titled the children in a certain event to payment of a portion of this provision during the lifetime of their father; and if that had been so the case would have stood in a very different position from what it does. The provision which is so founded on is this, "declaring that the said Margaret Tod Bell shall be bound and obliged to employ the funds which she shall acquire in virtue of this provision of the conquest after the said John Marshall's death, not only in supporting herself, but also in alimenting and educating the children of the present intended marriage, until the said children shall attain the years of majority or be married. It is quite plain that all that contemplates only the event of the wife surviving the husband. But then follow these words, "And upon the marriage or majority of each of such children, one-half of the share of conquest which shall belong to such child in virtue of this provision shall then be payable or prestable to him or her, and shall be enjoyed by him or her unburdened by the said Margaret Tod Bell's liferent. Now, it is contended that this provision applied not merely to the case of the widow surviving the husband and enjoying a liferent, but also to the case of the widow predeceasing the husband, and that whenever the children attained majority or marriage they were entitled to demand from their father payment of one-half of the provision secured to them by this contract. But it is too clear almost to admit of argument that this provision is intended only to apply to the case of the survivance of the widow, because it is a provision that they shall have that portion of their shares of the conquest paid over to them unburdened by the case of the widow's liferent—words which apply only to the widow surviving and enjoying the liferent. That specialty, therefore, I think is entirely out of the case and on the general ground which I have already noticed I am quite satisfied that the Lord Ordinary's interlocutor is well founded.

Lord Deas—I am of the same opinion, and I have nothing to add. On the whole, I come to the conclusion that this was a provision and not a debt.

Lord Ardmillan—I am of the same opinion. I think this case was very correctly described by your Lordship as lying somewhere between the case of *Hagart* and the case of *Moir*, but upon all the authorities the result is that this is a provision by way of succession, and not a proper debt. There is no direct obligation to pay. The obligation is to provide and secure, and it is to my mind pretty plain that the maker of the deed had the distinction in view, because in dealing with the liferent of the wife he introduces an obligation to content and pay, and follows that with an obligation to provide security for that which he had engaged to content and pay. In the case of these provisions, the primary obligation is to provide and secure. There is no obligation in words to content and pay.

Lord Jerviswoode—I think this was a very proper case to bring before the Court for judgment, but now that it is here I take the same view as your Lordship.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for Marshall's executors against Lord Ormidale's interlocutor of 24th February 1874, Adhere to the interlocutor, and refuse the reclaiming note: Find the defender entitled to additional expenses, and remit to the Auditor to tax the account of said expenses and report."

Counsel for Pursuer — Watson and Pearson. Agents—Gibson & Strathearn, W.S.

Counsel for Defender—Dean of Faculty (Clark), and Rutherford. Agent—Angus Fletcher, Solicitor of Inland Revenue.

Friday, March 20.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

M'DONALD *v.* M'DONALDS.

Entail—Resolutive Clause.

Terms of the resolutive clause in a deed of entail *held* sufficient for the validity of the deed.

This was an action of declarator raised by Colonel Alastair M'Iain M'Donald of Dalchosnie, against John Alan M'Donald, his brother, and Misses Elizabeth Moore Menzies, Adriana and Jemima M'Donald, his sisters, as being the whole heirs of entail at present in existence called to the succession of the estates of Dalchosnie, Loch Garry, and Kinloch-Rannoch, under a deed of entail made by the late General Sir John M'Donald, K.C.B., and registered on 18th November 1837. The summons concluded for declarator that this deed of entail is not a valid and effectual tailzie in terms of the Act of the Parliament of Scotland, passed in the year 1685, chap. 22, entituled "Act concerning Tailzies," and that the foresaid lands and estates of Dalchosnie, Loch Garry, and Kinloch-Rannoch, as particularly described in the said deed of entail, belong to the pursuer in fee-simple, and free from the whole conditions, and prohibitory, irritant, and resolutive clauses contained in the said deed of entail.

Sir John M'Donald was the father of the pursuer, and proprietor of the estates above mentioned; he died on the 24th June 1866, and was survived by his wife, who died on 7th November 1872. Sir John's brothers, who were called as substitutes in the entail, died before him without issue, and the whole of his surviving children were defenders in this action, as being the whole heirs presently in existence after the pursuer.

The deed of entail contained certain conditions which the pursuer and the other heirs of entail were directed to obey, including a direction to use the surname and armorial bearings of M'Donald, to possess the lands only under the deed of entail, and to purge and redeem adjudications and other legal diligence against the lands. These conditions were followed by prohibitory clauses, containing sundry restrictions and limitations; *inter alia*, that the wives and husbands of the heirs of entail should be excluded from all right of terce or courtesy in the entailed lands, and that it should not be in the power of the pursuer or any of the other heirs of entail to alter the order of succession thereby established, or to sell or alienate the lands therein contained, or to burden them with debt, or to do any act or grant any deed, directly or in-

directly, whereby the lands or any part of them might be affected or in any manner of way evicted from the pursuer or any other of the heirs. Then followed certain irritancies, in case the pursuer or any of the other heirs of entail failed to purge adjudications or other legal diligence against the fee of the estates. The next clause in order was the resolutive clause, in the following terms:—"And with and under this irritancy, as it is hereby conditioned and provided, that in case the said Alastair M'Iain M'Donald, or any of the other heirs succeeding to the lands and estate before disponed, shall contravene the before written conditions, provisions, restrictions and limitations herein contained, or any of them, *that is*, shall fail or neglect to obey or perform the said other conditions and provisions, and each of them, or shall act contrary to the said other restrictions to be hereinafter added and appointed by me, excepting as is before excepted, then and in any of these cases, the person or persons so contravening shall, for him or herself only, *ipso facto* amit, forfeit, and lose all right, title, and interest which he or she hath to the lands and estate before disponed." The pursuer maintained that the resolutive clause was defective, as not duly enumerating or referring to the antecedent restrictions or prohibitions against altering the order of succession, selling or alienating the lands, or burdening them with debt. Further, that the only restrictions therein referred to were certain other restrictions "to be hereinafter added and appointed" by the entailer, whereas the deed of entail contained no subsequent restrictions against altering the order of succession, selling or alienating the lands, or burdening them with debt. By section 43d of the Act 11 and 12 Vict., cap. 36, it is enacted "that where any tailzie shall not be valid and effectual in terms of the said recited Act of the Scottish Parliament, passed in the year 1685, in regard to the prohibitions against alienation and contraction of debt, and alteration of the order of succession, in consequence of defects either of the original deed of entail or of the investiture following thereon, but shall be invalid and ineffectual as regards any one of such prohibitions, then and in that case such tailzie shall be deemed and taken from and after the passing of this Act to be invalid and ineffectual as regards all the prohibitions."

The pursuer pleaded that—(1) The deed of entail was not a valid and effectual tailzie in terms of the Act 1685, cap. 22. (2) The prohibitions against alienation, contraction of debt, and altering the order of succession, were invalid and ineffectual. (3) The irritant and resolutive clauses were also defective and incomplete, and that the entail was therefore invalid. (4) In virtue of section 43d of the Act 11 and 12 Vict., cap. 36, the deed of entail was to be deemed invalid and ineffectual as regards all the prohibitions contained in it.

The defenders claimed to be assoilzied with expenses, as the deed of entail was in all respects valid and effectual.

The Lord Ordinary (MACKENZIE) pronounced the following interlocutor, with note:—

"*Edinburgh*, *5th December* 1863.—The Lord Ordinary having heard the counsel for the parties, and considered the closed record and deed of entail libelled on, sustains the defences, assoilzies the defenders from the conclusions of the summons, and decerns: Finds the pursuer liable in expenses, &c.

"*Note.*—The pursuer pleads in the record that the entail of Dalchosnie is defective in the prohibitory, irritant, and resolutive clauses; but the only objection insisted in at the debate was that which is directed against the sufficiency of the resolutive clause.

"The resolutive clause is in the following terms—'And with and under this irritancy, as it is hereby conditioned and provided, that in case the said Alastair M'Iain M'Donald or any of the other heirs succeeding to the lands and estate before disponed shall contravene the before written conditions, provisions, restrictions, and limitations herein contained, or any of them; that is, shall fail or neglect to obey or perform the said other conditions and provisions, and each of them, or shall act contrary to the said other restrictions to be hereinafter added and appointed by me, excepting as is before excepted, then and in any of these cases the person or persons so contravening shall, for him or herself only, *ipso facto* amit, forfeit, and lose all right, title, and interest which he or she hath to the lands and estate before disponed; and as such right shall become void and extinct, so the said lands and estate shall devolve and accrue and belong to the next heir appointed to succeed, albeit descended of the contravener's own body, in the same manner as if the contravener were naturally dead and had died before the contravention.'

"The pursuer maintains, in support of his objection to the validity of this resolutive clause, that the entailer throughout the deed of entail makes a distinction between those clauses which are directed against selling or alienating the estate, burdening it with debt, and altering the order of succession, and the other clauses of the deed by which the heirs are obliged to use and bear the arms of 'M'Donald,' to possess the estates under the entail and no other title, to engross the destination and whole clauses in the titles and investiture of the estates, and to purge and redeem adjudications. The former, it is said, are dealt with in the entail under the name of 'restrictions' or 'restrictions and limitations,' while the latter are denominated 'conditions and provisions.' And the defect in the resolutive clause is stated to be, that it is not directed against the three cardinal restrictions and limitations, but only against the conditions and provisions last above mentioned.

"The Lord Ordinary is of opinion that there are no sufficient grounds for thus limiting the application of the resolutive clause, and that its terms include and are directed against the whole conditions, prohibitions, and clauses irritant and resolutive contained in the deed.

"At the outset of the entail, the entailer, 'upon the conditions, restrictions, and provisions after specified,' conveyed the estates. At the end of the dispositive clause it is set forth that the estates are conveyed 'always with and under the conditions, provisions, restrictions, limitations, exceptions, clauses irritant and resolutive, declarations and reservations aftermentioned.' The same terms are used in the procuratory of resignation. Then the clause by which the heirs are taken bound to bear the name and arms commences with the words—'with and under this *conditions* always, as it is hereby expressly *provided*.' The clause which relates to possessing under the entail, engrossing the destination and whole clauses of the deed in the titles, and purging adjudications, commences with the words—'as also with and under these

conditions that.' That part of the prohibitory clause which is directed against altering the order of succession, and which also debars all right of terce or courtesy, commences with the words—'and with and under the *restrictions and limitations* after written, as it is hereby expressly *conditioned and provided*.' There is an exception in this clause, by which the heir in possession is empowered, on the forfeiture or attainder for treason of any of the apparent or presumptive heirs, to renew the entail, 'but with and under the whole conditions, restrictions, exceptions, and irritancies herein contained.' Then follows the remainder of the prohibitory clause in regard to sale, alienation, and contraction of debt, which commences with the words—'and with and under this *restriction and limitation* also, as it is hereby expressly *conditioned and provided*.' The two clauses by which the heirs are restrained from doing any act or granting any deed by which the estates may be adjudged forfeited, or evicted, and by which the heirs are prohibited from letting the lands with diminution of rental and on payment of a grassum for any longer space than the life of the granter, &c., are called 'restrictions and limitations.' Then follows a 'condition, as it is hereby specially provided and declared,' by which the heirs may excamb to the extent prescribed by statute. And the provision that the lands shall not be affected or burdened with, or adjudged or evicted by or for, the deeds and debts of the heirs, is styled a 'limitation and condition.' The resolutive clause also commences with the words—'and with and under this *irritancy*, as it is hereby *conditioned and provided*.' And by the irritant clause 'all debts contracted, deeds granted, and acts done contrary to the conditions and restrictions,' are declared null.

"It is impossible, the Lord Ordinary thinks, to read the entail without being satisfied that it does not afford any sufficient grounds for the pursuer's argument, and that the entailer does not deal with 'conditions and provisions' as one thing, and with 'restrictions and limitations' as another; but that, on the contrary, the words 'conditions and provisions' are used in the resolutive clause as applying to the whole conditions, prohibitions, and clauses irritant and resolutive of the entail. This appears not only from a consideration of the whole deed, but also from a consideration of the manner in which these words are used in the resolutive clause.

"It is not disputed that the first part of the resolutive clause is sufficiently general to cover all acts of contravention. But it is said that these general terms are limited by the definition which follows them, namely, '*that is*, shall fail or neglect to obey or perform the said other conditions and provisions, and each of them.' The use of the word 'other' creates no difficulty, seeing that it has been held in the case of *Stirling* v. *Moray* (7 D. 640) that this word must be held as referring to the resolutive clause itself, which is a condition and provision of the deed distinct from the 'before-written conditions, provisions, restrictions, and limitations,' or as referring to the irritancy condition and provision which immediately precedes the resolutive clause, and which binds the heirs to purge adjudications, and resolves their right in the event of failure to do so within a specified time. Now, that being the case, the words 'the *said* other *conditions and provisions*' can only mean in this entail the aforesaid conditions and provisions, that is, those which are immediately before specified in the resolutive clause itself as 'the before-written conditions, provisions, restrictions, and limitations.' The entailer, therefore, has in this clause itself defined what he includes in and means by the words 'conditions and provisions.' Farther, that meaning is in exact accordance with the import and effect of the word 'provision,' which is of the most comprehensive nature, and includes the whole terms and stipulations of a deed, including the fetters of an entail.

"The pursuer further maintained that the words in the resolutive clause, 'shall fail or neglect to obey or perform,' are insufficient to cover contravention of the cardinal prohibitions, and that they can only be held as applying to failure or omission to perform those conditions first mentioned in the deed, such as taking the name and arms, and possessing under the entail, which are to be implemented *faciendo*, and that accordingly they limit the signification of the words 'conditions and provisions' to those conditions. The Lord Ordinary is of a different opinion, and he considers that the words 'fail to obey,' 'neglect to perform,' are in themselves sufficient to cover not only every neglect to perform those positive conditions, but also all acts of an heir done in contravention of the three cardinal prohibitions.

"The words which follow those already noticed in the resolutive clause do not, it is thought, restrict in any respect the meaning and application of the prior part of the clause. These latter words are—'or shall act contrary to the said other restrictions to be hereinafter added and appointed by me.' There is nothing inconsistent here with the preceding part of the clause. The restrictions here mentioned are the provisions which may be 'hereinafter added,' and they are those set forth in the latter part of the deed. The pursuer maintained that after the word 'restrictions,' there had been an omission of the words 'hereinbefore contained, or any other restrictions,' and that the insertion of these words is necessary to make a valid resolutive clause. The Lord Ordinary can find no warrant for this supposition. This part of the clause is, as it stands, very similar to the corresponding part of the resolutive clause in the *Finzean* entail. The question is, not whether anything is omitted, but whether the clause as it stands in the deed is sufficient to meet the provisions of the Act 1685, c. 26, which requires, in order to an effectual entail, 'irritant and resolutive clauses, whereby it shall not be lawfull to the airs of tailzie to sell,' alienate, burden with debt, or alter the order of succession.

"The Lord Ordinary considers that the concluding part of the resolutive clause also confirms the view which he has taken of the clause, because it is thereby provided that 'then, and in any of these cases, the person or persons so contravening' shall forfeit all right to the estate.

"The case of *Holmes* v. *Cunninghame* (13 D. 689), founded on by the pursuer, is not, it is thought, in point. The decision in that case proceeded upon the failure to insert the resolutive clause of the entail in its integrity in the charters and sasines by which the entail was feudalized. No doubt some of the Judges who decided that case gave opinions as to the effect of the resolutive clause in the charters, supposing it to have occurred in a deed of entail. But the structure of the entail in the present case is altogether different, so that these opinions are inapplicable. The case of *Adam* v. *Farquharson*,

(2 D. 1162, and Bell's App. 295), the resolutive clause in which is very similar to that now under consideration, supports the view taken by the Lord Ordinary of the import and meaning of that clause in the present entail.

"The prohibitory and irritant clauses appear to the Lord Ordinary to be in all respects valid and effectual."

Colonel M'Donald reclaimed, and argued—The mistake in this deed arose from the leaving out of a small portion of the style which was being copied. [Russell's Entail Styles, p. 290, and Juridical Styles.] "Conditions" refer to the power of doing and performing, whereas "restrictions" refer to restraints upon the power of the proprietor. [*Adam* v. *Farquharson; Rennie* v. *Horn; Holmes* v. *Cunninghame.*] There is authority to show that words so omitted cannot be introduced (*Hamilton*), and there is none for saying that the Court can supply words so as to cure a blundered deed (*Speid*; *Eglinton*).

The defenders (respondents) argued—If the deed is intelligible and sensible without the words, no omission is to be presumed (*Sharp* v. *Sharp; Yolland* v. *Yolland*).

Authorities cited:—*Holmes* v. *Cunninghame*, 13 D. 689; *Adam* v. *Farquharson*, 2 D. 1162, and 3 Bell's App. 295; *Stirling* v. *Moray*, 7 D. 640; *Rennie* v. *Horn*, 3 Bell's App. 170; *Sharp* v. *Sharp*, 1 S. and M'L. 594; *Yolland* v. *Yolland*, 4 Macq. 585; *Speid* v. *Speid*, 15 S. 618; *Eglinton* v. *Montgomerie*, 7 D. 425; *Hamilton* v. *Lindsay, Bucknell, and Others*, 8 Macph. 323, 7 Scot. Law Rep. 205.

At advising—

Lord Justice-Clerk — My Lords, this case I have found to be one of great perplexity and difficulty. The question arises as to the effect of the resolutive clause in the deed of entail of his estates, executed by the late Sir John M'Donald. It appears to me to be desirable that the terms of this clause should be considered in some detail—[*Reads clause*]. The clause is divided into two distinct and separate parts—*firstly*, there is the hypothesis, stating the contingency upon which the clause will come into operation; and *secondly*, from the words "then and in any of these cases" follow the actual resolutive words. Yet further, the first portion of the clause is in itself duplex, for there is in the first place the contingency "in case" the heir "shall contravene," and then follows a definition of what shall constitute such contravention. The objection taken by the pursuer to the deed is, that when the defining portion of the clause arrives at the restrictions it runs thus—"the said other conditions and provisions," &c., and that these words do not duly enumerate and refer to the various restrictions and prohibitions antecedent, but are directed against the conditions and provisions last above mentioned. The Lord Ordinary has found that there was enough in the clause to cover the whole of the three cardinal restrictions and limitations, and as to that, I am clearly of opinion that this clause was constructed and intended to meet (1) any contravention of the entail, and (2) any contravention of the prohibition. It appears to me evident that we have both contravention by failure put in contrast with contravention by contrary act. To take an illustration — in a pure condition the irritant clause truly has nothing on which to operate if that condition does not come into force. The antithesis here is not between conditions and restrictions, but, as I have said, between contravention by failure and contravention by contrary act. I have only further to add, that the case of *Farquharson* does not appear to apply, as it does not affect the real matter we have here.

There still, however, remains a question. It cannot be doubted that the second part of the definition is incomplete, and as it stands, I think, incapable of any construction, and unmeaning. I am quite clear that something has been omitted, and what that something is has been made evident by the style quoted to your Lordships and by the words themselves. The error appears to have arisen from the omission of a line. But there may be enough left even without this line to enable the Court to arrive at a conclusion. So far as the resolutive clause was intended to apply to conditions subsequent, I think it would fail, but that is not so as to antecedent conditions. I have come to the conclusion that, whether we stop reading the clause where it ceases to be intelligible, or whether we supply the words omitted, there is enough in the first portion alone to apply the resolutive words to the whole range of prior conditions.

It is manifest what the words omitted were, and therefore, as no other words could have been there, the Court is entitled to read the clause as if the omission had not occurred. The prior part of the clause had referred to conditions which could be contravened, and "restrictions and limitations" were the words omitted. I am quite aware of the difficulty, but it would have been a different matter had it been possible to have made any other suggestion as to what had been omitted. A good illustration is derivable from the case of *Holmes* v. *Cunninghame*, where the words were "any other of tailzie above specified," and the word "heir" had evidently been omitted. The omission, if any there was, must have been that which I have mentioned.

Lord Benholme—The case is one of much difficulty, but, on the whole, I have made up my mind that what your Lordship has said is sufficient to enable the Court to arrive at a satisfactory conclusion.

Lord Neaves—I agree with what your Lordship has said. It appears to me that the case of *Farquharson* does not apply to the present circumstances.

Lord Ormidale read the following opinion:—

In the present case, as in all cases of its class, where the title-deeds of landed estates are called in question, it is, I think, peculiarly incumbent on the Court to have regard to the rules and principles of construction which have been previously settled and given effect to; for otherwise many important and varied interests, created on the faith of precedents, might be endangered or destroyed. I have thought it right to make this introductory remark, for the reason that the conclusions at which I have arrived depend in some measure upon the view I have taken of the reported opinions of the Judges on the rules of construction which were held to be applicable to deeds of entail challenged upon grounds similar to those relied upon by the pursuer in the present case.

After the explanations which have already been given by your Lordships, it is unnecessary

for me to enter into any minute detail of the circumstances in which the present controversy has arisen. It is enough to say that two questions have been presented to the Court, the solution of which depends upon what may be held to be the true construction of the resolutive clause of the deed of entail in dispute:—1st, Does the word "other" in that clause render it so ambiguous as to destroy its efficacy? And, 2d, Is the clause otherwise so framed and expressed as to be, according to its true construction as it stands, so uncertain and unintelligible as to be insufficient to fence the cardinal conditions regarding the contraction of debt, the sale or disposal of the estate, and the alteration of the order of succession?

1. I am of opinion, and without any difficulty, that the first of these questions must be answered in the negative. The resolutive clause is itself described by the entailer as a condition and provision; for he says, "with and under this irritancy, as it is hereby conditioned and provided;" and then he goes on to state that forfeiture will be incurred by any of the heirs of entail contravening the before written conditions, provisions, limitations, and restrictions of the entail, or any of them,—that is, failing or neglecting to obey or perform "the said other conditions and provisions, and each of them." It appears to me from this to be sufficiently plain that by the use of the word "other," the entailer meant merely to distinguish the resolutive clause, which he had characterised as being itself a condition and provision, from the conditions and provisions which had been previously set out in the deed. Such appears to have been the view taken of a similar point by all the Judges in the case of *Stirling* v. *Moray*, referred to in the Lord Ordinary's note; and this being so, I should hold myself bound by that case as a precedent, even if I had otherwise entertained any doubt on the subject, which I do not.

2. The second question, viz., Whether the resolutive clause in the deed in question is otherwise insufficient to fence the cardinal conditions of the entail? although not unattended with difficulty, must also, I think, be answered in the negative. It is too obvious however to be disputed, and indeed was not disputed at the debate, that the clause as it stands is imperfect; that, in short, some words of the style intended to have been followed have been omitted. But the question comes to be, Whether, notwithstanding this, the clause is not quite sufficient for all the purposes required? It appears to me that it is so. If the entailer, after referring, as he does at the beginning of the clause in the most comprehensive terms, to a contravention of the "before written conditions, provisions, restrictions, and limitations herein contained, or any of them," had stopped at that point, there could have been no doubt or difficulty as to his meaning; but he goes on to add, "that is, shall fail or neglect to obey or perform the said other conditions and provisions, and each of them, or shall act contrary to the said other restrictions." This, however, in place of destroying only illustrates and confirms, as it was evidently intended to do, the entailer's meaning, as previously conveyed in a somewhat different way. But it was argued that the whole, and not merely a portion of the resolutive clause, must be looked at to ascertain its true meaning and effect, and that if this were done it would be found to be unintelligible, inasmuch as after the "said other restrictions" in that part of the clause which has just been quoted there follow the words, "to be hereinafter added and appointed by me." That some words, such as "and others," have been omitted immediately after "restrictions," is manifest; but the only and utmost consequence of this, as it appears to me, is that the resolutive clause is rendered ineffectual in regard only to restrictions, if any, inserted in the deed *after* the resolutive clause, but that in regard to the restrictions, including all the cardinal ones, previously inserted in the deed, the resolutive clause is quite intelligible and free from any well founded objection.

For these reasons, and without entering on the question how far the resolutive clause might be perfected by supplying what may be supposed to be omitted words,—a mode of meeting all difficulty which is not without authority to support it in *Gollan* v. *Gollan* and other cases—I am of opinion that the Lord Ordinary has arrived at a sound conclusion, and that his interlocutor now under review ought to be adhered to. I agree however with your Lordship in the chair in thinking that the case of *Adam* v. *Farquharson* is not directly in point, although the reasoning on which the judgment proceeded in that case, especially in the House of Lords, is not unimportant as bearing on the present, and supports the result which has been come to.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for Colonel Alastair M'Iain M'Donald, against Lord Mackenzie's interlocutor of 5th December 1873, Refuse said note, and adhere to the interlocutor complained of, with additional expenses, and remit to the Auditor to tax the same, and to report."

Counsel for Pursuer (Reclaimer)—Fraser and Moncreiff. Agents—H. G. & S. Dickson, W.S.

Counsel for Defender (J. A. M'Donald)—D. F. Clark, Q.C., and Trayner. Agents—Dewar & Deas, W.S.

Counsel for Misses M'Donald—Balfour. Agents—Webster & Will, S.S.C.

I., Clerk.

Friday, March 6.

FIRST DIVISION.

[Lord Shand, Ordinary.

THE HONOURABLE ROBERT PRESTON BRUCE, PETITIONER.

(Before the First Division, with Lords Benholme, Neaves, and Gifford.)

Entail Amendment Act, 11 *and* 12 *Vict. c.* 36, § 2—*Heir of Entail in Possession—Disentail.*

An heir of entail born subsequent to August 1848, and holding the estates under an entail dated prior to August 1848, by which it was provided that whenever the heirs called thereby to the succession of the said estates should come to inherit a certain title and earldom they should be bound to demit the possession of the said estates in favour of the heir next in succession,—*held* (*diss.* Lords Deas, Neaves, and Jerviswoode) to be an heir of entail in