two of them of such eminence as Brooke and Dyer—decided exactly the opposite. It seems, on the contrary, to be as strong an authority against the idea of *Dumpor's Case* as could be imagined.

But what is the proposition put forward by the two judges who thought the condition terminated? No other than this, that the lessor having prohibited any alienation except *to* the lessee's own family, this meant unlicensed alienation *through* them. That is, that, by pursuing the exception originally made to the condition, the whole condition was defeated; or, practically, that a condition to which there is an exception is defeated as soon as made. Surely the meaning of the lessor in this case was too plain for comment; namely, that there should be no alienation by the lessee or any one else except to the lessee's own family, and no further.

A condition that the lessee shall not alien to B. will not of course, on any construction, prevent A., to whom the lessee aliens, in turn assigning to B.* It would be otherwise if the condition were that the lessee should not permit B. to take.

The only confirmation therefore to the view taken by the two judges, is in the case of *Whitchcocke* v. *Fox*, 12–14 Jac. 1 (*annis* 1614–16);† which, as it occurred so soon after *Dumpor's Case*, and was decided when Lord Coke was on the bench, is rather parcel of the doctrine of that case than a subsequent recognition of it. It was three times argued and often reported, but the report of Rolle, though diffuse, seems the most exact. The facts were that a lease was made upon the express condition that the lessee *and his assigns* should not alien except to his wife, and the residue to his children, or in default of these to his brothers. His wife dying without issue, he assigned to his brothers, who assigned over, for which latter assignment the lessor re-entered. Several other questions were mooted in the case at great length; but, on the question of the validity of the condition, Coke thought that by the assignment to the brothers the condition was gone; holding broadly the exact position we have stated above as the necessary result of *Dumpor's Case*, "quant l'assignment est un foits fait solonque le condition, le condition est dispense," or an assignment made *in accordance with* an exception to a condition defeats the whole condition; and in support of this he referred to *Dumpor's Case* as his authority. But this view was not concurred in, "mes lauters justices semble a douter de cest point." At the third argument* the correct view was strongly urged, namely, that an exception was no dispensation, and that the lessee's assigns being restricted by the same instrument which allowed him to assign to his brothers, his brothers as such assigns were as much bound as he; "ici per cest exception ils esteant assignees ne sont exclude hors del condition." Coke, however, adheres to his view (again relying on *Dumpor's Case*), that an exception defeats the entire condition; and it is probable that the other judges at last concurred in this opinion. If so, the doctrine of this case forms the clearest possible *reductio ad absurdum* of the idea of *Dumpor's Case*.

We conceive therefore, that, from this review of the law and the state of the cases at the time *Dumpor's Case* was decided, it sufficiently appears that that idea has no support from any analogy to the doctrine of non-apportionment, even were this doctrine better founded on authority or principle than it seems to have been; secondly, that it was wholly without antecedent authority and contrary to the only prior case really *in pari materia* and the grave authority of Dyer and Brooke therein; and, thirdly, that when carried out to its natural consequence, as in *Whitchcocke* v. *Fox*, it led to a conclusion clearly absurd.

We are next to consider what modern recognition it has received. In 1807, after a lapse of two centuries, it is referred to by Lord Eldon,† as "the law of the land;" and by Sir James Mansfield in 1812,‡ as "law for so many centuries that we cannot now reverse it." It is somewhat remarkable that in each instance the recognition of its (supposed) authority was accompanied with the em-

* *Anon.*, Dyer, 45 *a*.

† 1 Rolle, 389, s. c. *nom. Hitchcock* v. *Fox*, 68, 70; s. c. *nom. Whitchcot* v. *Fox*, Cro. Jac. 398; s. c. *nom. Fox* v. *Whitchcock*, Bulst. 290.

* 1 Rolle, 390.

† *Brummell* v. *Macpherson*, 14 Ves. 170.

‡ *Doe* v. *Bliss*, 4 Taunt. 735.