determine the amount, then it is for the parties concerned to say whether it has been well determined or not. Now there is nothing in the case before us to indicate that when the Sheriff does decide the matter both parties will not be quite satisfied with the award. Before he has determined that matter I think it would be out of the question for us to inquire into the regularity of anything that the Sheriff-Substitute may have done in the process of informing himself as to the amount of compensation due. Even in the case of ordinary actions in the Sheriff Court there are some appeals which are competent and some which are not, but if an incompetent appeal has been taken from the Sheriff-Substitute to the Sheriff we do not deal with the matter at once, but wait till the end of the case, and if we think that anything has been done under the alleged incompetent appeal that has had an effect upon the decision, then we can alter it. Here the Sheriff-Substitute has adopted a particular form of process to obtain the information necessary. I do not think that any form of process is prescribed in the Act of Parliament. I think that the Sheriff might get the parties before him in his own room, and after hearing them he could determine the question of the amount of compensation finally. We have no jurisdiction until the matter has been determined by the Sheriff, and indeed only then if the parties complain of any irregularity.

LORD RUTHERFURD CLARK—I agree. I think the proceedings should be dismissed. I think it is an idle and useless appeal.

LORD TRAYNER—I agree with Lord Rutherfurd Clark. I think this is an idle and incompetent appeal. The Sheriff is the final judge in the matter, and to ask us to interfere with the way in which the Sheriff takes to get the information he requires for his decision is out of the question.

The Court dismissed the appeal.

Counsel for the Appellants—M'Kechnie—G. Burnet. Agents—D. Maclachlan, S.S.C.

Counsel for the Respondent—D. Robertson—G. Stewart. Agents M'Neill & Syme, W.S.

Tuesday, March 17.

SECOND DIVISION.

(WHOLE COURT.)

HALL AND OTHERS *v.* HALL.

Succession—Testament—Vesting—Conditio si sine liberis decesserit.

A testator, who was the only child of her mother's first marriage, conveyed her whole estate to her mother and stepfather in conjunct fee and liferent, for her or his liferent use allenarly, and to the children of their marriage in fee, with power to the liferenters or the survivor to divide the estate among the children. All the children of the marriage, six in number, were born at the date of the settlement.

The testator was predeceased by the liferenters and four of their children. In a question between the two survivors and the daughter of a predeceaser—*held* (*diss.* Lord Justice-Clerk and Lord Young) that the *conditio si sine liberis decesserit* did not apply, and that the daughter of the predeceaser was not entitled to one-third of the estate of the truster under the settlement.

Williamina Anne Scott of Campfield died at Aberdeen on 23rd October 1889, leaving a disposition and settlement dated 14th June 1844. Miss Scott was the only child of the first marriage of her mother, who at that time was married to Mr Harvey Hall, her second husband.

The settlement was in these terms—"I, . . . for the love, favour, and affection I have for my dear mother Mrs Anne Hall, now the wife of Mr Harvey Hall, do therefore, and for other good causes and considerations, give, grant, and dispone, to and in favour of the said Mrs Anne Hall, my mother, and the said Harvey Hall, my stepfather, in conjunct fee and liferent, and to the longest liver in liferent, but for her or his liferent use allenarly, and to the children of their marriage, equally between them in fee," certain specified lands; "and I do hereby nominate and appoint the said Mrs Anne Hall and Harvey Hall jointly, or the survivor of them, to be my sole executors or executor and intromitters with my moveable means and estate; but providing always and declaring, as it is hereby specially provided and declared, that, failing any more particular arrangement by myself, it shall be in the power of the said Mrs Anne Hall and Harvey Hall, or the survivor, by any writing under their hand, to transfer, divide, and apportion my lands and estate of Campfield above disponed amongst the children of their marriage, in such way and manner, and according to such proportions, as they or the survivor shall judge proper."

In 1844 Miss Scott was twenty-one years of age, and there were six children alive of her mother's second marriage, the eldest twelve and the youngest two years old; no other children were born of the marriage. Mr and Mrs Harvey Hall and four of the children predeceased the testator. One of the children, John Robert Hall, died 26th October 1885 and left one child, a daughter, Anne Margaret Hall. On Miss Scott's death this daughter claimed to take her father's share in his half-sister's succession. It was agreed that for the purposes of this case no notice should be taken of the fact that the testatrix survived John Robert Hall for four years without altering her settlement.

A special case was accordingly presented by (1) the two surviving children, Alexander Harvey Hall and Mrs Lancey, and

Mrs Lancey's marriage trustees; and (2) Miss Anne Margaret Hall.

The question for the consideration of the Court was—"Whether the second party as coming in place of her deceased father or otherwise is entitled to one-third of the whole estate, heritable and moveable, of the late Williamina Anne Scott of Campfield under her disposition and settlement?"

After hearing counsel the Second Division ordered printed minutes of debate to be laid before the Whole Court.

The first parties argued — The second party's claim was founded alternatively on the destination in the deed, or on the implied *conditio si sine*. The first alternative must rest on the argument that the words "children of the marriage" might include, and should be held as including, grandchildren, issue of a predeceasing child. Such a contention ran counter to the whole course of decisions both here and in England — *Rhind's Trustees*, 5 Macph, 104; *Bowen*, 9 App. Cas. 890, 915. That such an extension of the term was inadmissible, at least where persons survived as here, to whom the word 'children' in its natural sense was applicable; that if the second party had had brothers and sisters it would have involved a claim on the part of all of them as well as herself to share along with their uncle and aunt *per capita;* and lastly, that it was inconsistent with the power of appointment in the deed quoted. With regard to the second alternative — There was enough within the four corners of the settlement to prevent its emergence. The testatrix plainly indicated what she meant in using the word 'children' in the leading clause of her settlement. For the word was again used in the power of appointment, and used in such a way as to confine it to the immediate issue of her mother and stepfather. The power was to apportion, not the whole estate heritable and moveable, but the lands and estate of Campfield among the children of their marriage. These children alone were the proper objects of the power—*Mackie* v. *Mackie's Trustees*, 1885, 12 R. 1230, and cases there. There were certain general rules deducible from the authorities. (*a*) The duty of the Court was to discover, if possible, from the terms of a settlement what was the intention of the testator. To give effect to the *conditio* was, *ex hypothesi*, to insert a clause or term in the settlement which did not appear on the face of it. Two theories have been put forth to explain the *ratio* of thus exceptionally dealing with the *enixa voluntas* of a testator. One was, that he really meant the inclusion of issue of a predeceasing object of his bounty by the use of the words to be found in his will. The other explanation was, that he inadvertently forgot the possibility of the predecease, and would, had he thought of it, have certainly provided for it in express terms. There must be some limit imposed on this presumption of intention. Otherwise, the cardinal rule of lapse of a legacy through the death of a legatee or beneficiary before the death of the testator, or before the vesting of the bequest, would be reduced to a nullity. (*b*) The scope of the *conditio* was further restricted. There must be no proper *delectus personæ* in the bequest. The leading case was that of *Hamilton* v. *Hamilton* in 1838, 16 S. 478—see also *Fleming*, 1798, M. 8111; *Gillespie*, 1876, 3 R. 561; *Douglas' Executors*, 1869, 7 Macph. 504; *Bryce's Trustee*, 1878, 5 R. 722—the settlement must be a general one and of the nature of a family settlement, and the bequest must be devised to a class. The doctrine of *delectus personæ* applied with much force where there is a special conveyance, as of a bond—*Chancellor*, 1872, 10 Macph. 995—but the fact that a special subject only was conveyed was not conclusive against the application of the *conditio*. Nor was it necessary to call the whole class in order to let in the presumption; nor, again, that all the persons favoured should belong to the same class; nor, lastly, that the members of the class should be benefited equally—*Halliday*, 1869, 8 Macph. 112; *Montrose Magistrates*, *infra; Wood*, *infra; per* Lord President (Inglis) and Lord Shand in *Bogie's Trustees*, 9 R. 453. (*c*) The other mode in which the application of the *conditio* was restricted was the rule whereby it was confined to cases where the testator was either an ascendant (*parens*) or stood strictly *in loco parentis* to the persons called to share in the inheritance — *M'Gown's Trustees*, 8 Macph. 356; *Grant*, 24 D. 1211; *Nicol*, 3 R. 374; *Neilson and Baillie*, 1 S. (N.E.) 427; *M'Call*, 10 Macph. 281; *Chancellor*, *supra; Bryce*, *supra; Rougheads*, M. 6403.

The doctrine was first recognised in 1738 in the case of *Montrose Magistrates* v. *Robertson*, M. 6398, where it was applied in spite of a survivorship clause in construing the destination in a bond. But there the civil law was strictly followed for the destination was in the direct line. The next case, *Wishart* v. *Grant*, 1763, M. 2310, indicated clearly that the maxim did not then apply to nephews or nieces or their issue. *Binning*, 1767, M. 13,047; *Wood*, 1789, M. 13,043; and *Rattray*, 1790, Hume's Dec. 526, were all concerned with destinations in bonds to descendants. The first case in which the doctrine was applied beyond the line of direct descent was *M'Kenzie* v. *Holte's Legatees*, 1781, M. 6602. In the report of this case nothing is said as to the relationship between the testatrix and the three families which were to be benefited by her settlement, but it appeared from the Session papers (F.C., 1781, No. 27) that they were the children of two sisters and of a niece of the testator's husband, and that she was disposing of property which had come to her from him, and which she apparently regarded herself as bound to dispose of in favour of his nearest relatives. So that substantially the testatrix stood *in loco parentis* to the children, and was making for her husband a family settlement. In *Cuthbertson* v. *Thomson*, M. 4279, the favoured persons

were in the direct line of descent, so also *Rougheads*, 1784, M. 6403. In *Fleming* v. *Martin*, 1798, M. 8111, it was held that an aunt was not under that natural obligation to provide for a nephew which a parent was under to provide for his grandchildren. The earliest case in the present century was the important decision of *Wallace* v. *Wallace*, 1807, M. Clause App. No. 6. It was chiefly important as containing the first formal statement of the restriction now in question. The successful argument proceeded on the presumed will of the testator, as involving the *conditio si sine liberis;* and the argument to the contrary was that the presumption of the *conditio* only held in the case of direct descendants, and where the testator was properly *in loco parentis*—neither of which relations was, it was contended, to be found in the circumstances of the case. The cases of *M'Kenzie* and *Wallace* were strongly founded upon in the decision of *Christie* v. *Paterson*, July 5, 1822, F.C., p. 667, and 1 S. (N.E.) 498; the narrative is erroneously stated. The persons called were cousins-german. One of them predeceased the testator leaving issue, and that issue was held entitled to the share which would have fallen to their mother had she survived. The soundness of this case had been doubted. *Glendinning* v. *Walker*, 1825, 4 S. 237, turned merely upon the meaning of the word "issue." *Hamilton* v. *Hamilton*, 1838, 16 S. 478, was important on account of the *dicta* which fell from some of the Judges. The decision went against the application of the *conditio* on the ground that there was a *delectus personæ—per* Lord Glenlee. In the case of *Thomson's Trustees* v. *Robb*, 1851, 13 D. 1326, a lady instituted in her will the family of her sister, called generally, and a nephew and niece *nominatim*, and failing any of the said parties leaving lawful issue, the said issue was to take equally among them, *per stirpes*, the share which would have belonged to their respective parents if in life. Two members of the said family having predeceased the testator leaving issue, the *conditio* was applied in favour of the issue of predecessors apart altogether from an express direction that such issue should take—*per* Lord President. In *Martin's Trustees* v. *Milliken*, 1864, 3 Macph. 326, it was held that the *conditio* could not be applied in favour of the children of a legatee described as "the natural son of my brother." In *Rhind's Trustees* v. *Leith*, 1866, 5 Macph. 104, the decision turned on the fact that the testator's cousin-german, whose child claimed under the *conditio*, had not survived the date of the settlement, and was, in accordance with the earlier cases of *Wishart*, M. 2310, and *Sturrock*, 6 D. 117, excluded. The cousin had not been instituted, and therefore there could be no conditional institution in favour of her child. The Lord Justice-Clerk (p. 111) guarded against the misapprehension that the Court were by implication recognising the applicability of the *conditio si sine liberis* to the claimant—see also the same Judge in *Douglas' Executors*, 1869, 7 Macph. 504 and 508. In *Halliday* v. *M'Callum*, 1869, 8 Macph. 112, the Lord President and Lord Ardmillan expressed themselves as unfavourable to any extension of the *conditio;* while in the case of *M'Gown's Trustees*, 1869, 8 Macph. 356, decided a little later in the Second Division, where the institute was a nephew of the testator, and where the *conditio* was applied, it was remarked that there was an inclination in the law to extend the maxim, at least in favour of the children of legatees to whom the testator stood *in loco parentis*. In *Aitken's Trustees*, 1871, 10 Macph. 275, the application of the doctrine to cases in which the testator stood *in loco parentis* was reaffirmed; for the persons called were nephews and nieces. In the immediately succeeding case of *M'Call*, 10 Macph. 281, the relationship of the parties was the same, and the *conditio* was held to be excluded in respect of an express provision for survivance. But Lord Deas made certain important observations on the general law. In the following decisions the *conditio* was applied in favour of the children or descendants of nephews or nieces of the whole or half blood, and it was distinctly assumed to be necessary that the testator should stand *in loco parentis* to the parties instituted in his will—*Irvine*, 1873, 11 Macph. 892; *Nicol*, 1876, 3 R. 374; *Gillespie*, 1876, 3 R. 561; *Gauld's Trustees*, 1877, 4 R. 691; *Bryce's Trustees*, 1878, 5 R. 722; and *Bogie's Trustees*, 1882, 9 R. 453. It was argued for the second party that the present case was *a fortiori* of the case of *Nicol*, the ground taken being that the brothers uterine there were children of a prior, not of a subsequent, marriage of the testator's mother. But the argument was displaced by the observation that the persons favoured in the will were not these brothers but their issue—nephews and nieces of the testator. In *Bogie's Trustees* the Lord President explained what is meant by a testator placing himself *in loco parentis*. In the most recent case—*Berwick's Executors*, 1885, 12 R. 565—his Lordship, at p. 571, reiterates this explanation of the meaning of the word in substantially the same terms. In *Blair's Executors* v. *Taylor*, 1876, 3 R. 362, the question now at issue was more thoroughly canvassed than in any other case to be found in our books. The main distinctions between that case and the present were that there the testator was full brother to the persons whom he favoured in his will, and that, though he called all of his brothers and sisters, he did so *nominatim*, not in general terms. But neither of these specialties seemed to have been decisive in leading the majority of the Court to the conclusion that the *conditio* did not apply. The Lord Justice-Clerk (Moncreiff) and Lord Neaves rested their judgment mainly, if not exclusively, upon the view that the testator did not stand *in loco parentis;* and Lord Ormidale did not differ. Lord Gifford, who dissented, admitted that the cases which alone were attended with difficulty were those in which a bequest was made, not to strangers

nominatim, nor to children or descendants, but to collateral relatives, either called by name or as a class, and that there it was very difficult to lay down a satisfactory principle. His Lordship further admitted that the *conditio* applied in general to bequests to nephews and nieces, and proceeded to figure circumstances in which a brother might be more in the position of parent to his brothers and sisters than an uncle to his nephews and nieces; and suggested that, even in the case of strangers in blood, such as an adopted father and son, the *conditio* might apply, and he concluded, "It is dangerous to make a legal presumption that one person is *in loco parentis* to another. I rather think that this will always depend upon circumstances, apart from the case of direct descendants." In the dissent of Lord Gifford in the case of *Blair's Executors* v. *Taylor* last referred to, was thought to lie the strength and weakness of the argument upon the other side. Those who maintained it were driven to abandon a legal presumption upon which a rule of some certainty had been based, without being able to substitute for it anything but the indefiniteness of circumstances. It was plain that their argument, if carried to its logical result must eliminate relationship altogether from the consideration, for it could not stop at any particular degree of relationship. If so, they must bring the matter to this, either that the *conditio si sine* shall be applied in all cases where a testator makes a general settlement or a general provision in favour of a class, or they must allow extrinsic circumstances to weigh. In either view there would be a wide departure from the principles which had hitherto regulated the interpretation of settlements and a transition from judicial interpretations to mere conjecture. The presumption of intention involved in the doctrine of the *conditio si sine* had been adopted by our law, and by our law it had been extended beyond its original conception. But its extension had proceeded on definite and intelligible lines. On the other hand, the views above referred to expressed by Lord Gifford and accepted by the other side showed forcibly the danger of indefinitely extending the doctrine beyond the intelligible limit which had hitherto (with one doubtful exception) been imposed upon it, viz., that in the case of collaterals the testator must not only have evinced the intentions of a parent in his will by granting what is substantially a family settlement, but also be, in the technical sense, *in loco parentis*. In conclusion on this the main question, it was submitted that to decide in favour of the second party would be to misinterpret the intention of the testatrix, as shown by her use of the words "children of their marriage," and to go further than in any decided case except that of *Christie*—where the present question did not seem to have been debated—in innovating on the plain terms of settlements in pursuance of what must after all be matter of pure conjecture, and that it would be dangerous to do so, more especially looking to the unique development of the doctrine in our legal system, to the slender warrant which it can claim from the civil law, and to the state of the law and practice in England.

The second party argued—In the present case the settlement was universal, was in favour of a class, and of the nature of a family settlement, and therefore the only question was, whether in the sense of the *conditio* the testator was *in loco parentis* to the beneficiaries? The principle upon which the *conditio* in its modern development rested had been laid down upon high authority to be the implied will of the testator. In the case of a provision by a parent to his children the *pietas paterna* was itself sufficient to raise the implication. In the case of those who were not actually parents, the implied will was mainly to be gathered from the terms of the settlement—the fact that the settlement was universal, in favour of a class, and of the nature of a family provision, being, as already pointed out, the strongest indication of intention that children should take the share of a predeceasing parent—*Dixon* v. *Dixon*, February 9, 1841, 2 Rob. App. 1; *Grant's Trustees* v. *Grant*, July 2, 1862, 24 D. 1211 (*per* Lord Ordinary (Kinloch), 1221, the Lord President, 1226, and Lord Deas, 1230); *M'Call* v. *Dennistoun*, December 22, 1871, 10 Macph. 281 (*per* Lord Ardmillan, 285). Consistently with the principle so laid down, the *conditio* had been applied not only in favour of the children of descendants, but also in a long series of cases where provisions had been made by a testator in favour of collaterals—*Wallace* v. *Wallace's Trustees*, M. *voce* "Clause," Appx. No. 6; *Thomson's Trustees* v. *Robb*, July 10, 1851, 13 D. 1326; *M'Call* v. *Dennistoun*, December 22, 1871, 10 Macph. 281 (*per* Lord Kinloch, 287). *Christie* v. *Paterson* was a very different case from the present, because it was not a universal settlement in favour of the testator's cousins, but a bequest of residue only; and further, the bequest was expressly limited to cousins "who shall be alive at the time of my death." It was true that the Lord President, in *Rhind's Trustees*, used language which might be read as indicating the opinion that in no case could the *conditio* be applied when the relationship between the parties was that of cousins, but the ground upon which his Lordship disapproved of the judgment in *Christie's* case was that there the testator did not stand *in loco parentis* to the legatees, and that the will was not, properly speaking, a family settlement, both of which elements concurred in the case of *Wallace*, which that of *Christie* professed to follow. In the present case it seemed too clear for argument that the terms of the settlement were sufficient to raise the implication of intention on the testator's part that the issue of predeceasing children should take their parents' share unless the relationship of the testator to the beneficiaries was such as to exclude the implication. This raised the question, What was meant by the term *in loco parentis*

in the sense in which it had been used in the cases referred to? The question whether the testator stands *in loco parentis* to the beneficiaries did not depend wholly or even chiefly upon actual relationship. If in the whole circumstances the granter may fairly be regarded as having put himself in that position toward the beneficiaries—that is to say, if he had made a settlement in their favour similar to what a parent might have been presumed to make, he would be held to have placed himself *in loco parentis*, so as to let the principle in question apply—*Bogie's Trustees* v. *Christie*, January 26, 1882, 9 R. 453 (*per* the Lord President, 455); *Blair's Executors* v. *Taylor*, January 18, 1876, 3 R. 362 (*per* Lord Gifford, 373). Applying the test laid down in these opinions, the testator had clearly placed herself *in loco parentis*. If she had been an aunt, it must be admitted that the *conditio* would apply. Did the mere fact that she was an elder sister by a previous marriage necessitate a different construction being put upon her family settlement? That question could not be better answered than in the language of Lord Gifford in the case of *Blair's Executors*. *Blair's Executors* was greatly relied on by the first parties. The circumstances of that case, however, differed in all essential particulars from the present case. There the testator made his will when a young man about to leave the country and settle as a merchant in Smyrna. By his will he left his whole estate to his father, and failing him by death to his brothers and sisters *nominatim*. The question arose upon the death of the testator, thirty-five years afterwards, predeceased by his father and by two brothers who left issue. A majority of the Court held that the testator was not *in loco parentis* to his brothers and sisters, the true ground of judgment being that they were called only as conditional institutes, and were not called as a class but *nominatim*. No doubt the Lord Justice-Clerk and Lord Neaves indicated the opinion that a person could not be *in loco parentis* to brothers and sisters, but it was not necessary for the judgment to decide that general question, and the *dicta* of the learned Judges upon the point, if read apart from the special circumstances of the case, were contrary to principle and authority. In *Berwick's Executor* v. *Tod*, 12 R. 565, and 22 S.L.R. 357, also relied on by the first parties, the report in the "Scottish Law Reporter" shows that the judgment proceeded on the very special terms of the settlement, and the opinions of the Judges were, it was submitted, in no way inconsistent with the argument for the second party in the present case, but, on the contrary, supported her contention. To sum up, it is submitted that every test and qualification required for the application of the principle was satisfied and existed in the present case. There was near relationship between the testator and the beneficiaries. The beneficiaries were called as a class and not *nominatim*, and the importance of this fact was specially emphasised in *M'Gown's Trustees* v. *Robertson*, December 17, 1869, 8 Macph. 356, and in *Hamilton* v. *Hamilton*, February 8, 1837, 16 S. 478. Further, at the date of the settlement the youngest beneficiary was only two years of age, so that it was by no means certain there would not be other children of the marriage of Mr and Mrs Hall. Such a settlement, in which the testator left her whole estate to a class of very near relatives equally among them, was clearly a settlement "similar to what a parent might have been presumed to make," while the whole circumstances evinced that kind of personal affection for the beneficiaries which might fairly be regarded as analogous to the *pietas paterna*, so as to justify the conclusion that the testator had put herself *in loco parentis* to those who, though her brothers and sisters, were truly a younger generation. That the principle applies in the case of collaterals had already been shown by the authorities above referred to. The closest collateral relation was that of a brother and sister, and accordingly Lord Kinloch, in *M'Call* v. *Dennistoun*, 10 Macph. 281, referred to brothers and sisters as the first class of collaterals which the doctrine comprehends. It was submitted that the argument in support of the principle is stronger where the beneficiaries are younger brothers and sisters uterine than if they had been of the full blood in respect of the disparity of age between the testator and them, and of the fact that the beneficiaries, while in a sense of the same family as the testator, were in reality a different and junior branch of it. In view of this last consideration, the present case is *a fortiori* of the case of *Nicol*, 3 R. 374, where the brothers uterine were the children of the testator's mother by a previous marriage.

The consulted Judges delivered the following opinion:—The question referred to the consulted Judges arises under the testamentary disposition of Miss Williamina Anne Scott of Campfield, who conveyed her estate, heritable and moveable, to her mother Mrs Anne Hall, and her stepfather Mr Harvey Hall, in conjunct fee and liferent for her or his liferent use allenarly, and to the children of their marriage in fee.

According to the terms of the disposition, the testamentary heirs of Miss Scott are Mr Alexander Harvey Hall and Mrs Lancey, the brother and sister uterine of the testator. But a share is claimed by Miss Anne Margaret Hall, the child of a deceased brother-uterine of the testator, on the ground that the *conditio si sine liberis decesserit* ought, as she contends, to be read into the will in the same manner as if this had been a will by a parent in favour of his children, or by a testator in favour of nephews and nieces to whom he had placed himself *in loco parentis*.

As to the origin of the rule of law under which issue are held entitled to come in place of the parent without express words of institution, it is probably unnecessary to say more than that it was introduced on the authority of the Roman law, or by an analogical application of its principles.

But as the authority of the Roman law is referred to in the argument in favour of the extension of the rule in question to the present case, it may be pointed out that the rule of the law of Scotland which goes by the name of the "*conditio si sine liberis*" is by no means identical with the *conditio* of the Roman jurisprudence. While in one direction our Judges have sought to confine its application by means of the expression to be found in almost all the reported cases, that the benefit of the *conditio* is confined to persons to whom the testator placed himself *in loco parentis*, in another direction the rule of our law has a wider extension than that of the Roman system. Under our system the *liberi* or issue of the persons instituted have the benefit of the implied condition in preference to next-of-kin of the testator. But the case treated in the Digest is the case of a gift to an institute, with a conditional institution in favour of a stranger or remoter heir, in which case only it was considered that the testator would have preferred the issue of his immediate legatee to the stranger if he had contemplated the case of the death of the legatee before the opening of the succession.

According to the principles of construction of wills which are now received and acted on, it is probable that we should not feel justified in introducing such a rule at all if the question were now to arise for the first time, for it must be admitted that the effect of the *conditio* is to import into the will something which is not there, although this is accomplished by means of an artificial rule of construction. The same reasons which raise a doubt as to the validity of the process by which the rule was originally introduced into our law, ought, as we think, to incline the Court to refrain from extending the doctrine beyond the limits within which it has hitherto been confined by decisions and the practice following on decisions. To these general observations it may be added that in England the doctrine of the implied institution of children rests on statutory authority, and is confined in its operation to the descendants of the testator; and it has not been shown to us that any writer of authority has advocated an extension of the principle beyond the admitted limits of its application in the law of Scotland.

It is plain enough that the Judges by whom the *conditio si sine liberis* was first admitted as a rule of construction had no intention of establishing it as a universal rule. The rule was first applied to the case of bequests by parents to children, and was afterwards extended to the relation of uncle and nephew, subject to this qualification, that it should appear from the will that the uncle had placed himself *in loco parentis* towards the objects of his gifts—in other words, that he intended to make a family settlement.

Accordingly, when in the case of *Rhind's Trustees* v. *Leith* it was proposed to apply the *conditio* to a bequest in favour of the testator's first cousin, it became necessary to fix a limit to the application of the rule, and the whole subject was considered from this point of view. It was seen that if the *conditio* was made general in its application, this would be equivalent to repealing the rule of law that a legacy lapses by the predecease of the legatee. It was found that with the doubtful exception of the case of *Christie* there was no authority for applying the *conditio* to legacies in favour of collaterals, and it was pointed out by the Lord Justice-Clerk Inglis that the case of *Christie* was of little weight as an authority, because the case was determined by a majority of three to two, and Lord President Hope, who was in the majority, gave his decision, not in accordance with his personal opinion on the point, but in deference to the supposed authority of the case of *Wallace*, which certainly does not touch the question of the extension of the *conditio* to collaterals.

It is true that in the case of *Rhind's Trustees* the claim made in virtue of the *conditio* must have failed on another ground—viz., that the parent of the claimant was not instituted. But this circumstance was in the view of the Judges who decided the case, and their decision is given with reference to the two questions. As an expression of judicial opinion the case of *Rhind* is entirely adverse to the extension of the *conditio* to collaterals. But the history of the question at issue does not end here. In the case of *Blair's Executors* v. *Taylor* the question of the limits of the application of the *conditio* was again considered by the Second Division of the Court, the claim in this case being at the instance of the child of the testator's predeceasing brothers. The leading opinion was given by Lord Moncreiff, and was in accordance with that delivered by the present Lord President in the case of *Rhind's Trustees*. Lord Moncreiff, after reviewing the authorities and weighing all the reasons that had been urged in favour of the extension of the rule to the descendants of brothers and sisters, came to the conclusion that the children of the testator's brothers were not entitled to come into their parents' place as implied institutes. Lord Neaves and Lord Ormidale concurred, while Lord Gifford came to a different conclusion. The decision seems to be directly in point, and it has all the weight which is due to a carefully considered judgment of the majority of the Court.

Supposing the question to be open to reconsideration, we could not come to a different conclusion from that which is expressed in these decisions. It is not necessary to recapitulate the arguments which are set forth in the opinions there delivered. But it may be pointed out that the presumption on which the *conditio si sine liberis* is founded—viz., the supposed preference of the testator in favour of the issue of his legatees—is not necessarily consistent with fact. A childless testator may have considered in his own mind whether he ought to leave his fortune exclusively to his surviving brothers and sisters, or whether he ought to include nephews and nieces within the scope of his

gift. This is a matter on which the views of testators may very naturally differ. But in the case supposed, if the testator did not mean to leave anything to the nephews and nieces he would naturally suppose that he sufficiently expressed his wishes by passing them over. Few persons in making a will would wish to resort to the odious form of express disinherison, and it seems undesirable to establish a rule which would render it necessary for testators to use excluding words in order to accomplish their intentions. In the case of bequests to descendants it is so usual to include the whole family that there is not much likelihood of the testator's true intention being defeated through the operation of the *conditio*. But it is not by any means so clear in the case of bequests to collaterals that the intention is to go beyond the immediate next-of-kin.

The case of uncle and nephew is perhaps intermediate ground. At all events the rule is there established, with a limitation to the case of proper family settlements, containing no indication of a contrary intention.

We see no expediency in extending the rule either to gifts in favour of brothers and sisters, or to gifts in favour of cousins, and it is at least doubtful whether such extension, even if expedient, is altogether legitimate or within the province of a Court of construction. If the principle is to be further extended it will be very difficult to find any other limit than the one indicated in the decisions, and the choice seems to be between confining it to the wills of parents or persons *in loco parentis*, and making the rule universal and thus rescinding the rule that a legacy lapses by the predecease of the legatee.

Our opinion accordingly is that the question in the special case ought to be answered in the negative.

At advising—

LORD JUSTICE-CLERK—The consulted Judges have in this case arrived at a unanimous decision, expressed in one opinion, in which I understand two of your Lordships concur. I regret that after full consideration it has been impossible for me to concur in the judgment which must follow upon that opinion. Had the question been entirely novel, I should have been willing to waive my own view in favour of that arrived at by so large a number of my brethren, so many of whom are senior to myself, and to have been guided by them in the decision of a novel question. But as I hold that the decision to be given in this case is a direct upsetting by the whole Court of what has been already in principle decided—and in my view rightly decided—I feel bound to express my own view to the effect that the former decision was sound, and ought not now to be departed from as a precedent.

In seeking for a definition of what is required in order to justify the Court in holding that the children of a beneficiary under a will shall take their parent's share, when the parent has predeceased the testator, although not mentioned as substitutes, I accept that which was laid down by my predecessor in this chair in the case of *Blair's Executors*. He specifies four elements as necessary — first, that the settlement be universal; second, that the beneficiaries be a class; third, that the provision be of the nature of a family settlement; and fourth, that the testator, if not a parent, be at all events *in loco parentis* to the beneficiaries. It is certain that as regards the first three elements there can be no doubt. The testatrix in this case made a universal settlement. She was the sister uterine of the beneficiaries, her mother having married a second time, and they are pointed at not individually but as a class to which there might have been additions after the will was made. She was the member of the family who had means to dispose of, and for the love she bore to her mother she left all her estate in fee to her brothers and sisters, thus plainly making for her parents that family settlement which it would have been natural for them to make had they possessed the subject of the settlement.

What is the meaning of a family settlement? It means just this, that the testator was bestowing his gifts on all of a class, not because of the personal regard he had to each separately and individually, but because of his regard for the family generally, and his wish to favour all whether he knew them or not, or indeed whether they were in existence at the time of his executing his will or not. Whenever you have a will, which is natural for a testator to make from his relationship to the class favoured, you have a family settlement. These elements concur in this case.

The only remaining question therefore is, whether the testator was *in loco parentis* to those favoured by the will. What is the meaning of these words? I concur with the Lord President in the case of *Bogie's Trustees* that they do not mean that the testator has during his lifetime acted towards them in his intercourse with them as a parent would do. It is not necessary that he should have ever seen them at all at the time of his will being executed. The position must be ascertained from the will itself, in the light of the circumstances attending it. Has he, as the Lord President expresses it, "placed himself in a position like that of a parent toward the legatees—that is to say—made a settlement in their favour similar to what a parent might have been presumed to make." It appears to me that there can be no doubt whatever in this case that what the testatrix did was to make a family settlement exactly as described by the Lord President, viz., "similar to what a parent might have been presumed to make." Having therefore the three elements of family settlement, a universal settlement, and of settlement in favour of a class, and further of settlement such as a parent presumably would make, the question is narrowed down to a very simple one indeed. Is a sister uterine excluded by law from putting herself *in loco parentis* to the class of her brothers and sisters in dividing her estate among them. For it

cannot be seriously suggested that every other element does not point in the direction of her having done so if it was not beyond her power by law.

The argument against the view that the *in loco parentis* element is possible in the case of so near a relative as a sister uterine seems to me to be one based on no principle. When once it is admitted that even during the lifetime of the actual parents a relative such as an uncle or aunt can in making a will act *in loco parentis* to a family, I can see no principle whatever which should debar a sister from doing the same. It cannot really depend upon a question of family ascendancy, for if it is the action in making the will which places the testator in the *locus* of *parens*, that is a place assumed, not in virtue of any right, but in order to fulfil a family purpose which the law holds to be natural. There cannot, I think, be any principle which should bar a member of the family from doing the part of a parent to the family in the way of provision merely because the member was not an actual ascendant in the family tree. The presumption is that the making of a family provision is from family affection, and no one would suggest that there is ground for holding that the purpose was less likely to exist in the case of a brother or sister than in the case of an uncle or aunt. In ordinary life the cases are many in which a brother or sister has to take up every duty of a parent that is possible to one not the actual parent. Once it is recognised that some relatives may by will put themselves *in loco parentis* to those not their own children, on what conceivable principle can it be held that the will of so near a relative as a brother or sister, though in every respect the same as that of the uncle or aunt, is not to be held to carry the same advantages to the children of predeceasing beneficiaries. The possible results are most anomalous. An uncle's gift to his nephews may pass by law to grandnephews, but a brother's gift to his brothers may not pass to their sons, his nephews, a generation nearer to him. Indeed, in the case of *Wallace* the rule was applied in favour of a great-grandnephew. I am unable to see any ground for such a distinction, by which one near relative is held to have included the children of those favoured and the other has not, although they have both expressed themselves in the same way and for the same general purpose. For it is intention that is in question. The intention to favour children of predeceasing institutes is implied by the law. What ground is there for not implying it in this case? None whatever that I can discover. It cannot surely be said that a brother or sister is less likely in making a family settlement to desire to favour the families of brothers and sisters than uncles or aunts to favour grandnephews and grandnieces. Indeed, the opposite is the more likely. Here, in this particular case, the place of parent as regards provision for the family is naturally and kindly taken by the sister. She was the member of the family who possessed the means, and was able to fulfil the duty of affection which generally rests upon the actual parent of providing for the family—that is, for the children of the family, and their children in the event of predecease, that being what the law holds that a natural parent will desire to do. The whole principle of the implication rests on the idea that natural duty would tend to a certain course of action, and that general words must be held to imply that which natural duty would dictate. The further implication in the case of other relatives than the natural parent is, that as they take upon themselves the fulfilment of the duty they take the place of the natural parent in that matter, and therefore must be held that they also desire that the same result should follow their general directions which would follow from similar directions of the parent himself. I am unable to find any principle upon which it is to be held that a brother or sister in taking up the natural duty and fulfilling it is not to be held to do so to the same effect by the same acts as would be held in the case of uncles and aunts.

The consulted Judges appear to be unable to find any principle, and to turn to expediency as a ground for refusing to give effect to the implication in the present case. They say—"We see no expediency in extending the rule, . . . and it is at least doubtful whether such extension, even if expedient, is altogether legitimate or within the province of a Court of construction." But the same opinion has already admitted that the rule of construction is "artificial." I therefore see no middle course between logically applying the artificial rule of construction, which is now undoubtedly a rule accepted, or to set it aside altogether. If the rule is to obtain at all, there is no expediency in limiting it arbitrarily, and the proposed limitation in this case I consider to be arbitrary in the highest degree. No case could be conceived in which a refusal to carry out the rule would be so arbitrary as the present case. The rule might in some cases have an effect different from that which the testator really intended. It certainly might be so in the case of an uncle or aunt. But there is no case, other than that of an actual parent, in which the presumptions are so strong in favour of the rule as that of a brother or sister. Therefore, if expediency is to come into consideration, it seems to me to be an incomprehensible view of expediency which holds it expedient to construe an uncle's will according to the rule and to refuse to apply the rule to a brother's.

It may be asked, Where are you to stop? I am not troubled by that question. I hold that a decision in favour of the second party in this case would not extend the operation of the rule at all. I hold it to be *a fortiori* of the case of uncle and aunt, and I also hold that as the rule has been extended further already by the case of *Christie*, which was decided after much debate, the present decision is not an extension of the rule in any sense. The Judges in the majority in that case plainly held—and I agree with them—that the principle of the case of *Wallace*

applied, and thus held distinctly that the limitation of the rule to cases in which there is ascendancy is unsound. They held that the logical result of its application to the case in which the institute was a grandnephew was that it must apply also to cousins-german. Holding that decision to be right, I hold further, that a rule which has been extended to cousins-german must apply to a brother or sister uterine, always assuming that the latter comes in the position of *parens* in the settlement. There can be no logic in holding that a cousin-german can place himself *in loco parentis* to his cousin, and to deny the same power to a brother or sister uterine. I am aware that numerous criticisms have been made upon the decisions in *Wallace* and in *Christie*, to the effect that the case of *Wallace* was not a precedent justifying the decision in *Christie*. But it seems to me that the opinions of the majority in *Christie* were plainly based on the view that the question whether a testator put himself *in loco parentis* depended upon the expression of his will, and not at all upon the relation of ascendant or descendant. The Lord President in the case of *Wishart* v. *Sturrock* says that *Wallace* was not a precedent for *Christie*, because in *Wallace* the testator was *in loco parentis* to the persons favoured. But I read the case of *Christie* as meaning that the majority there held that the cousin put himself *in loco parentis*, and that it did not occur to them that a cousin was precluded from doing so merely because he was not an ascendant. In that view, which I hold to be sound, the case of *Wallace* was a precedent for the decision in *Christie*, and I see no reason to depart from what was decided in these cases. I do not think that the question, Where are you to stop? is to be an excuse for retrogression when no ground of equity or even expediency can be stated for going back. No evil has resulted from the decision in *Christie*, now seventy years old, and I see no reason for setting it aside, still less for giving a judgment contrary to it in a case which is *a fortiori* of it.

In saying what I have now said regarding the case of *Christie*, I do not overlook the decision in the case of *Rhind's Trustees*. If the question in this case related to a will by a cousin, I might feel myself bound by the decision in *Rhind's* case until it was reconsidered, and I admit that the opinions of the consulted Judges make it plain that no different result could be expected. But this case does not relate to cousins, and having been sent to the Whole Court, I presume each of us is bound to express his own opinion without being bound by previous decisions, and in that view I have expressed my opinion after considering the cases but without feeling bound to follow them.

One other ground is stated in the opinion of the consulted Judges for the judgment they propose, to which it is necessary to refer, viz., that the application of the rule imposes upon a testator who does not desire that the children of predeceasing beneficiaries should succeed, the necessity of resorting to what their Lordships call the "odious form of express disinherison." I do not understand the reasoning which makes any such consideration a ground for restricting the operation of an admitted principle. I do not understand how the expression of a testator's will can be odious if that which it expresses is not odious in itself. There can be nothing odious in a testator expressing his will in such form as shall prevent persons being favoured whom he is under no actual obligation to favour and does not desire to favour. It looks rather as if the consulted Judges thought that it would be an odious thing to exclude children from the benefit of a legacy to their parent, and that the expression of it in the will would be the expression of something odious, and that therefore it will be better to hold the odious thing done without its being expressed. If that is not what was intended by the reasoning, I am unable to understand what it is. But the view is, in my opinion, baseless. In no case would any such form—if odious—be necessary. The opinion of the consulted Judges expresses distinctly the doctrine that to whatever limit the *conditio* is to apply, it is only to apply in those cases in which the testator has placed himself by his will *in loco parentis* to the objects of his favour. He has therefore only to express himself so as to exclude the idea of his having placed himself in the position of *parens* to exclude the operation of the rule of construction, and thus avoid the odium which their Lordships seem to fear will be incurred by testators if the rule be applied in accordance with the decision in *Christie*.

Being unable to follow the views expressed by the consulted Judges either upon principle or expediency, I must express my dissent from the judgment which must follow upon the opinion they have expressed.

LORD YOUNG—This case was heard and referred to the Whole Court for decision last summer, when I think Lord Lee was a member of this Court. So far as my memory serves me, I was opposed to that step, because it appeared to me that the question in the case might be decided upon the terms of the will, and without going into the troublesome and difficult questions that might arise on considering the *conditio si sine liberis* and the authorities on that doctrine.

The will is simple in its conception, although it is at the same time rather special. The lady whose settlement is here in dispute was a child of the first marriage of her mother, and she lived long enough to see her marry again and have another family. So long ago as 1844 she executed a disposition and settlement in favour of her mother and stepfather in liferent and the children of the marriage in fee. It so happened that at the date of the settlement all the children of the second marriage who were to be the ultimate beneficiaries were

born, but it might have been otherwise—there might have been no children born of the marriage, and it would have been perfectly within her right to give the whole of her estate to her mother and stepfather in liferent and to the children of the marriage in fee, and although she had died before any of the children were born the will would have been effectual to carry the fee to any who were born afterwards. A good deal has been said in the minutes of debate about imputing intentions to the testator. Nothing is more familiar in cases of this kind; indeed, no will could be construed without implying a great deal which is not expressed in the deed. When the will says nothing about the terms of vesting, then the Court will imply that vesting takes place *a morte testatoris*, because as no one can have a claim to take anything except under the provisions of the will, anything which is given must be given on the consideration that the will is meant to benefit these particular persons; that result can only be reached by construction, and therefore if nothing is said as to the terms of vesting it is implied that the testator meant vesting to take place *a morte testatoris*. There are a number of decisions on the terms of wills which have been held to mean that the testator meant vesting to take place at some other time than at his death, but that also is construction of the will. There is another familiar case of implied will—that is, where a gift is so expressed as to be given by description; there it is implied that the will intends those shall take the gift who answer the description at the death of the testator. But instances of implying what is not expressed in a will or settlement are numerous. In this case both those cases of implied intention which I have mentioned are inapplicable. The vesting is not to be *a morte testatoris*, because there might be no children alive at that time, and yet others born afterwards would take under this settlement. Again, this gift is given by description to a certain class of persons of whom some might be alive at the time of the testator's death, but others might come into existence afterwards, and all who answered the description at the death of the survivor of the spouses would take their share.

Now, I see here no room for argument on the *conditio si sine liberis*. The learned Judges whom we consulted seem to think that the only alternative is to admit the *conditio* or allow the legacy to lapse. Their Lordships refer to the case of *Rhind's Trustees* v. *Leith* as implying this. They say—"It was seen that if the *conditio* was made general in its application this would be equivalent to repealing the rule of law that a legacy lapses by the predecease of the legatee." But *Rhind's Trustees* cannot be an authority upon the *conditio*, because their Lordships say—"It is true that in the case of *Rhind's Trustees* the claim made in virtue of the *conditio* must have failed on another ground—viz., that the parent of the claimant was not instituted." Of course there could be no real claim then, so we have merely *obiter* but no judgment. Well, if the legacy is so given that the subject of it if not properly given would fall into residue or intestacy, that might be a case which I might think would fall under the *conditio* or would not. If a man makes a provision in his settlement—and the most ordinary way of making a settlement is by leaving a legacy—to A B, and A B predeceases him, then the legacy lapses unless the *conditio* applies and the legatee has left issue — in that case the falling into residue or intestacy will be defeated. The *conditio* of that is that the first person instituted shall die *sine liberis*. But here there is no question of the lapsing of the legacy, there is no suggestion of its falling into residue, and it cannot fall into intestacy.

The learned Judges at the close of their opinion say—"If the principle is to be further extended, it will be very difficult to find any other limit than the one indicated in the decisions, and the choice seems to be between confining it to the wills of parents or persons *in loco parentis*, and making the rule universal, and thus rescinding the rule that a legacy lapses by the predecease of the legatee." Now, I venture to say we have here no question about the legacy lapsing. The provision that the fee of the whole estate shall go to and be divided equally among the children of the marriage stands and must have effect. The only question before us is whether the meaning of the word "children," as we shall be judicially satisfied in regard to its proper meaning, comprehends "grandchildren?" and that is the only question. If the meaning comprehends "grandchildren," or if we shall be satisfied that it does not comprehend them, there is equally an end to the matter.

Now, when this daughter gives her whole estate to her mother and to her stepfather in liferent, and to the children of the marriage in fee, and further empowers her mother or the survivor of the marriage to distribute it among the children of the marriage as seems proper to them, I am of opinion that in such a case the meaning of the word children does include grandchildren. I think that she made this gift of her estate as a family provision to her parents' children, enabling her mother or her husband to divide it among the children of the marriage as if it had been their own, and if they had divided this estate among their children, dealing with it as their own, I think that the word children would have included grandchildren. That is the result which I have reached looking to the ordinary custom of this country, the good sense of the will, and the disposition of the testatrix as it appears in the deed. That result is the result of reasoning upon the good sense of the settlement and the general feeling of the people of this country in regard to such matters. It is always legitimate to look at such considerations in construing wills, but we must construe them as we judicially apprehend them, and the same reasoning which estimates the intention of the testatrix in this settlement

as being according to the ordinary good feelings of the people of this country in such matters, leads me to give the same meaning to the word children in this settlement as if it had been used by the father of the children himself.

But the general question of the *conditio* has been raised, and the learned Judges have given their opinion upon it; it is therefore right that I should indicate my opinion upon the matter. I shall suppose that this is a provision by one sister to another. One sister may very well have a sister twenty years younger than herself and to whom she has acted the part of a mother for the greater part of her life. Well, she makes a will in her favour giving her the whole estate she possesses. She has other relatives, other brothers and sisters, but she prefers to give her whole estate to one of them, her favourite sister. It is manifestly given to her from what may be called *pietate materna*, the mother-like feeling which she has to her sister twenty years younger than herself. Well, the proposition is, that if this younger sister predecease her leaving issue, that what was intended for her either goes to her issue or is divided among the other brothers and sisters of the testatrix. In considering that question we are not entering upon a new field. The question has been considered and a conclusion reached in the case of a settlement by a father or mother in favour of their children, it has been considered and a conclusion reached in the case of an uncle or aunt giving a gift to a nephew or niece, and the question has been considered and a conclusion reached, not on the consideration of any rule *positivi juris* or of the provisions of any statute, but, as I have said, on the considerations which commend themselves as being right and proper to the customs and feelings of the people of this country in such matters. Can you sensibly reach in such a case as I have put any other conclusion than that which has been reached before in the other cases I have referred to? To my mind it is impossible to reach any other conclusion. I do not think that to apply the rule to this case would be to extend the principle; it would merely be to apply the same argument under the same circumstances. There is nothing suggested in the opinion of the learned Judges that will distinguish this case in principle from the cases in which the *conditio* has been held to apply. I would rather put it in this way. If there had been a statutory provision on the subject which said—If the father shall leave his estate to his children, then the *conditio* shall apply, or if an uncle leave his estate to his nephew, then the *conditio* shall apply. I do not think that it would be extending the argument of the act if we were to hold that the provision applied to a brother or sister making a gift to another brother or sister. The question to be determined here is, whether the argument employed in these cases will lead to one result at one time and to another result at another? I think not. The learned Judges have put it that in all these cases the *conditio* applies, because they hold that the testator has the same affection for the child of his sister or the child of his niece that he had for the sister or for the niece herself. They cannot put it upon any other ground. I confess it appears to me to be a startling result that we shall impute to an uncle the same affection for his grandniece that he had for his niece, but that we shall not impute to a brother the same affection for his sister's children as he had for his sister. We shall impute to a father the same affection for his daughter's child as he had for his daughter, and the same affection in an uncle to his niece's daughter that he had for the niece, but we shall not impute to a sister the same affection for a sister's child that she had for the sister herself. I think it is irrational, and I am of opinion that the *conditio* applies, as well as that on the terms of this settlement we should hold that the word "children is inclusive of grandchildren."

LORD RUTHERFURD CLARK and LORD TRAYNER agreed with the opinion of the consulted Judges.

The Court answered the question in the negative.

Counsel for the First Party — Low — Dickson. Agents — Morton, Smart, & Macdonald, W.S.

Counsel for the Second Party—H. Johnston — Rankine. Agents — Macandrew, Wright, & Murray, W.S.

Tuesday, March 17.

FIRST DIVISION.

FORBES *v.* WHYTE.

Process—Expenses—Party Conducting his Own Case.

A successful litigant in the Court of Session, who lived at a distance from Edinburgh, and who had conducted his own case in its various stages, lodged an account of expenses including railway fares, personal expenses while in Edinburgh, and a daily allowance for detention from business.

The Auditor taxed his account on the principle that he was not entitled to professional fees but only to a reasonable allowance for his trouble.

The Court, while of opinion that a litigant who conducted his own case was not entitled to remuneration for time and trouble, in respect of no objections by the other party, *decerned* for the sum found due by the Auditor.

On 30th September 1890 a petition was presented in the Court of Session by Simon Forbes, distiller, Peterhead, praying for the sequestration of the estates of George Whyte, at one time a distiller in Aberdeen, and latterly a commercial traveller in London.

On 21st October the Lord Ordinary, after hearing parties, refused the petition.