tor had proceeded to deal with the estate and make payments to other beneficiaries upon that footing, it may be that neither Mrs Crellin nor her representatives would have been entitled to fall back upon her legal rights on the plea that the conventional provisions were contingent, and might fail or had failed in consequence of Mrs Crellin predeceasing her mother. It would be a more difficult question whether, if nothing had followed upon an election so made, and the legitim fund remained intact, Mrs Crellin or her representatives might not have repudiated the election and claimed legitim. I am not aware of any case involving that state of the facts, but the tendency of the authorities on this subject is in favour of allowing a child to betake herself to her legal rights if things are substantially entire, even where the provision accepted is not contingent. But I do not think it is necessary to decide that question, or to decide whether, when Mrs Crellin entered into her marriage-contract, she did so in excusable ignorance of her legal rights, because I am of opinion she never made what could properly be called an election in a question with the judicial factor on her father's estate or the other children of the truster.

"The result is, that I shall repel the first six pleas-in-law for the defender, and appoint the defender to lodge a state showing the legitim due to the pursuer as representing the deceased Mrs Crellin."

The defender reclaimed.

At advising—

LORD JUSTICE-CLERK—There is now only one question in the case; that is a simple one; and I think the answer is clear.

Mrs Crellin, who was a widow at the time of her second marriage, executed a marriage contract, by the first provision of which she handed over to her trustees "a sum of £4000, or such sum as she the said Mrs Jessie Muirhead or Carter may be entitled to, falling to her under the settlement of her said father Charles Muirhead."

Now, the judicial factor on Mr Muirhead's estate says that by doing that she made her election to take the provisions given to her under her father's settlement, and gave up all claim to legitim.

I do not think that she did so. The marriage-contract was a contract between her and her husband to pay a certain sum over to the trustees named in the deed. They had no interest to know where the money came from. If Mrs Crellin had succeeded to a sum of £4000 before her death, not under her father's will at all, but as a bequest from a stranger, and had handed it over to the trustees, she would have satisfied the claim in the marriage-contract, and the trustees could have asked no more. The proposition that by making this provision in the marriage-contract she thereby elected to take her conventional provisions, and gave up her claim of legitim, is one I cannot agree to. I think the Lord Ordinary is right.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I agree on the grounds stated by the Lord Ordinary, which I think are conclusive.

The Court adhered.

Counsel for Reclaimer—Wallace. Agents—George M. Wood, S.S.C.

Counsel for Respondent—H. Johnston—C. K. Mackenzie—Dick Peddie. Agents—Macandrew, Wright, & Murray, W.S.

Friday, November 18.

FIRST DIVISION.

HENDERSON AND OTHERS *v.* HEDRICH & OTHERS.

Process—Proof—Reduction of Testament on Ground of Facility and Circumvention—Diligence for Recovery of Medical Reports on the Health of the Testatrix made during her Life

In an action for reduction of a trust disposition and settlement on the ground of facility and circumvention, which had been set down for jury trial, the defender craved a diligence for recovery, *inter alia*, of medical reports on the health of the testatrix, obtained by the pursuers during her lifetime from certain doctors named. The pursuers objected that the defenders' application was practically an attempt to obtain precognitions of their medical witnesses. The Court *granted* the diligence.

Counsel for Pursuers—Dundas. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for Defenders—H. Johnston. Agents—A. P. Purves & Aitken, W.S.

REGISTRATION APPEAL COURT.

Friday, November 18.

(Before Lord Kinnear, Lord Trayner, and Lord Kincairney.)

SIM *v.* GALT.

Election Law—Burgh Franchise—Residence—2 and 3 Will. IV. cap. 65, *sec.* 11.

A person who had two houses, one in Glasgow, which he held on lease, and one in Ayr, of which he was proprietor, was in the habit of residing in his house in Glasgow from October till April, and in his house in Ayr from April till October. During the months of his residence in Glasgow he was in the habit of coming once a month to his house in Ayr for a few days. He never let his house in Ayr. In the year in question he resided in his house in Ayr for five days in each of the months of February and March, and during the whole of April, May, June, and July.