held that a testament executed notarially was invalid because the docquet was not holograph. That must be taken as very strong authority, and even if it had been open to reconsideration, as all law resting upon only one decision must be, it was again considered in *Irvine* v. *M'Hardy*, and was held to be in point and to apply to the 1874 Act.

In the circumstances, as the parties have brought the case before the Division which gave these decisions, I must conclude that we are bound to follow their authority, since there is no doubt as to their application to the case. Had these decisions not been in point, more weight might have been given to the arguments which have been advanced in favour of the validity of the will, but we are precluded from considering these.

LORD KINNEAR—I am of opinion that the question is ruled by the decisions in the cases of *Henry* v. *Reid* and *Irvine M'Hardy*. Both of these cases are binding on us, and we cannot consider any argument against them as though the point were still an open one.

The only question therefore is whether this case is distinguishable from them, and I agree that it is not. The chief ground given by Mr Campbell for distinguishing this from the case of *Irvine* is, that the rules regulating the execution of wills are not so rigorous as those relating to deeds executed *inter vivos*, but that proposition does not apply to *Henry* v. *Reid*, where the question was whether a testament signed on behalf of a blind man was invalid because the docquet was not holograph.

The other ground of distinction was that in the case of a testament any defects of execution might be supplemented by allowing the justice, after the death of the testator, to write in the docquet, and this was justified by the authority of the case of *Traill*. I agree that this is quite inadmissible, both because it is against the express terms of the Act of 1874, which says that the granter of the deed must be present, and also on the more general ground that a will cannot be executed after the death of the testator. I think Professor More's criticism of the case of *Traill* is well founded.

The LORD PRESIDENT was absent.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for the Pursuer—Strachan—A. M. Anderson. Agent—John Veitch, Solicitor.

Counsel for the Defenders—W. Campbell—M'Lennan. Agent—D. W. Paterson, S.S.C.

Tuesday, March 12.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

LAIRD *v.* SECURITIES INSURANCE COMPANY, LIMITED.

Insurance—Insurance of Money Deposited with Bank—Conditions of Policy—Default of Payment — Reconstruction — Assignation to Assurer of Claim of Assured.

The pursuer, having lent money on deposit-receipt to an Australian Bank, insured the deposit with the defenders, an insurance company, who guaranteed payment of the deposit with interest, if the debtors made default in repayment of the deposit for more than twenty-one days after the date named in the receipt. The policy was subject, *inter alia*, to the condition that the asssured on receiving payment should hand over to the assurers "the deposit and all his rights in respect thereof." The deposit was due to be paid on 15th May 1893. On 4th April the bank suspended payment. On 26th April a scheme of compromise was sanctioned by the Court of Victoria, which transferred the liabilities of the bank to a new company. On 19th June this scheme was approved, with certain alterations, by the Appeal Court.

Held (*aff.* judgment of Lord Wellwood) that the bank made default by failing to repay the deposit when it became due, and that the pursuer satisfied the condition of the policy by offering to transfer the deposit and his rights in respect thereof as then existing, and was therefore entitled to a decree for the amount of his deposit-receipt.

On 28th June 1889 the trustees acting under a trust-disposition and settlement of James Coutts, Corstorphine House, Corstorphine, deposited a sum of £1000 in the Commercial Bank of Australia. The deposit-receipt was payable on one year's notice, with interest at 4½ per cent. On 6th May 1892 the trustees gave notice to the bank that the deposit would be uplifted upon 15th May 1893. On 17th May 1892 the trustees insured the sum deposited and interest thereon in the Securities Insurance Company, Limited, 26 Old Broad Street, London. The policy of assurance, which was signed by the secretary and two of the directors, was in the following terms:—"Whereas . . . trustees of the late James Coutts . . . (hereinafter called the assured) sometime since deposited with the Commercial Bank of Australia, Limited (hereinafter called the debtors) one thousand pounds, at interest at the rate of £4½ per cent. per annum . . . and the assured are desirous of being insured by the above-named company (hereinafter called the assurers) in manner hereinafter appearing, and have paid to the assurers the sum of one pound five shillings,

as the agreed premium for such insurance until the 15th day of May 1893. Now, this policy of assurance witnesseth that the assurers do hereby guarantee to the assured the payment of the said sum so deposited, and the interest thereon as follows, that is to say:—"(1) If the debtors make default for more than twenty-one days in payment of any interest due in respect of such deposit, the assurers will pay the amount thereof to the assured at the expiration of fourteen days after the assured shall have demanded payment thereof from the assurers. (2) If the debtors make default for more than twenty-one days after the date named in the receipt in repayment of the said deposit, the assurers will pay the amount of such deposit to the assured at the expiration of three calendar months after the assured shall have demanded payment thereof from the assurers. This policy is subject to the conditions endorsed hereon, which are to be deemed part of the same." Of the conditions referred to, the only important ones for the present case were the third, fifth, and seventh, which were as follows:—"(3) Any demand under this policy must be in writing, signed by the assured and served at the registered office of the assurers, and the assured must, if required by the assurers, produce the deposit-note in respect of which the demand is made, and furnish such evidence of his claim and verify the same as the assurers may reasonably require. (5) Whenever any such demand as aforesaid is made, the assurers shall be at liberty to make it a condition of complying with such demand that the assured shall forthwith transfer the deposit and all his rights in respect thereof to the assurers in exchange for a sum equal to the amount of the deposit, and all interest thereon up to the date of such transfer, and the assured shall be bound to comply with such condition. (7) This policy will, subject to these conditions, continue in force from the 15th day of May 1892 until the 15th day of May 1893. Provided always, that if default shall be made in payment of the said deposit, or the interest thereon, on the 15th day of May 1893 (being the date for the repayment of the said deposit), this policy, for the purposes of any claim which may be made thereunder, shall be deemed, without payment of further premium, to remain in force for thirty days after the said date."

Upon 4th April 1893 the Commercial Bank suspended payment. Notice of the suspension and claim was at once sent to the Insurance Company by the agents of the trust-estate, and on 22nd April the Insurance Company wrote—"We are in receipt of your letter of yesterday, which we accept as intimation of claim, and hope to reply definitely in a few days."

On 26th April 1893 the Commercial Bank of Australia obtained the sanction of the Supreme Court of Victoria to "a scheme of compromise or arrangement between the Commercial Bank of Australia, Limited, and its creditors."

Under this scheme the old company was to be wound up voluntarily and liquidators were to be appointed for the purpose of the winding-up. A new company was to be formed for the purpose "of acquiring all the property and assets of the old company, subject to the debts and liabilities thereof, the new company undertaking to pay, satisfy, and discharge all the debts of the old company in manner as hereinafter provided." . . . The eleventh and twelth articles of the scheme dealt with the payment of depositors, and provided:—"XI. . . . Every creditor of the old company . . . shall be entitled to receive the deposit-receipt of the new company for two-thirds (as nearly as practicable) of the amount of principal now owing to such creditor by the old company, . . . and the principal amount of such deposit-receipt shall be payable at the expiration of five years from the date when such principal is payable by the old company. . . . XII. Save as hereinafter provided, every creditor of the old company (except as aforesaid) shall also be entitled to receive preference shares in the new company, credited as fully paid up, equal in nominal value to the balance of principal now owing to such creditor by the old company and not provided for by Clause XI." By Clause XIII. the creditors were bound to accept these provisions in satisfaction of their claims against the old company, and to deliver up their deposit-receipts to be cancelled.

On 19th June 1893 the Court of Appeal at Melbourne gave its sanction to the scheme of reconstruction with certain alterations. The chief alteration by the Court of Appeal was that corporate bodies and trustees without legal power to take up preference shares were to be entitled to receive for the balance of their claim not provided for under Clause XI. deposit-receipts, repayable at the expiration of ten years, in place of preference shares.

On 8th August 1893 Thomas Patrick Laird was appointed judicial factor on the trust-estate of James Coutts, all the trustees having died or resigned.

On 10th October 1893 he raised an action against the Securities Insurance Company concluding for payment of the £1000 insured in the policy.

On 24th October the defenders went into voluntary liquidation, and a new company was formed who took up their liabilities, and on 15th March 1894 sisted themselves together with the liquidators as parties to the action.

The pursuer stated that after the suspension of the bank and before its liquidation the trustees had offered to transfer the deposit and all rights accessory thereto to the defenders; that "he has all along been willing and hereby offers to grant said transfer in exchange for a sum equal to the amount of the deposit and interest;" that he had "agreed to no discharge of said deposit or novation of the debt, and generally had done nothing to prejudice the rights of the defenders."

The defenders averred that the bank had not made default within the meaning of the policy, and that they were therefore under no obligation to pay; that in con-

sequence of the scheme sanctioned by the Supreme Court of Victoria on 26th April 1893, by which he had lost all claims against the old company, before payment of the deposit was due, the pursuer was not in a condition to comply with the fifth condition of the policy "and transfer the deposit and all his rights in respect thereof to the assurers" on receiving payment.

They pleaded—"2. The Commercial Bank of Australia, Limited, not having made default within the meaning of the defenders' policy in payment of the deposit-receipt, the pursuer's claim is unfounded. 3. The defenders are released from liability under the policy covering the deposit-receipt in respect of (1) the discharge and novation of the debt under the scheme of compromise and arrangement of the Commercial Bank, and (2) the pursuer's inability to comply with the stipulations of the policy."

On 5th June 1894 the Lord Ordinary (WELLWOOD) decerned against the defenders in terms of the conclusions of the summons.

"*Opinion.*—The deposit in this case was repayable by the Commercial Bank of Australia on 15th May 1893. The bank suspended payment on 4th April 1893, and neither principal nor interest were paid at Whitsunday.

"The pursuer now sues the defenders' company for payment of principal and interest in respect of the policy of insurance referred to on record. The defenders, *inter alia*, dispute that there has been any default on the part of the Commercial Bank of Australia, Limited, within the meaning of the defenders' policy; and '(3) the defenders are released from liability under the policy covering the deposit-receipt, in respect of (1) the discharge and novation of the debt under the scheme of compromise and arrangement of the Commercial Bank; and (2) the pursuers' inability to comply with the stipulations of the policy.'

"The facts of this case differ from those in the recent case of *Young* v. *Trustee Assets and Investment Insurance Company, Limited*, 21 R. 222, in this respect, that, while in *Young's* case default undoubtedly occurred before a scheme of reconstruction was arranged, in the present case it is alleged that on 26th April 1893 the bank, under the Companies Amendment Act 1870 (Victorian) obtained the approval of the Supreme Court of the Colony of Victoria to a scheme of compromise and arrangement with its creditors. The defenders state in reference to this scheme—'Under the said scheme, stated generally, the bank was to be wound up and a new bank formed for the purpose of acquiring all the assets of the old bank and undertaking to pay all the liabilities of the old bank in the manner therein specially provided. The new bank was forthwith incorporated, and the old bank, which was the debtor under the said insured deposit-receipt, was thereby discharged of all liability to make payment of the same at maturity. The date of repayment (15th May 1893), which had not arrived when the said scheme was sanctioned, was by the said scheme legally postponed, and default in repayment has not been made within the meaning of the policy.'

"I assume in the meantime that the scheme became operative at the date named, 26th April, although I understand it was not sanctioned by the Court of Appeal until the 19th of June 1893. In my opinion the substitution of the scheme for winding-up in ordinary course is immaterial.

"The first matter to be considered is, whether the Commercial Bank of Australia, Limited, was in default within the meaning of the policy or not. I have no hesitation in saying that it was, simply because the sum in the deposit-receipt with interest was not paid when due.

"The defenders contend that there was no default in the sense of the policy, because when the money fell to be paid the old company no longer existed, and had transferred its assets to a new company, with which the defenders had nothing to do. It might as well be said that there would be no default if a debtor died before the date of payment leaving no estate, or having so tied up his funds that they could not be immediately applied in payment of his debts.

"But further it is urged that the pursuer is not now in a position to claim payment from the defenders, because he is unable to comply with the stipulations in the policy as to giving the defenders the means of relief against the bank on faith of which the policy was granted. They complain that all he can give them is his right to the benefit of the reconstruction scheme such as it is, and that this is not what they bargained for. I think this defence is ill-founded. Under the conditions of the policy the trustees, the assured, in the event of default, and on the defenders paying the sums due, were bound to do no more than place the defenders in their own shoes so as to enable the defenders to operate their relief against the bank. In the event which happened, the assured were not responsible for the adoption of the scheme; they gave no consent to it. If they had opposed it, which they had no time to do, the opposition would have been ineffectual. The very purpose of insuring the deposit was to protect the depositors who were resident in this country against the risks incident to an investment in an Australian bank. Owing to distance they would be necessarily placed at a great disadvantage as compared with creditors on the spot in the event of embarrassment or insolvency of the bank. The purpose of the policy was to save the assured from all trouble about these matters. The possible stoppage and liquidation of the bank, and its possible discharge by arrangement with its creditors under the bankruptcy laws of Victoria, must or should have been in the contemplation of the defenders when they issued the policy. These were the contingencies insured against. If the liquidation had run its usual course, and the winding-up had terminated before the deposit was re-

payable, I do not apprehend that the defenders would have maintained that they were freed from liability because the company no longer existed, and its contributories had been discharged. But the scheme sanctioned by the Court was simply a step in the liquidation or an alternative mode of liquidation which the law allowed a majority of the creditors to substitute for the winding-up, such as the British Statute, the Joint-Stock Companies Arrangement Act 1870 (33 and 34 Vict. c. 104), sec. 2, empowers the Courts of this country to sanction. The discharge thereby given to the contributories of the old company was effected by operation of law, just as much as a discharge obtained in ordinary course in a winding-up would have been.

"In the case of *Dane* v. *The Mortgage Insurance Corporation*, 1894, L.R., 1 Q.B. 54, Lord Esher says (p. 61)—'What the defendants have done, as it appears to me, is to insure payment of the deposit-receipt according to the contract made between the depositor and the bank, *i.e.*, that the bank will pay the amount at the date fixed by that contract for payment. The policy is not a guarantee that the bank will be able to pay; it is a positive contract that if the bank does not pay a certain amount on a fixed day the Insurance Company will pay that amount;' and again (p. 62)—'It is quite immaterial to the plaintiff, whether there was any scheme of arrangement or not. Nothing is material so far as she is concerned after the fact that the day of payment according to the contract between her and the bank having arrived she was not paid. If after that by any law anything can be got from the bank, it is for the insurers to get it, the plaintiff being bound to put no difficulties in their way.' These remarks are directly applicable to the present case. It is true that in *Dane's* case the scheme had not been adopted before default, but that, if the views which I have expressed are correct, is quite immaterial, not only to the legal position of the parties, but also to the practical result. In *Dane's* case the depositor, as here, was bound to hand over her deposit-receipt to the Mortgage Insurance Corporation, but the only use they could make of it when they got it would be to recover anything that was to be got under the reconstruction scheme, and thus they would be in no better position than the defenders in the present case.

"The decision might have been otherwise if it could have been shown in this case that the assured did anything to deprive the defenders of their remedy against the bank. I am far from saying that even if they had voted for the scheme the defenders could have complained. But admittedly the assured did not do anything to impair the defender's position, and that being so, I have no hesitation in giving the pursuer the decree he asks."

The defenders reclaimed, and argued—(1) There had been no ultimate insolvency, and no default had been made by the bank in the sense of the policy. It was not enough to say that the date of payment had passed, and no payment had been made. The true reading of the obligation was that there must be a subsisting obligation under the deposit-receipt. The whole conditions had changed before it became due, for by the scheme of compromise as sanctioned by the Court on the 26th April, the old company had transferred its obligations to a new company, with which the defenders had nothing to do. The scheme was binding from that date. In *Dane* v. *Mortgage Insurance Corporation*, L.R. 1894, 1 Q.B. 54, all the proceedings took place after default had been made. This was also the case in *Young* v. *Trustee and Assets Insurance Company*, December 8, 1893, 21 R. 222, and *ex parte Jacobs*, 1875, L.R., 10 Ch. 211. The case of *The London Chartered Bank of Australia*, L.R. 1893, 3 Ch. 540, was different, because it was under the 1870 Act referring to companies already being wound up. (2) Owing to the change in his rights the assured could not fulfil the fifth conditions of the policy by assigning "his deposit and all the rights in respect thereof." . . . on receiving payment. The true meaning of that condition was that he must transfer his claim and accessory rights as at the time when the policy was issued. He obviously could not do that, having lost all his claim against the old company. Therefore the assurers were released from their liability.

Argued for the pursuer—The policyholder had done nothing to prejudice the interests of the assurers, and did not lose his rights even if the conditions were changed by supervening legislation. The meaning of the policy was not that it was a guarantee that the bank would be able to pay, but a contract that if the bank failed to pay by a certain day the Insurance Company must pay the amount. The ground of judgment in *Dane* was directly applicable to the present case, and the difference in the circumstances there had no bearing on the judgment. The principles applicable to the case of a guarantee had no application here. The case of *The London Chartered Bank of Australia* showed that the release of the old company having been affected by the operation of law, and not by the act of the assured, it did not free the assurer. Analogous cases on bills of exchange were *Rouquette* v. *Overmann*, 1875, L.R., 10 Q.B. 525, where the time for payment having been extended by an *ex post facto* law, the drawers and indorsers were not freed from liability thereby; and *ex parte Jacobs*. But an examination of the dates showed that the assured was in a position to fulfil the fifth condition even as interpreted by the defenders. The scheme was not really final till sanctioned by the Appeal Court on 19th June 1893, with its important modifications in favour of trustees. At any time before then the assured could have assigned, and actually offered to assign, his claims and rights exactly in the condition they were in at the date of the policy.

At advising—

LORD M'LAREN—I see no grounds for disturbing the Lord Ordinary's opinion. The question we have to consider arises on the construction of what is called a "policy of insurance," the object of which is that the insured, a body of trustees lending money on a deposit-receipt to the Commercial Bank of Australia, shall be indemnified against loss. The obligation is in the usual form of a policy of insurance, the consideration is called a premium, and it sets out that the trustees are desirous of being insured by the Security Insurance Company, in respect of the sum of £1000 deposited by them in the Commercial Bank, and are to pay a premium of £1, 5s.

[*His Lordship then narrated the terms of the policy, and of the third, fifth, and seventh conditions annexed thereto.*]

It is not disputed that the third and seventh conditions either have been or can be complied with.

But it is said that the insured trustees are not in a position to fulfil the terms of the fifth condition, by transferring to the Insurance Company "the deposit, and all their rights in respect thereof, in exchange for a sum equal to the amount of the deposit, and all interest thereon up to the date of such transfer."

As matters now stand under the scheme of compromise sanctioned by the Supreme Court of Victoria, the Commercial Bank has been freed from its obligations, which have been taken over in a modified form by the new bank. The modifications are that, in place of the obligation to pay the deposit in full with interest, every depositor is to accept a deposit-receipt for two-thirds of his deposit, and preference shares in the new bank of the nominal value of the remaining third. He thus is treated as a creditor only to the extent of two-thirds of his claim, and takes his chance for the remaining third as a member of the company with fully paid-up shares. According, therefore, to the existing state of the rights and obligations of the pursuer (who represents the depositors in question) and the new and old banks, the pursuer is unable to transfer the original deposit and accessory rights, as existing at the time when the policy was granted, but only their claim such as it is to two-thirds in deposit and one-third in shares with the accessory rights.

The question to be considered is the meaning of the fifth condition, for if we hold it satisfied by the pursuer's tender of the existing claim, there is no doubt that the defenders must pay.

I am disposed to think, without reference to time, or to the argument depending on time, that the pursuer's offer is sufficient, because we cannot regard the obligation of the Insurance Company in the light of a guarantee. It is called a policy of insurance, and that is its true nature, and under it the Insurance Company is not substituted as a new debtor in place of the bank, but undertakes an independent obligation to indemnify the pursuer against a failure to pay on the part of the Commercial Bank of Australia from whatever cause. There may be various causes of the failure, *e.g.*, inability of the debtor to pay, or refusal to do so though he is really solvent, but here the cause is supervening legislation which discharges the debtor on his handing over his property to a new company who come under what the law considers to be an equivalent obligation. Now, the statements to the effect that the Commercial Bank of Australia has gone into liquidation and has been discharged by a decree of the Supreme Court in consideration of obtaining the new company's obligations, are nothing more than a statement of the causes of the default of payment, but as the Insurance Company has agreed to indemnify the pursuer against default in general, I cannot see why these circumstances should deprive the pursuer of his right to recover.

We must construe the fifth condition consistently with the principal obligation, which I hold to be perfectly general, and therefore when the assured are prepared to give over every right they possess in relation to this deposit, it is not consistent with sound principles to construe that condition as meaning that the rights must be made over as they stood when the policy was granted. The alteration of the debtor's obligation is one of the risks insured against, and we are not to accept a construction which would limit the operation of the policy to the case of actual default by the bank.

But it is also said, and with some force, that at the time when default was made the pursuer could have complied with the fifth conditions in the sense in which it is read by the defenders.

The dates to be considered are, first, the 22nd April 1893, when news came to England that the bank had suspended payment, and when a notice of claim was sent to the Insurance Company and accepted by them. Then on the 26th April the decision of the Court of First Instance in Melbourne sustained the proposed compromise. On the 22nd the trustees could have transferred their deposit with all rights as at the date of the policy. But if that is not sufficient because of the term of payment not falling due till 15th May, then let us consider whether the trustees were able to assign their claims at that later date *in eodem statu?* The decision of the Court was under appeal, and was only affirmed on 19th June with important changes. These included a provision recognising the rights of trustees who were barred by their trust from taking preference shares. It seems a well-founded statement that, pending the appeal, there was no obstacle to the transference of claims unchanged to the Insurance Company, because a mere proposal to compromise could have no legal effect until it was sanctioned by a final decree of the appropriate Court. If, therefore, the Insurance Company intended to enforce their condition, they were bound, as soon as they became liable in terms of their indemnity, to call on the pursuers to transfer the deposit, and then they could have appeared in the compromise with as good a title as

the pursuers, but no such demand was made, and now only the claims against the new bank can be transferred. I therefore hold, under every view of the case, that the defenders are bound under their policy to pay in terms of the indemnity contained therein. I am fortified in this opinion by the decision in the case of *Dane*. The only distinction suggested is that there the claim against the company was made before the completion of the compromise, but the reasoning of Lord Esher was independent of this circumstance, which did not affect the substance of the decision. I adopt the reasoning in that case, and the principles which guided the Court that in such obligations where a variation is made in the terms of the principal obligation by the effect of legislation the accessory obligation of indemnity is not discharged. In the case of *Rouquette* the question turned upon the obligation contained in a bill of exchange. There an Act of the French Government during a period of disturbance had extended the time of currency of bills of exchange. The acceptor, who lived in France, had received an extension of time for payment by virtue of this general law, and it was held that the extension of time did not deprive the holder of his remedy against the drawer, because the obligation was that all the parties were liable in a certain order, and because the principle by which a co-obligant is liberated by an extension of time being granted does not apply, where this is caused not by the act of the creditor but by legislation supervening. Therefore both with reference to the circumstances of the case and on the authorities, I am of opinion that the Lord Ordinary is right.

LORD ADAM—I am of the same opinion, and see no ground for doubting that the Lord Ordinary is right. There seems no doubt that the debtors "made default." These words mean nothing more nor less than that they failed to pay, and therefore according to the terms of their policy the Insurance Company were bound to pay the trustees. But, it is said, the reason for the debtors failing to pay was that they went into liquidation and that the terms of the original obligation were altered by the formation of a new bank. I agree with the Lord Ordinary and Lord M'Laren that the assured have nothing to do with that. The case would be different if they had been unable to fulfil any of the conditions in the policy, but the only failure on their part to do so averred is that the Insurance Company are entitled to a transference of their rights against the debtors. Now, so far as I have seen, the trustees are ready and willing to make over all their rights as they now stand, and that is all they can be called upon to do. That these rights are altered from their original ones is no fault of theirs.

The LORD PRESIDENT concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuer—H. Johnston—C. N. Johnston. Agents—Wallace & Pennell, W.S.

Counsel for the Defenders—Lorimer—C. S. Dickson. Agents—Hamilton, Kinnear, & Beatson, W.S.

Tuesday, February 12.

FIRST DIVISION.

WOTHERSPOON AND OTHERS.

Process — Proving the Tenor — Will Destroyed by Testator while Insane.

In an action brought to prove the tenor of a will, the Court being satisfied on the evidence that the deceased had executed the will, of which a draft was produced, when of sound mind, that he had subsequently destroyed it while insane, and that he had never afterwards recovered his sanity, *granted* decree of proving the tenor.

This was an action brought by Miss Wotherspoon and others to prove the tenor of the will of the deceased Dr Archibald Logan, under which they were the principal beneficiaries.

The pursuers were maternal aunts or cousins of the deceased. Certain cousins were called as defenders. There were no nearer relatives in existence, and the only other parties called as defenders were the Hon. F. J. Moncreiff, who had been appointed judicial factor on the deceased's estate, and the Lord Advocate as *ultimus hæres*.

Defences were lodged by the judicial factor, but he did not further oppose decree being granted.

The pursuers averred, *inter alia*—"(Cond. 5) Towards the end of February 1894 the said Dr Archibald Logan took ill and was laid up with a severe bilious attack. He had been drinking heavily shortly before that. By the middle of March he had recovered from the bilious attack, although he had not yet left his bed and was still physically weak, when he expressed his intention of making a will. On 20th March 1894, in pursuance of his previously expressed intention, the said Dr Archibald Logan executed a settlement or testament in the terms set forth in the summons. He himself dictated the terms of the said settlement to his cousin, the pursuer John Nimmo, who is an accountant in the Commercial Bank of Scotland at Wishaw, and is also a notary-public. The said John Nimmo wrote a pencil draft of the said settlement to the dictation of the said Dr Archibald Logan and engrossed the same in ink, and the principal deed was then executed by the said Dr Archibald Logan. He thereafter acknowledged his signature to the said settlement to two neighbours, Mr Archibald Cameron, spirit merchant, and Mr John M'Hardy junior, provision merchant, both in Dumbarton Road, Glasgow, who were immediately called into the