

necessarily involves an application after the proceedings there referred to have been gone through, it would be difficult to suppose that sub-section (b) would be framed in any other view. I agree with your Lordships that the words are quite clear, and that the result is just what one would expect, namely, that if and when any question of hardship arises, the Court must be in the position of knowing and considering as at that time all the circumstances, the creditor's as well as the debtor's, and deciding whether they are to grant or refuse the application *simpliciter*, or whether they are to grant it under conditions, and it is equally clear that it is only after decree that this question can be properly considered.

The Court dismissed the appeal, found in fact and in law as in the interlocutor of the Sheriff-Substitute, of new found, declared, and decreed as craved in the initial writ.

Counsel for the Pursuers and Respondents—Sandeman, K.C.—Lippe. Agents—Simpson & Marwick, W.S.

Counsel for the Defender and Appellant—M'Lennan, K.C.—Walker. Agent—S. F. Sutherland, S.S.C.

Tuesday, November 30.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

HALCROFT v. WEST-END PLAYHOUSE, LIMITED.

*Contract—Theatre—Reparation—Construction of Contract—Breach of Contract—Condition—“Subject to the said Theatre being in the Occupancy and Possession of the Management.”*

A troupe of theatrical artistes entered into a contract with a company to perform at the company's theatre for a week “subject to the said theatre being in the occupancy and possession of the management.” The theatre was not completed by the date when the contract fell to be fulfilled, and the company cancelled the contract. In an action by the artistes against the company for payment of a week's salary the Court *assoilzied* the defenders, *holding* that the clause did not imply a representation or warranty that the theatre was actually in the defenders' occupation and possession at the date of the contract being entered into or of its fulfilment, and that the exemption contained in it applied to the case of the theatre not being completed.

Charles Halcroft, London, *pursuer*, brought an action in the Sheriff Court at Glasgow against the West-End Playhouse, Limited, Glasgow, *defenders*, to recover £25 damages for breach of contract which had been cancelled by the defenders, and under which the pursuer was to have played in the defenders' theatre.

The defenders pleaded, *inter alia*—“(2)

The defenders' theatre not being in the occupancy and possession of the defenders on said 3rd March 1913, they are not in breach of contract and should be assoilzied with expenses. (3) It being impossible to perform said contract, through no fault of the defenders, they are not liable in breach thereof and are entitled to absolutor with expenses.”

The contract was as follows:—

“Contract, dated 23rd August 1912.

“Veuillez lire les conditions inserees sur l'autre cote de la page. Man ist hierdurch ersucht die Bedingungen auf der andere seite zu lesen. Si prega di leggere le condizioni scritte nell'altra parte della pagina.

“WEST-END PLAYHOUSE, LTD.,  
GLASGOW.  
STAMP. The Glasgow Pavilion, Ltd.  
Six Lyceum Theatre, Ltd., Govan,  
Pence. Glasgow.

“THE ‘AWARD’ CONTRACT  
For Music Halls in the Provinces,  
working on the “Twice-a-Night”  
System.

“N.B.—No Commission MUST be charged  
STAMP. by any Manager doing business  
10/- direct with an Artiste.

“An agreement made the 23rd day of August 1912, between West-End Playhouse, Ltd., Glasgow (Note.—A condition of the acceptance of this contract is that the Management have power to transfer the Artiste to the Glasgow Pavilion, Ltd., or Lyceum Theatre, Ltd., Govan, Glasgow, by giving notice on receipt of billing matter), hereinafter called the Management of the one part, and 3 Royal Dreadnoughts, hereinafter called the Artiste of the other part, witnesseth that the Management hereby engages the Artiste, and the Artiste accepts an engagement to appear as shooting act (or in his usual entertainment) at two performances every evening at the theatres, and from the dates, for the periods, and at the salaries stated in the schedule hereto, subject to the said theatre being in the occupancy and possession of the Management, and upon and subject to the under-mentioned conditions:—

“1. The word ‘Artiste’ shall, when more than one is included in the performance, include the plural.

“2. The Artiste agrees to appear at any matinees required by the Management, and shall be paid at the rate of one-twelfth of the weekly salary for each matinee.

“3. Where this contract relates to a partnership, troupe, or sketch, the Artiste shall, at the time when the contract is signed, furnish the Management, in writing, with such names as the Management may require, and shall not substitute a performer for a person so named without the written consent of the Management.

“4. The Artiste may be transferred during the whole or any part of the engagement (not less than one week) to any other theatre owned or controlled by or associated with the Management, with the consent of the Artiste, such consent not to be unreasonably withheld. If such transfer is made in the Provinces, reasonable expenses shall be allowed.

“5. Barring Clause.—The Artiste shall not, without the written consent of the Management, appear at any place of entertainment within a radius of ten miles for fifteen months prior to his appearance, nor for two weeks afterwards—according to this contract—excepting in a town which has a population of more than 70,000 inhabitants (according to the London A B C Railway Guide), and is situated beyond a radius of six miles.

Artistes will please intimate here what other dates they hold in Glasgow

"If the period between the date of this contract and the performance exceeds the period of bar, the Artiste, before accepting an engagement at another theatre within the barred area, shall offer his services to the Manager on the terms mentioned in this contract, and thereupon the Management shall accept such offer in writing, and specify the theatre for the performance within a week, or be deemed to have refused the same.

"Upon breach of (any of) the barring clauses the Artiste shall pay to the Management as liquidated damages one week's salary for each breach thereof, but nothing in this clause shall affect the right of the Management to apply for an injunction to restrain the Artiste from performing or rehearsing in breach of the said clauses, nor the right to determine the contract.

"6. The Artiste shall not infringe any copyright, patent, or proprietary rights of third parties, and in the event of infringement shall be liable for, and on demand pay, the amount of all damages, penalties, and costs incurred by the Management.

"The Artiste shall not give, or permit to be given, any colourable imitation or version of his performance within the radius or time prescribed by the barring clauses.

"7. In case the Artiste shall, except through illness certified as hereinafter provided, or accident proved to the satisfaction of the Management, fail to perform at any performance, he shall pay to the Management, as and for liquidated damages, a sum equal to the sum which the Artiste would have received for such performance, in addition to costs and expenses incurred, by the Management through the default of the Artiste.

"When the Management own or control two theatres in any provincial town, the Artiste shall act as deputy in cases of emergency upon request, and be paid at the rate of £

"8. The Artiste undertakes that his performance shall not be dangerous to the artistes, audience, or stage employees. If any accident or injury results from the performance of the Artiste, the Artiste shall pay for any damage or costs incurred by the Management.

"9. The Management shall not be liable to the Artiste or to the legal personal representative of the Artiste for any loss, damage, or injury to the Artiste's person or property during or in connection with the engagement, unless caused by the negligence of the Management.

"10. The Artiste shall not assign, mortgage, or charge his salary, nor permit the same to be taken in execution. No salary shall be paid for days upon which the theatre is closed by reason of national mourning, fire, epidemic, strikes, lock-outs, disputes with employees, or order of the licensing or any public authority. No salary shall be payable for any performance at which an Artiste may not appear through illness or his own default, nor, provided that two months' previous notice has been given to the Artiste, for days upon which the theatre is closed for alterations, decorations, repairs, or any cause which the Management may reasonably consider adequate.

"11. The Artiste agrees to observe and carry out conditions and regulations imposed by statute, the Corporation, or other public authority, and to comply with the requirements of any public authority that scenery and properties used by the Artiste shall be non-flammable. All flammable material brought into the theatre by the Artiste may be required to be made non-flammable by him or, at his expense, by the Management.

"12. The Artiste declares that at the time of signing this contract he is under no engagement with any other Management that can preclude him from fulfilling the engagements shown herein, and that he has not concealed any change of professional name or description.

"13. The rules and regulations subjoined shall be read and construed as forming part of this contract, and the Artistes agree to abide by all reasonable rules which may from time to time be made by the Manage-

ment for the good and orderly conduct or special requirements of their theatre, provided that the rules shall have been served on or brought to the notice of the Artiste.

"14. Upon the breach by the Artiste of any of the terms and conditions in this contract, or of rules 1 to 10, the Management, without prejudice to other remedies, and in addition to rights given under the terms and conditions aforesaid or the rules, may forthwith determine this contract, and the Artiste shall have no claim upon them for salary (other than a proportion for performances played), expenses, costs, or otherwise.

"The same provision shall apply upon breach by any member of a troupe or company if not remedied after complaint by the Management.

"15. Any notices under this contract may be served upon the Artiste by posting the same to his last known address, or to the agent through whom this contract is made, or while performing at any theatre in the manner specified in rule 11.

"16. The Management may by notice in writing, to be given before the termination of this engagement, re-engage the Artiste once, subject to any engagements existing at the date thereof, to appear at any of the theatres herein mentioned for a like period not exceeding.....weeks, to commence not later than 18 months subsequent to the date of the notice, and the Artiste shall, if so required, perform accordingly upon the same terms as in this contract.

"17. If the Artiste's performance is contrary to law, or is objected to by any licensing or other public authority, the contract may be cancelled by the Management.

"If the Management be threatened with legal proceedings in respect thereto the contract may be cancelled, unless the Artiste forthwith provides indemnity to the satisfaction of the Management.

"18. In the case of all artistes the matter for billing, programmes, and advertisements, and the words of all songs, must reach the Management at the General Offices, 136 Renfield Street, Glasgow, not less than 14 clear days before the date of opening, or failing which the Artiste hereby expressly agrees that the Management shall, at their option, be entitled to cancel this contract; and in addition to the foregoing power of cancellation, the Artiste shall be liable and shall pay to the Management, as he hereby expressly agrees to pay, a sum equal to one week's salary as at the West-End Playhouse, Ltd., Glasgow, in name of agreed-on liquidate damages for every breach of the stipulations regarding timeous notification of billing matter as aforesaid.

"19. Artistes must state when signing this contract what dates they hold in Glasgow, and at which hall.

"SCHEDULE.

"One week at Playhouse, commencing 3rd March 1913, at a salary of twenty-five pounds stg. per week (twelve night performances).

"£25 stg. "WEST-END PLAYHOUSE, LTD.,  
Glasgow,

per JOHNSTON TAIT."

On 1st December 1914, a proof before answer having been led, the Sheriff-Substitute (DAVID J. MACKENZIE) pronounced this interlocutor—"Finds (1) that the pursuer resides at 3 Electric Mansions, Brixton, London, S.W., and is proprietor of the Three Royal Dreadnoughts, and the defenders are the West-End Playhouse, Limited, Glasgow, having offices at 136 Renfield Street, Glasgow; (2) that on 23rd August 1912 a contract was completed between the pursuer and defenders, by which the Three Royal Dreadnoughts were to appear at the defenders' playhouse in Glasgow for a week commencing 3rd and ending 8th March 1913 at an agreed-on salary of £25 for said week. . . . (3) That the said con-

tract, after reciting the above agreement, contains a proviso in these words, 'subject to the said theatre being in the occupancy and possession of the management'; (4) that at the date of said contract the defenders' theatre, The West-End Playhouse, was in course of construction, and at the date of said engagement, 3rd March 1913, the said theatre was still only in course of construction, and was not as a theatre in the occupancy and possession of the management . . . ; (6) that the cause of the defenders' theatre not being in the occupancy and possession of the management on the date of the engagement was the delay which occurred in the supply of steel material by the contractors employed by the defenders in its construction; (7) that the defenders made every reasonable effort to expedite the construction of said theatre, but that these efforts were unsuccessful, and that the theatre, which was expected to have been opened in December 1912, was not in fact completed until July 1913 owing to the cause above referred to; (8) that said delay in the supply of steel material was owing mainly to the state of the steel market produced by the coal strike in the spring of 1912, and was not due to any fault on the part of the defenders: *Finds in law* (1) that the proviso above quoted from the contract between the pursuer and defenders is operative in the circumstances to render the contract void as regards the dates thereby fixed, as the theatre was not then in the occupancy and possession of the management in the sense of said proviso, and that defenders are not in breach of said contract; and (2) that the defenders are not liable to the pursuer in any sum of damages in respect of a breach of said contract: Therefore assolvies the defenders from the conclusions of the action."

The pursuer appealed to the Sheriff (MILLAR), who on 10th February 1915 adhered.

The pursuer appealed to the First Division of the Court of Session, and argued—The defenders had represented or warranted to the pursuers that the theatre was in their possession and occupation at the date when the contract was entered into, or alternatively that they would be in possession and occupation at the date when the contract fell to be fulfilled. There was no evidence to show that at the time of the contract the pursuers knew that the theatre was only in course of completion. In point of fact the pursuer did not know that, and so far as he was concerned the defenders were in possession and occupation of the theatre. In the contract the theatre was given a name. Article 10 implied that the theatre existed, and on the principle *unius inclusio exclusio alterius* the defenders' contention was excluded. There was no evidence to show that the completion of the theatre was a commercial impossibility, and even if it had been that was not a sufficient answer—*Baily v. De Crespigny*, (1869) L.R., 4 Q.B. 180, *per Hannen, J.*, at 185. Admittedly if the contract had contained the following condition, viz., "subject to there being a

theatre in existence and the defenders being in possession thereof," the defenders would have been entitled to succeed, but that condition could not fairly be read into the words, "subject to the said theatre being in the occupancy and possession of the management"—*Hong Kong and Whampoa Dock Company, Limited v. Netherton Shipping Company, Limited*, [1909] S.C. 34, 44 S.L.R. 35; *Gillespie & Company v. Howden & Company*, (1885) 12 R. 800, 22 S.L.R. 527. The cases of *Taylor v. Caldwell*, (1863) 3 B. & S. 826, and *Clark v. Glasgow Assurance Company*, (1854) 1 Macq. 668, and similar cases, were distinguishable from the present in respect that in these cases the subjects had ceased to exist, whereas in the present case the theatre did exist although it had not been completed. The case of *Couturierv. Hastie*, (1856) 5 H.L. 673, was also distinguishable in respect that in that case there was mutual error. *T. & R. Duncanson v. Scottish County Investment Company, Limited*, (1915) 52 S.L.R. 790, and *Paradine v. Jane*, Aleyn 26, were also referred to.

Argued for the respondents—The defenders had not represented or warranted to the pursuers that they were in occupation and possession of the theatre at the date when the contract was entered into, or that they would be in possession and occupation of it at the date when the contract fell to be fulfilled. In point of fact the defenders were not in possession and occupation of the theatre at the date when the contract was entered into, and through no fault of theirs it was impossible to complete it in time to fulfil the contract. Mere occupancy of the ground did not amount to occupation of the theatre—*Nickoll & Knight v. Ashton, Edridge, & Company*, [1901] 2 K.B. 126. The words "subject to the said theatre being in the occupancy and possession of the management" implied a condition that the theatre should be in existence at the date when the contract fell to be fulfilled—*Krell v. Henry*, [1903] 2 K.B. 740; *Hardie v. Balmain*, (1902) 18 T.L.R. 539; *Poussard v. Spiers*, (1876) L.R., 1 Q.B.D. 410; *Howell v. Coupland*, (1876) L.R. 1 Q.B.D. 258; *Taylor v. Caldwell*, *cit.*, *per Blackburn, J.*, at 833; *Strong, Dramatic and Musical Law*, 3rd ed., pp. 27 and 28, and cases there cited, and p. 34; *Anson, Contracts*, 13th ed., p. 374.

At advising—

LORD JUSTICE-CLERK—[*After referring to the pursuer's averments and the interlocutors in the Sheriff Court*]—Before this Court no question was raised as to the soundness of the interlocutors restricting the proof, nor was the soundness of the finding that there was a completed contract disputed. The question argued here was whether there was any representation or warranty implied from the terms of the contract, and the series of cases of which *Taylor v. Caldwell*, 3 B. & S. 826, was amongst the earlier, and what are called the "*Coronation Seats*" cases are amongst the later, were founded on. It was admitted that the theatre was not ready in time for the performance, and I

consider that the Sheriffs were right in finding that this was not due to fault on the part of the defenders.

As to the question of the effect of the clause "subject to the theatre being in the occupancy and possession of the management," I am of opinion that it must receive effect according to its plain terms, and that the agreement therefore was subject to the said theatre being occupied and possessed by the defenders. Occupancy, I think, is entirely a question of fact. Possession may be a question of both fact and law. In my view the theatre was neither in the occupancy nor in the possession of the management as at 3rd March 1913, and therefore the pursuer cannot succeed in this action.

It was argued on behalf of the pursuer that there was a representation or warranty by the defenders on which the pursuer was entitled to found. It appears to me, however, that the Court cannot consider whether there was any such representation or warranty because there is no record for that contention. But, apart from that objection, the pursuer seems to have great difficulty in knowing whether to put his case on representation or on warranty, or whichever view be taken on that matter, what was the precise representation or warranty on which he relied—whether it was a representation or warranty that the theatre was in existence at the time when the contract was entered into, or whether it was a representation or warranty that the theatre would be in existence and ready to play in when the period of performance, viz., 3rd March 1913, arrived. I am of opinion that the terms of the contract would not justify us in holding that there had been any representation or warranty to either of these effects. I cannot find on consideration of this record that there is any sufficient statement of representation or warranty that would allow us to give judgment for the pursuer on either ground, or on consideration of the proof that any such representation or warranty has been established.

In my opinion the judgment of the Sheriff-Substitute, affirmed by the Sheriff, is well-founded, and the appeal falls to be dismissed.

**LORD DUNDAS**—The sum here at stake is very small, but I think the learned Sheriff was justified in certifying the cause as suitable for appeal to this Court, for the construction of the clause in dispute is by no means clear, and the form of contract in which it occurs is that generally used for music-hall engagements in the provinces.

The opening clause of the contract must plainly be taken in collocation with the schedule. It is therefore permissible to read it as embodying an engagement for two performances every evening at the West-End Playhouse, Glasgow, during the week commencing 3rd March 1913 at a salary of £25 for the twelve performances, "subject to the said theatre being in the occupancy and possession of the management" and upon the conditions therein under mentioned. The crucial portion of the clause is within the quotation marks. The pursuer avers on record that it "refers and applies

only to the case of change of ownership or management whereby the management party to such contract, after entering into the same, loses control of the theatre referred to therein." I am unable to see why the clause should be so limited in its extent. It appears to me as matter of construction to cover the case now before us. I do not think that upon the admitted facts this theatre could properly be said to have been on 3rd March 1913 "in the occupancy and possession" of the defenders. The word "possession" may have a legal as well as an ordinary signification, but the word "occupancy" which is here coupled with it is one of ordinary and unambiguous import. I do not consider that the theatre was in any reasonable sense in the "occupancy" of the defenders at the date referred to. On this short ground I am for refusing the appeal.

It was indeed argued, though no such case seems to be averred on record, that the clause, fairly construed in the light of existing facts within the defenders' knowledge but not known to the pursuer, amounts to a warranty to the pursuer (or an implied condition of the contract) to the effect that when the date of fulfilment (3rd March 1913) arrived the playhouse should be available in the defenders' hands for the pursuer's performances. I am unable so to construe the contract. The words of exception seem to me to exclude such a construction. It was further, as I understood, contended for the pursuer (alternatively)—though again without record for the contention—that the clause must be read as amounting to a representation to him that the defenders were at the date of the contract (23rd August 1912) in possession of a theatre, viz., the Playhouse, in which the pursuer should perform. I cannot so read the contract. I think that it merely imports an engagement for the performances, subject to the said theatre being at 3rd March 1913 in the occupancy and possession of the defenders—a condition which, as already stated, was not, in my judgment, purified. But assuming the construction last suggested to be legitimate, it would not, I think, support the pursuer's claim for damages. In the absence of any suggestion of fraud the pursuer would at best be entitled to set aside the contract on the ground of misrepresentation, but not to recover damages—*Manners v. Whitehead*, (1898) 1 F. 171. He does not seek to set the contract aside. His action is one of damages for breach of the contract.

I think the learned Sheriff-Substitute's findings in fact and in law are correct, and that we ought of new to find in terms thereof.

**LORD SALVESEN** and **LORD GUTHRIE** concurred.

The Court pronounced this interlocutor—

"Dismiss the appeal: Affirm the interlocutors of the Sheriff and Sheriff-Substitute appealed against: Find in fact and in law in terms of the findings contained in the interlocutor of the Sheriff-Substitute dated 1st December

1914: Of new assouilzie the defenders from the conclusions of the action, and decern."

Counsel for the Appellant (Pursuer)—A. O. M. Mackenzie, K.C.—Gentles. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Respondents (Defenders)—Christie, K.C.—J. B. Young. Agents—Weir & Macgregor, W.S.

Tuesday, December 14.

SECOND DIVISION.

BRASH v. BRASH.

Succession — Will — Fee and Liferent — Executory Trust.

Where a testator by his holograph will directed his trustees to "make over to my son A (certain) properties with the Burden upon them of Thirty pounds stg to his two oldest children by his First Marriage during his lifetime And at his death so as to Equally divided amongst his other Children," held that the trustees were bound to execute a conveyance of the properties to A in liferent allanarly, and his other children born and to be born in fee.

*Frog's Creditors v. His Children*, (1735) M. 4262, distinguished.

Thomas William Brash and others, the testamentary trustees of Thomas Brash, retired grocer, Dumfries, who died on 6th February 1915, leaving a holograph will dated 24th June 1914, *first parties*; Mrs Elizabeth Ellen Brash or Phillipson and Mrs Marion Wightman Brash or Brewer, the two eldest and only surviving children of the said Thomas William Brash by his first marriage, *second parties*; Hilda Mary Brash, Annie Rickerby Brash, and Jessie Ronald Brash, the only children of the said Thomas William Brash by his second marriage, *third parties*; and the said Thomas William Brash, who was a son of the deceased, as an individual, *fourth party*, brought a Special Case to settle the respective rights of the parties in a bequest by the testator.

The *bequest* was in these terms:—"I direct that my trustees make over to my son Thomas Wm. all my property at 162, 164, 166, 168 High Street, and Coffee Close and Chapel Street, with the lodgings above the same, also Cellars belonging to me at present, with Burden upon them of Thirty pounds stg, to his two oldest children by his First Marriage during his lifetime And at his death so as to Equally divided amongst his other Children."

The Case stated—"3. Without actually conveying his estate or any part of it to his said trustees, the testator's first direction in the said holograph will is in the following terms:—'. . . [v. sup.] . . .' The annual value of the properties thus dealt with amounts to £230, 4s."

The *questions of law* were, *inter alia*—"1. Is the fourth party, Thomas William Brash, the *fiar* of the property in question, and is he entitled to a conveyance thereof by the

first parties in his favour in absolute fee? or otherwise, 2. Is the fourth party, Thomas William Brash, restricted to a liferent of said property? 3. In the event of the second question being answered in the affirmative are the first parties bound to convey the said property to the fourth party (a) in liferent only, and to the third parties in fee? or (b) in liferent only, and his children born and to be born (other than the second parties) in fee?"

The Court appointed Mr Robert Candlish Henderson, advocate, *curator ad litem* for the third parties, who were in minority.

Argued for the third parties—The fourth party was entitled only to a conveyance in liferent allanarly, the destination of the fee being such that at his death his whole children born and to be born (other than his two eldest daughters) would take the property in equal shares. *Frog's Creditors v. His Children*, (1735) M. 4262, was distinguishable, because here there was really an executory trust, the trustees being directed to settle the property so as to bring about the above result—*Gifford's Trustees v. Gifford*, (1903) 5 F. 723, *per* Lord M'Laren at 731, 40 S.L.R. 476, at 480; *Mitchell's Trustees v. Smith, &c.*, (1880) 7 R. 1086, 17 S.L.R. 736; *Mein v. Taylors*, (1830) 4 W. & S. 22.

Argued for the fourth party—The fourth party was entitled to a conveyance in absolute fee of the property. The case was ruled by *Frog's Creditors v. His Children* (*cit.*). The rule in that case had been extended to moveables, to a trust, and to children *nati*—*M'Clymont's Executors v. Osborne*, 1895, 22 R. 411, 32 S.L.R. 279. The case of *Gifford's Trustees v. Gifford* (*cit.*) was distinguishable—see Lord Kyllachy, *ibid.*, at 5 F. 732, 40 S.L.R. 481. So also were the other cases cited by the third parties. The phrase "make over to my son" had a recognised legal significance which it was not legitimate to disturb—*Ralston v. Hamilton*, (1862) 4 Macq. 397, *per* Lord Chelmsford at 418.

At advising—

LORD JUSTICE-CLERK—The first question in this case is whether the fourth party is the *fiar* of the property referred to in the first bequest in his father's will on the principle of *Frog's Creditors*, M. 4262, or whether he is only a liferenter. Now in regard to that case I accept as a correct statement of the law what was said by Lord Stormonth Darling in *Gifford's Trustees*, 5 F. 723, at 734, 40 S.L.R. 476, at 482—"I understand it to be the universal desire of Scots lawyers not to carry the rule of *Frog's Creditors* one inch further than it has already been carried. No one expresses that desire more decidedly than the late Lord President Inglis when he said in *Cumstie v. Cumstie's Trustees*, 3 R. at 942, 13 S.L.R. 606—"There the rule remains to this day. It is applicable to a case of parent and child, and it is applicable to a case where no more is said than that the conveyance is made to the parent in liferent and to the children *nascituri* in fee; but it is not applicable to any other case whatever; and I for one am not prepared to carry that doctrine any further." Accept-