may be thrown open to them. It is true that the bequest only refers to students which then were eligible, and which of course were males only. But conditions have now altered, and there is nothing in the settlement to indicate, any more than there was in the case of the *Clark Bursary Fund*, 5 F. 433, that she would have been opposed to the admission of women to the benefit of her bounty if they were admissible as students.

LORD KYLLACHY—I am of the same opinion. This is described as a petition to extend the benefits of a certain bequest. It is not suggested that the Court has power to extend the purposes or alter the conditions of the bequest as expressed in the settlement, but, as explained by the counsel for the petitioners, the object of the petition is to obtain a declaration by the Court as to the extent of the trustees' powers under the settlement. What we have to decide therefore is simply whether the trustees have power to extend the benefits of certain bursaries at present confined to students attending the United College at St Andrews to students attending the University College, Dundee. The trustees claim to have this power because the college at Dundee is now one of the colleges composing the University of St Andrews, and though the bursary is limited to students attending "one or other of the colleges of St Andrews," they maintain that that may now be read as including the college at Dundee although it was not one of the colleges of St Andrews at the date of the death of the testatrix. Several answers have been made to this contention. It is said, in the first place, that, as the result of a certain determination made by the trustees in 1882 under a power in the settlement, the benefits of the bursary were confined, and confined finally, not only to students attending one or other of the two colleges at St Andrews, but to students attending the United College at St Andrews. Another answer is that the University College at Dundee forms part of the University of St Andrews only on certain conditions, one of which is that "the bursaries now attached to the colleges and the University of St Andrews shall continue to be tenable only by students studying at St Andrews." But the primary and perhaps best answer is, that on a just construction of the trust settlement the bequest is conceived in favour only of the colleges of St Andrews existing at the date of the testatrix's death, and so does not include the University College of Dundee. I think that view is correct, and as it is sufficient for the decision of the case it is unnecessary to consider whether the other grounds of objection are well founded.

As to the question of the admission of females to the benefits of the bursary, I agree with what has been said and have nothing to add.

LORD STORMONTH DARLING—The testatrix who founded these bursaries died in 1880. At that date there were only two colleges at St Andrews, and her bequest is expressed to be "for the purpose of establishing one or more bursaries in either one or other of the colleges of St Andrews." In 1897, seventeen years after her death, the University College of Dundee became part of the University of St Andrews, but it did not thereby become one of "the colleges of St Andrews," for, geographically speaking, it remained a college, not at St Andrews but at Dundee. For that reason I am of opinion that it does not fall within the description of the object of the charity as expressed in the trust deed. Further, I entirely concur with the argument for the University Court of St Andrews so far as it is founded on the terms of the agreement between St Andrews and Dundee on which the incorporation proceeded, and when the University Court, representing, as they do, both the contracting parties, tell us that they would regard the extension of the bursaries to Dundee as a breach of that agreement, I do not think we could disregard their views. But I think it enough for the decision of this case to put it as your Lordship has done, that the bursaries are confined to the two colleges existing at the date of the death of the testatrix.

On the other point I agree that females should be admitted to the benefits of the bursaries for the simple reason that there is nothing in the trust deed to indicate the intention of the testatrix to confine them to male students.

LORD KINCAIRNEY—I agree with what your Lordship has said both as to the extension of the bursaries to the University College of Dundee and as to the admission of females to their benefits.

The Court pronounced this interlocutor:—

"Find that the petitioners have authority to admit to the benefits of the Blyth Scholarship Fund female students attending the United College of St Andrews: *Quoad ultra* refuse the prayer of the petition," &c.

Counsel for Petitioners—Wilton. Agent—David R. M'Cann, S.S.C.

Counsel for Respondents—Irvine. Agents—W. & J. Cook, W.S.

Wednesday, June 28.

SECOND DIVISION.

[Sheriff Court of Lothians and Peebles at Linlithgow.

MURPHY *v.* BLAIR & WHITE.

Process—Appeal—Stated Case—Failure to Observe Regulations of A.S. as to Application for a Stated Case—Failure to Deposit Required Fee—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched. II, sec.* 14, *c—A.S. June* 3, 1898, *sec.* 9 (*a*).

Section 9 (*a*) of the Act of Sederunt of 3rd June 1898, regulating procedure under the Workmen's Compensation

Act 1897, provides that an application to a sheriff to state a case shall be made by a minute setting forth the proposed question or questions of law, and accompanied by a deposit of £1.

On the last day allowed for taking an appeal against the award of a sheriff in an arbitration under the Workmen's Compensation Act 1897, a fellow agent, in the absence of the agent in charge of the case, and at his request, went to the Sheriff Court offices and wrote on the interlocutor sheet at the end of the note to the award, "The pursuer appeals against the foregoing judgment and requests a case to be stated." He made no deposit, being informed by the clerk in attendance that no fee was necessary, and no deposit was ever made.

The Sheriff having stated a case, *held* that the case fell to be dismissed, as the appellant had not complied with the Act of Sederunt.

This was a stated case in an arbitration under the Workmen's Compensation Act 1897 between James Murphy, labourer, Edinburgh, and Blair & White, contractors, Glasgow, in the Sheriff Court at Linlithgow.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), Sched. II, sec. 14 (*c*), provides—"Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily . . . subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by Act of Sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally and remit to the sheriff with instructions as to the judgment to be pronounced."

The Act of Sederunt of 3rd June 1898, regulating procedure under the Workmen's Compensation Act 1897, provides, section 9 (*a*)—"An application to a sheriff to state a case on a question of law determined by him shall be made by minute lodged in the process within seven days after the sheriff has issued his award, and such minute shall set forth the question (or questions) of law which is (or are) proposed as the subject-matter of the case, and shall be accompanied by a deposit of £1, which shall be paid to the sheriff-clerk as his fee for preparing the case."

At the submission to the parties' agents by the sheriff-clerk of a draft case for appeal the respondents objected that the application to state the case had not been made by the appellant in accordance with the regulations of the Act of Sederunt.

The Sheriff-Substitute (MACLEOD), having repelled the objection on the ground that he possessed a discretion to grant indulgence in cases of hardship, stated a case. In it he gave the following narrative of the facts connected with the application for a case:—

"My award is dated 5th May 1905, and the appellant's only application to me to state a case was made by the writing of the following words on the interlocutor sheets at the end of the note to the award, viz.—'Linlithgow, 12th May 1905.—The pursuer appeals against the foregoing judgment and requests a case to be stated.—(Signed) PETER MILLER, for James Kidd, Pror. for Pursuer.' It seemed to me that though the method thus adopted was unusual it might nevertheless (looking to the substance rather than to the form of the regulations) perhaps be sufficient, in respect the respondents could be in no dubiety as to the questions of law to be put to the Court, seeing that the only point of law which I decided against the appellant was clearly set forth in my judgment. Further, no deposit, as the fee for preparing the case, accompanied the said writing, but in respect the language of the above cited Act of Sederunt relative to the said fee is less absolute in its terms than the language of the corresponding statutory enactment (section III, 1 (2) of 38 and 39 Vict. c. 62) in criminal appeals it seemed to me that I might possess a discretion to grant indulgence in cases of great hardship. On the matter of hardship the facts are as follows:—At 4·45 p.m. on 12th May 1905, that being the last day allowed for taking an appeal, there was delivered at the office of the Linlithgow correspondent of the appellant's Edinburgh law-agent a telegram from the said law-agent asking his said correspondent to take an appeal. Unfortunately the said correspondent was absent in Glasgow, but his clerk took the telegram to several law offices in vain, but at last found a brother procurator who was able to attend to the matter. Just on the stroke of five o'clock (the usual closing time of the Court offices) the said brother procurator called at the Court offices, and having on his request obtained from the clerk in attendance therein the interlocutor sheets wrote thereon the minute above cited. The said clerk in attendance was asked on behalf of the appellant whether any fee was payable in connection with the taking of the appeal, and in the hurry of the emergency he replied that in respect it was in connection with a workmen's compensation matter he thought there was no fee payable. The said brother procurator, who had very little knowledge of the particular case he was dealing with, was satisfied with that assurance. There is no reason to suppose that if the liability for a fee had been present to the mind either of the said brother procurator or the said clerk in attendance it would not at once have been paid, and in these circumstances it seemed to me that it would be a great hardship to the appellant if I refused to state and sign a case. Accordingly I repelled the respondents' objection to my doing so."

When the case came on for hearing before the Second Division, counsel for the respondents moved the Court to dismiss the case on the ground that the appellant had in his application to the Sheriff failed to comply with the provisions of the Act of Sederunt.

Argued for the respondents—All the provisions of sec. 9, sub-sec. *a*, of the Act of Sederunt had been violated—there was no proper minute, no question of law, no deposit. The deposit had not even yet been paid, which was in itself a sufficient ground for dismissing the case, as the Court would not consider a process in which the statutory fees remained owing.

Argued for the appellant—The regulations of the Act of Sederunt were not of so peremptory a nature as to preclude the Sheriff-Substitute from relaxing them in his discretion. There was no special form of minute required, the note on the interlocutor sheet was sufficient, and for the failure to make the deposit the clerk and not the appellant's agent was to blame. The Summary Prosecutions Appeals (Scotland) Act 1875 (38 and 39 Vict. cap. 62), sec. 3, sub-secs. 1 and 5, was closely analogous, and the two following decisions under that statute showed that provisions of this nature were leniently construed—*Niddrie and Benhar Coal Company, Limited* v. *Young*, March 2, 1895, 22 R. 413, 32 S.L.R. 303; *Greig* v. *Finlay*, March 4, 1901, 3 F. J.C. 36, 38 S.L.R. 545.

LORD JUSTICE-CLERK—This is a matter in which it is essential that a certain regularity of procedure should be observed, and for that purpose the Act of Sederunt of 3rd June 1898, sec. 9 (*a*), enacts certain rules which regulate the method to be adopted in an application to a sheriff to state a case on a question of law. I am clearly of opinion that these rules have not been observed in the present case, and that we cannot therefore consider the appeal which has come before us.

The history of the case is short. On the last day allowed for taking an appeal a telegram was sent to the Linlithgow agent in charge of the case asking him to take the necessary steps to obtain a stated case. Unfortunately he happened to be absent in Glasgow, but his clerk found another practitioner, who went to the Court offices and wrote upon the interlocutor sheet the words, "The pursuer appeals against the foregoing judgment and requests a case to be stated." This practitioner apparently was not very familiar with the procedure in this matter, for under the Act of Sederunt there are two conditions essential to an application for a stated case—first, the minute of application must set forth the question (or questions) of law which is (or are) proposed as the subject-matter of the case; secondly, the minute must be accompanied by a deposit of £1. Neither of these conditions were complied with, and it appears to me that the party who wished to obtain the stated case must bear the consequences which have arisen from the mistakes or ignorance of those who acted for him. While therefore the fact that no proper minute was lodged is a sufficient ground for the decision I have come to, I may point out that we could not in any event consider this appeal, as the fee of £1 has, I understand, even yet not been paid. The cases to which we were referred in the course of debate were entirely different. If fees have not been timeously lodged owing to circumstances for which those who ought to lodge them are not responsible, as, for example, the impossibility of finding a magistrate or a clerk of court, then I can well understand that the parties will not be allowed to be prejudiced by a failure for which they were not responsible. I need hardly point out that we have no such case here.

LORD KYLLACHY, LORD KINCAIRNEY, and LORD STORMONTH DARLING concurred.

The Court pronounced this interlocutor:—

"The Lords, in respect the appellant has failed to comply with sec. 9 (*a*) of the Act of Sederunt, dated 3rd June 1898, regulating the procedure under the Workmen's Compensation Act 1897, dismiss the case, and decern: Find the appellant liable in expenses."

Counsel for the Appellant—Crabb Watt, K.C.—Burt. Agent—John Robertson.

Counsel for the Respondents—Cullen, —D. Anderson. Agents—Cunningham & Lawson, solicitors.

Friday, June 23.

FIRST DIVISION.

SMITH'S TRUSTEES *v.* SMITH'S TRUSTEES AND OTHERS.

Succession—Marriage-Contract—Heritage—Conditional Institution or Substitution.

By their marriage-contract spouses disponed certain heritable property belonging to the wife, to her in liferent, and on her decease to the husband in liferent so long as he should remain unmarried, and to the children of the intended marriage equally among them, "whom failing to the heirs and assignees of" the wife in fee.

The wife having died, survived by a daughter who died in infancy, *held* that the heirs and assignees of the wife were substituted, and fell to be ascertained at the date of the death of her infant daughter.

Kirkwood v. *Keeling*, March 5, 1842, 4 D. 878, *followed*.

Succession — Testament — Destination — "Survivor" Equivalent to Other.

A testator bequeathed certain heritable property to one of his children, whom failing to the heirs of the body of his other children, and in case of the death of any of his said other children without issue, or that the children of any of them should fail, "then to the heirs of the bodies of the survivors or survivor of" the said other children.

Held that the words "survivors or survivor" were to be read as "others or other."