intend the threatened forfeiture to take effect, but only inserted the condition in the hope that the legatee by taking an erroneous view of his intentions might be intimidated into remaining single.

We believe no one has succeeded in discovering when this doctrine which traces its origin to the Civil Law first became naturalized in this country. Like the family of Douglas, there never seems to have been a time when it did not flourish. We never come across it in an embryo state; on the very first introduction we are presented to it in a high state of development as an incontestible dogma. Yet so long ago as the leading case of *Scott* v. *Tyler*, it was spoken of very disrespectfully both by the judge and by some of the principal counsel of the day, and since that time its position has by no means improved.

It is no doubt a matter of congratulation that the Judges have, in this instance, been content simply to perpetuate a time-honoured doctrine which has been universally condemned for a century, and have not thought it necessary (as is often the case) to add to the sanction of antiquity the weight of their own approbation. The vigorous assaults on the part of the highest functionaries of the law to which this devoted doctrine has been subjected, certainly affords a gratifying spectacle of judicial independence. Lord Thurlow in *Scott* v. *Tyler*, after referring to some early cases, observes, "I do not find it was ever seriously supposed to have been the testator's intention to hold out the terror of that which he never meant should happen,"* and for a modern exposition of judicial opinion on the doctrine, it will be sufficient to refer to the judgment of Jessel, M. R., in *Bellairs* v. *Bellairs* (L.R. 18, Eq. 510), in which he follows the current of authority with extreme reluctance. Satisfactory as it is to find that the undisguised opinion of the Judges is in this instance not opposed to the plain dictates of common sense, we may well feel some little disappointment when we reflect that a doctrine, on the face of it utterly absurd, which has been energetically condemned by the highest legal authority nearly a century ago, should still be permitted to flourish in undiminished vigour. The vitality of legal abuses must indeed be great, if such a one as this can escape the raid of Law Reformers uninjured. Without a friend in the world, planted no one knows how or why, it exists simply because it has existed. Possibly like the need in the fable, its very weakness constitutes its strength. There is, it may be, a kind of chivalrous feeling in the breasts of Law Reformers, impelling them "*parcere subjectis et debellare superbos*," that is, to spare the small game, and direct their attacks at those large and terrible abuses which have influential defenders and die hard. We know that the satisfaction arising from the successful issue of an enterprise, depends principally upon a sense of the difficulties which have had to be surmounted, and we can quite understand that the feeling of triumph, to say nothing of an increased meed of popular applause, occasioned by a hotly-contested victory, affords a much keener source of gratification to the victor than the discomfiture of a feeble enemy.

A rat-catcher may be more usefully employed than a lion-hunter, but his occupation is not held in the same estimation. In this respect, the Law Reformer is no exception to the general rule. He feels as keen a delight as any other naturally combative person in meeting "a foeman worthy of his steel." To fight the powers that be, to try a fall with the Attorney and Solicitor-General, to brave the invectives of the Lord Chancellor, and the contemptuous sneers of the senior members of the Bar—this is indeed an inspiriting contest, defeat is no dishonour and victory inexpressibly glorious. How humble in comparison is the position of the mere Scavenger of Reform, he who quietly removes a nuisance the retention of which is a matter of indifference to the highest legal authorities. Too many of us aim rather at being famous than useful, and hence we can understand how it happens that an abuse may owe its vitality to the mere fact that it is too utterly rotten for any human being to defend, and we venture to think that no better illustration of the truth of this paradox can be found than in the continued existence of the Doctrine of Conditions *in terrorem*.

Having once firmly established the doc-

* See also the observations of Lord Mansfield, in *Long* v. *Dennis*, 4 Burr 2055.