will be ready to consider what, if any, additional allowance the same may render necessary." Now, I think that the trustees here take up a most fair position, and that the Court cannot interfere. I am therefore of opinion that this petition should be refused.

Lord Deas—The late Mr Douglas gave powers to his trustees under his trust-disposition and settlement "to make such allowance as they may think proper to the said children for their proper maintenance and education out of the free interest or annual produce of the presumptive shares which will respectively belong to them." Now, the trustees have been exercising these powers, and the Court should not interfere unless gross abuse of their powers by the trustees is stated. In this case there is nothing of that kind, but quite the reverse. Then the trustees express their willingness to increase the allowances if necessary, with the proviso that they must know beforehand the purpose to which the money is to be put. In this the trustees do not go beyond their powers. I concur with your Lordship that this petition should be refused.

Lord Ardmillan—I concur with your Lordships. Nothing but a very strong case could warrant our interference here, and the case presented to us is not a very strong one. The trustees have fully recognised their duty of taking all possible care of the children in their very precarious state.

Lord Kinloch concurred.

Agents for Petitioner—T. & R. B. Ranken, W.S.
Agents for Respondents—Mackenzie & Kermack, W.S.

Saturday, July 6.

SECOND DIVISION.

WILLIAM TAYLOR KEITH, PETITIONER.

Bankrupt—Liberation—19 *and* 20 *Vict. c.* 79, § 93.

Circumstances in which a bankrupt, incarcerated under the Act 19 and 20 Vict. c. 79, *held* entitled to succeed in a petition for liberation, the trustee not appearing to support the warrant.

This was a petition for liberation by a bankrupt incarcerated under the Act 19 and 20 Vict. c. 79, for refusing to give satisfactory answers to questions asked during his examination.

Scott, for the petitioner, argued that the warrant was informal, the question and answer not being engrossed therein in full.

The Court held that, while it would have been more satisfactory had this been done, it was unnecessary to decide that question, and that, in the absence of opposition by the trustee, the bankrupt was entitled to liberation.

Agent for Petitioner—J. M. Macqueen, S.S.C.

Tuesday, July 9.

FIRST DIVISION.

MACKENZIE (CHEAPE'S JUDICIAL FACTOR) *v.* LORD ADVOCATE.

ID *v.* UNITED COLLEGE OF ST ANDREWS AND ST MARY'S COLLEGE OF ST ANDREWS.

Teind—Interim Locality—Over and Under Payments—Titular—Prescription.

In an action by an heritor against the Lord Advocate, as representing the Crown, for repetition of over-payments of stipend for a long course of years under interim decrees of locality, the pursuer averred that the whole free teinds of the under-paying heritors, other than those allocated as stipend to the minister, had been paid to the Crown as titular, or its tacksman. The Crown, *inter alia*, pleaded (1) that the