expressions which fell from the Lord President in the case of *Muir* are opposed to these views. I think the principle on which these observations proceeded has been entirely misconceived. They are founded on the radical distinction between the case of the mother and the case of those who are by law of kin to her children, as she undoubtedly is not. She is not, like the father, legally of kin to her children in the matter of intestate succession. She has no place at all in the scale of propinquity. She has none even under the Act of 1855; for if the father survives she has no claim. This was the sole ground of the opinions delivered in that case. In the case of *Muir* the mother had no interest in the designation under which she might be confirmed, provided she was confirmed; and Lord Deas did not entirely coincide in the view of the Lord President. But it is quite clear that the judgment proceeded on considerations which have no possible bearing on the case now before us. What judgment the Court might pronounce if the same question as is presented in this case were to arise in the case of a mother we need not determine; but it was not determined in the case of *Muir*, which fixed nothing but a point of designation or nomenclature, and fixed it, as I think, correctly.

I propose that we should remit to the Sheriff to conjoin the parties to this suit in the confirmation.

Lord Ormidale—Two points requiring consideration have been raised, and formed the subject of discussion at the debate in this case, the first being one of procedure or form of process, and the other involving the more general and important question, Whether a father, although he has no available interest in or claim on the intestate succession of his daughter except that conferred on him by the Statute 18 Vict. cap. 23, has right to the office of executor of that daughter as one of her next-of-kin, notwithstanding the existence of brothers of the daughter, who are undoubtedly entitled to participate in her moveable succession as her next-of-kin.

(1) From the nature and object of a process of executry it is obvious that neither reduction nor reponing is necessary to make room for a preferable claimant. The process commences by an application to the Sheriff as commissary, and public intimation of it is made, so as to give notice to all concerned that they may appear for their interests, and so long as it has not been finally settled who is entitled to the office of executor it is open to any one to come forward and claim to be preferred to the office either exclusively or jointly with another claimant or other claimants. So much for the question of procedure.

(2) And that a father is not in such a process entitled to be dealt with as next-of-kin, or one of the next-of-kin, to his daughter, there being surviving brothers, is clear, I think, from the recent case of *Muir* (4 Rettie 74), and the other authorities referred to in the report of that case. It is true that in the case of *Muir* it was a mother who claimed the office of executrix, and not a father, as in the present instance. But a mother is in blood equally related to her child with the father, and in Muir's case the mother had under the Act of 1855 an interest in the moveable succession of her child, just as the father has in the present case. It may no doubt be said that prior to that Act, and independent altogether of it, a father, differing in this respect from a mother, might on the failure of descendants and collaterals have right to the office of executor of his child as his or her next-of-kin. But the father in the present case was not in that position, for here there were collaterals of the defunct who prior to the Act would have had right at common law to the office of executors *qua* next-of-kin. It is the Act of 1855 alone therefore which created the father's interest in the present case, just as it creates the mother's interest in the case of *Muir*. But really it is of very little moment how this point may be ruled in the present instance, as I concur with your Lordship in the same practical result, viz., that the proper course in the circumstances is to remit to the Sheriff as commissary to conjoin the appellant and respondent as executors of Sophia Webster, and to recall the interlocutors complained of so far as necessary to enable that to be done. This I observe was the course followed in the case of *Muir*.

Lord Gifford—I am quite of the same opinion. I think that since both parties here are equally entitled to the succession, both of them should be conjoined in the office of executor. That seems to me to be the true principle. I cannot come to the conclusion that anyone on whom the Act of 1855 conferred a new right is nevertheless to be excluded from the administrative office, even though the Act does not expressly include him. There is no reason for excluding a father who gets one-half the succession from one-half of the administration. I quite concur in the view adopted by your Lordships that, "next-of-kin" in a case of succession means those who take next.

The Court recalled the interlocutor appealed against, and remitted to the Sheriff to decern the pursuer and defender jointly executors-dative *qua* next-of-kin of the deceased Sophia Webster, and found neither party entitled to expenses.

Counsel for Pursuer (Respondent)—Trayner—Rhind. Agents—Begg & Murray, S.S.C.

Counsel for Defender (Appellant)—Kinnear—Moncreiff. Agent—W. J. Shiress, S.S.C.

Thursday, October 31.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

HARDIE *v.* LEITH.

Parent and Child—Illegitimate Child—Aliment—Right of Mother of an Illegitimate minor pubes *to Sue for Aliment.*

The mother of an illegitimate female child, born in May 1865, obtained decree for aliment against the reputed father till the child should be ten years old or able to maintain itself. In 1878 the mother raised a second action for aliment, claiming £5 yearly from May 1875 till May 1880, when the child would be fifteen, or till it should be able to support itself. *Held* (1) that the mother, *qua*

disburser, was entitled to receive payment of past aliment as up to November 1878; but (2) that she was not entitled to sue for future aliment in name of a *minor pubes*, who was *sui juris*, and might leave her and choose her own residence.

Counsel for Pursuer (Appellant) — Nevay— Agent—J. Watson Johns, L.A.

Counsel for Defender (Respondent)—Balfour—Rhind. Agent—Wm. Officer, S.S.C.

Thursday, October 31.

SECOND DIVISION.

[Lord Young, Ordinary.

LORD ADVOCATE *v.* SHARP.

Fishings — Crown—Salmon-Fishings ex adverso *of Coast — Right of Access to Lands of adjoining Proprietor.*

In a question between the proprietor of salmon-fishings in the sea and the proprietor of the lands, *ex adverso* of which they lay, *held* that the former was entitled to have access for the purposes of his fishings to and from the sea-shore through the lands, in so far as reasonably necessary to the due and proper possession of the fishings and the exercise of the rights of fishing incident to the property thereof, but in the way least prejudicial to the proprietor, and to use the foreshore, beach, and waste lands adjoining for the purposes of his business, and that such a right of access was not capable of being lost *non utendo*.

This was an action of declarator, raised by the Lord Advocate, on behalf of the Commissioners of Woods and Forests, against Adam Sharp of Clyth, in the county of Caithness. The summons sought to have it declared that "the salmon-fishings in the sea *ex adverso* of the lands of Clyth, in the parishes of Latheron and Wick, in the county of Caithness, the property of the said Adam Sharp, belong to us *jure coronæ*, and form part of the hereditary revenues of the Crown in Scotland falling under the management and control of the said Commissioners of our Woods, Forests, and Land Revenues; and . . . that in the exercise of the right of salmon-fishing we, and all in our right, are entitled to have access to and from the sea and sea-shore through the lands of Clyth . . . in so far as is necessary for the full beneficial use of the right; and . . that we and all in our right are entitled in the exercise of the right of salmon-fishing to use the foreshores, beach, and waste lands adjoining the same upon the lands of Clyth for the purpose of drawing and drying the salmon nets, and also to use shores, piers, roads, and paths at Occumster and also at Whalligoe, upon the lands of Clyth, as accesses from the sea to the public highway leading from Wick to Dunbeath, or to use for the purposes foresaid such other roads or paths through the lands of Clyth as may be fixed." The estate of Clyth, the salmon-fishings *ex adverso* of which had in 1875 been claimed by, and admitted by the defender to belong to, the Crown, extended for about six miles along the sea. In that distance, owing to the rocky character of the coast, there were only three places, all of them on the estate, at which salmon could be landed after being caught—(1) Occumster, one mile to the north-east of Lybster, where there was a public harbour; (2) Clyth, a mile further to the north-east; and (3) Whalligoe, five miles further north-east. The public harbour of Wick was seven miles north-east of Whalligoe. In 1873 Mr Sharp had let the fishings to Mr Stephen, fishcurer, who had then established fishing stations at Occumster and Whalligoe, and after the Crown had made good their right to them they had been let to the same tenant, the Crown being unable to come to terms with Mr Sharp, who had himself desired a lease.

The pursuer averred, *inter alia*—"The stations established at Occumster and Whalligoe are the only points at which the Crown right of salmon-fishing *ex adverso* of Clyth estate lands can be profitably worked. This said right cannot even at these points be profitably exercised without the use of the foreshore, beach, and waste lands adjoining, as well as of the shores and piers at Occumster and Whalligoe, and the roads and paths upon the lands leading from the landing-places to the public highway between Wick and Dunbeath. These and Clyth are the only available accesses from the sea to the high road along the whole estate of Clyth."

He further averred that the use of the foreshore was necessary for drawing and drying the nets, and it was admitted that while Stephen was the defender's tenant, he had used the roads and paths mentioned for access and for conveyance of the salmon to the public road, and he had continued to do so afterwards. It appeared that Whalligoe was an artificially constructed stair, cut in the rock, and that a road led from the top of it to the public road. There were two benches there, one forming the access to and from the sea, and on the other the nets were dried.

The defender, *inter alia*, averred—"The private harbours, piers, roads, and net-grounds were originally constructed for the purposes of the herring fishery, and have been let by the defender and his predecessors for the payment of a reasonable rent. They have never been made use of by anyone except the proprietor and his tenants, or persons to whom he has granted permission to use them. Owing to the storms which are frequent on the coast in question, the cost of maintainance is very heavy. The defender is willing to allow the Crown tenant to make use of the said private roads, piers, and net-grounds for payment of a reasonable charge."

The fishing, it appeared, was carried on by stake-nets and bag-nets, and the nets were set on either side of the stations, in some instances from half-a-mile to a mile from the landing places on either side.

The pursuer pleaded, *inter alia*—"(2) The Crown, as owner of the salmon-fishings in the sea *ex adverso* of the defender's said lands and estate, and all in right of the Crown, are entitled to such use of the lands of Clyth for access and otherwise as is necessary for the beneficial exercise of their right. (3) In particular, the Crown and all in right thereof are entitled to the use of the defender's waste lands, and his shores and roads at and leading to and from Occumster and and Whalligoe stations, for drawing and drying their salmon nets, and also for landing and re-