conducted under manifest disadvantages. In case of a committal on the verdict of a coroner's jury it is very desirable that some further preliminary inquiry should intervene before the accused is put upon his trial; and other examples might easily be cited in which something of the kind is equally desirable. While therefore we in the main agree with the London grand jury in their complaints to the existing system, we cannot think that the simple abolition of grand juries is the true remedy. The grand jury, as at present constituted, may not be the best tribunal for the purpose required; but that in many classes of cases such work as grand juries now do ought to be done by some tribunal we cannot doubt.—*The Solicitors' Journal.*

Bills to Perpetuate Testimony.

Re Tayleur, 19 W. R. 462.

The Act for Perpetuating Testimony in Certain Cases (5 & 6 Vict. c. 69) enacts (section 1) that any person who would, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any honour, dignity, title, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, shall be entitled to file a bill to perpetuate any testimony which may be material for establishing such claim or right. Before the passing of this Act it was held that the party filing such a bill must have a present estate or interest. The small value of the interest, or the remoteness of the possibility of enjoyment, was not a sufficient objection to the Court's interference, neither was it material whether the estate or interest upon which the interference of the Court was sought, was, in its legal character, vested or contingent (*Lord Dursley* v. *Fitzhardinge*, 6 Ves. 251). But an expectation, however proximate and valuable, by virtue of which the plaintiff had not a present interest, did not give a title to the Court's assistance. Thus, it was held that the next of kin of a lunatic could not maintain such a bill in the lifetime of the lunatic, for that they had no interest in the property (*Smith* v. *Attorney-General*, cited 6 Ves. 260), though the lunatic might be intestate and in the most hopeless condition mentally and physically, for the fact that the Court requires them to object or consent in the application of the property does not confer on them an interest in it. By a sort of analogy an heir-apparent cannot have the writ *de ventre inspiciendo* in the lifetime of his ancestor. But it seems that persons so situated may contract upon their expectations, and may perpetuate testimony with reference to the interest so created, though they cannot qualify themselves as to any interest in the subject itself (*Lord Dursley* v. *Fitzhard. sup.*)

In the last-mentioned case it was held that any interest, however slight, was sufficient. But the interest, besides being present, must also be incapable of being destroyed without the consent of the person interested. In *Allan* v. *Allan* (15 Ves. 130), a demurrer was allowed to a bill by issue inheritable under an entail, on the ground that they were at the mercy of the tenant in tail in possession; and in the leading case of *Earl of Belfast* v. *Chichester* (2 Jac. & W. 439), a demurrer was allowed to a bill by the eldest son of a peer for the purpose of perpetuating evidence of his father's marriage, on the ground that a peerage is capable of alienation by forfeiture, and that, although virtually granted in remainder, the person in remainder is never supposed to have any present interest. Lord Eldon suggested a doubt whether the Court had jurisdiction to entertain a bill filed to perpetuate testimony in support of a claim to a dignity, and advised an appeal to the House of Lords from his decision allowing the demurrer. It appears (Hubback on Successions, p. 110 n.) that the plaintiff never did appeal, but obtained a private act to remove the doubt as to his legitimacy. The doubt as to the competency of the Court to entertain the bill when the question was as to the right to succeed to a dignity was removed by statute 5 & 6 Vict. c. 69.

In *Re Tayleur* it was in contemplation to institute a suit to perpetuate testimony as to the validity of two wills made by the lunatic. The Lord Justices, in ordering that such costs as the Master in Lunacy might think proper of the suit, if instituted, might be paid out of the lunatic's estate, avoided expressing any opinion as to whether the bill, if filed, would be demurrable. Before the passing of the Act such a bill would have been clearly demurrable, for the devisee under the will of a living person can be no better off as to present interest than the next of kin of an intestate living person (*Smith* v. *Attorney-General*, *sup*). Whether, since the passing of the Act, such a bill will lie has not been decided. The Act is intended to extend the means of perpetuating testimony in certain cases (in what cases is not stated). Remedial Acts are in general to be construed liberally; yet we have it on the authority of the Lord Chancellor (*Campbell* v. *Earl of Dalhousie*, L.R. 1 Sc. App. 462), that proceedings under this Act ought to be jealously watched. Upon the whole, it seems very doubtful whether such a bill would lie as it was proposed to file in *Re Tayleur*. Before the Act the bill would not have been demurrable.—*Solicitor's Journal.*

It is no reason for a new trial in a case of felony that the reasons of the absence of a witness, who should have been present, were investigated while the jurors who were to try the case were in the court room.—*U. S. Reports.*