and the said lands are still liable for the said composition." And pleading in support of his claim for the second—"(2) In respect the said lands are in the same position as if they had been in non-entry, and the defenders are in right thereof as singular successors in virtue of their titles, the pursuer is entitled to a composition as at the death of Miss Douglas."

The defenders offered to pay one casualty, but *quoad ultra* pleaded—"(4) Assuming, but not admitting, that a superior is entitled to exact a composition which had never been demanded during the lifetime of the proprietor, from the representatives of such proprietor, as for the entry of such proprietor deceased, then on payment thereof he is bound to receive as his vassal the heir-at-law of such deceased proprietor on payment of relief-duty, provided no subsequent infeftment has been expede by another; and the defenders being thus in a position to offer such heir-at-law, and having offered accordingly, they are, in any view, entitled to absolvitor with expenses."

The authorities referred to in the argument will be found in the case of *Lamont* v. *Rankin's Trustees*, February 28, 1879, 6 R. 739. That case was affirmed in the House of Lords, February 27, 1880, 7 R. 10.

The defenders maintained in argument, in addition and antecedently to the grounds stated in their plea quoted above, that as the pursuer had made no claim during the lifetime of the vassal for the casualty due by virtue of the implied entry in 1874, and had not called upon her to enter before that date, her obligation for a composition fell by her death, just as under the law prior to 1874 all obligation to enter upon her part would have fallen by that event, and all action and claim would have been lost to the superior against her and her personal representatives.

LORD FRASER, after hearing parties, pronounced this interlocutor:—"Finds that the pursuer is the immediate lawful superior of the defenders, who are proprietors of a piece of ground, part of the lands of Overton, in the parish of Kilmalcolm: Finds that Alexander Lang was the vassal last entered by the superior, and that he died prior to the year 1874: Finds that Lang disponed the property to Peter Douglas, who afterwards disponed it to his daughter Elizabeth Douglas, who was infeft therein in the year 1850: Finds that Elizabeth Douglas was proprietor infeft at the date of the passing of the Conveyancing (Scotland) Act 1874, and by virtue of section 4, subsection 2, of said statute she became duly entered with the superior of said lands, and became liable in a casualty to the superior: Finds that Elizabeth Douglas died on 3d March 1882, leaving a trust-disposition and settlement by which she conveyed the said lands to the defenders: Finds that the defenders have not taken infeftment upon the said trust-disposition and settlement, and therefore are not liable in a casualty as entered vassals in respect of her death: Finds that the casualty due in respect of the entry of Elizabeth Douglas with the superior in virtue of the said section of said statute amounts to £43: Decerns therefor against the defenders: *Quoad ultra* assoilzies the defenders, and finds them entitled to expenses," &c.

Counsel for Pursuer—M'Kechnie. Agent—W. B. Glen, S.S.C.

Counsel for Defenders—James Reid. Agent—John Macpherson, W.S.

COURT OF TEINDS.

Monday, July 17.

(Before Lord President Inglis, Lords Deas, Mure, Shand, and M'Laren.)

BOYD, PETITIONER.

Church—Glebe—Petition to Feu—Consent of Heritors—Condition in Feu-Charter.

The consent of the heritors is by the Glebe Lands Act 1866 (29 and 30 Vict. c. 71, sec. 5) necessary to entitle a minister to make application to the Court for authority to feu the glebe effeiring to his benefice; and hence a qualified consent, given upon the footing that certain specified conditions shall be introduced into the feu-charter, entitles the heritors to insist against the minister that these conditions shall be so introduced.

The minister of a parish proposed to feu his glebe, but the heritors at their meeting, called in terms of the statute of 1866 (29 and 30 Vict. c. 71), refused to consent to the application unless the minister agreed to limit his application to authority to feu for villas, and to insert in the feu-charter in each case a condition that the house to be built "should always be occupied as a self-contained dwelling-house allenarly, and shall not be subdivided, let, or occupied in flats, nor by more than one family for the time being; that no outside stair shall be erected for or in connection therewith." The minister at this meeting by his agent intimated his readiness to accept such a consent rather than that all consent should be refused. The minister having afterwards put in a minute limiting his application to authority to feu the ground for villas, the Lords remitted to the Clerk to adjust the form of feu-charter. The Clerk reported, *inter alia*, that the words quoted *supra* might all be left out, and that it should be a sufficient guarantee for securing the class of houses required, that, as here, the plans and elevation were subject to the approval of the heritors and presbytery, and no alteration could be made without their consent; he was of opinion that the provisions for limiting the occupation of the houses was unnecessarily stringent.

The heritors moved the Court to order the insertion of such a clause, on the ground that their consent, which was by the statute a condition-precedent to the application, would have been withheld unless the applicant had undertaken to have such a clause inserted, and that they therefore had not consented to feu in the terms recommended by the Clerk.

The minister answered that the adjustment of the details of the charter was a matter within the discretion of the Clerk and the skilled reporter, who concurred in the Clerk's report.

The Lords sustained the heritors' contention

and ordered the clause to be inserted.

Counsel for the Minister—Jameson. Agents—Pringle & Dallas, W.S.

Counsel for the Heritors—Gillespie. Agents—Gillespie & Paterson, W.S.

Saturday and Tuesday, July 15 *and* 18.

FIRST DIVISION.

TAWSE, PETITIONER.
M'GREGOR, PETITIONER.

Succession—Evidence—Presumption of Life—Statute 44 *and* 45 *Vict. cap.* 47, *secs.* 4, 5, *and* 8.

Proof *held* sufficient to support applications to uplift estate under the 4th and 5th sections of the Presumption of Life Act, as establishing (1) that the person whose succession was in question had lived up to the period at which he became entitled to the estate in question; and (2) had not since been heard of.

John Wardrobe Tawse, W.S., presented a petition, as factor and commissioner of David Foggo, residing in Calcutta, craving authority to make up a title to certain heritable estate belonging to Neil Gow Foggo, an uncle of his constituent, under the 5th section of the Presumption of Life (Scotland) Act, which provides that "in the case of any person who has been absent from Scotland or who has disappeared for a period of twenty years or upwards, and who has not been heard of for twenty years, and who at the time of his leaving or disappearance was possessed of or entitled to heritable estate in Scotland, or has since become entitled to heritable estate there, it shall be competent to any person entitled to succeed to said absent person in such heritable estate to present a petition to the Court;" and the Court is empowered after advertisement and proof to grant authority to the petitioner to make up a title to the property in question.

Neil Gow Foggo, the absentee, was at the time of his disappearance in right of certain heritable property claimed under this petition, and it was averred that between the time at which he was last heard of and the expiration of the seventh year thereafter (at which latter date he must be held under the 8th section of the statute to have died) he had succeeded, as heir of conquest to his sister Ann Walker Foggo, to certain other heritable property, which was also claimed in the present petition.

After advertisement and proof had been led, the petitioner submitted to the Court that he had proved his averments so as to entitle him to decree as craved. He had called as witnesses a nephew, two cousins, and the wife of a cousin of the absentee; no nearer relatives were living. From their evidence it appeared that Neil Gow Foggo had left the country about 1833, had gone to Hobart Town, and had never communicated with his mother, who survived till 1874, or with any of his brothers or sisters, of whom several remained in this country, the last survivor dying in 1875. Three of the witnesses swore that nothing had been heard of the absentee after 1833, but the fourth witness, one of the cousins, swore—"I went abroad about 1838, and was away for six years and a-half. I knew Neil Gow Foggo. He left the country before I went away some three or four years. He would be twenty-three or twenty-four years of age when he left. Nothing more was ever heard of him, except from John Monro, a cousin of mine who is dead. He told some of the family that Neil Gow Foggo had been on board a man-of-war on which he, John Monro, was surgeon. I got the information after my return from the West Indies, and it was shortly before I got my information that Monro had seen him. He was serving on board the ship, but I don't know the name. It was a British man-of-war. I got this information from my sister, who is still alive in Australia. Neither I nor any of my relatives have heard anything of him since that time."

The absentee's sister, Ann Walker Foggo, to whose estate the petitioner averred that the absentee had succeeded, died in 1845.

Upon the foregoing evidence the Lords thought that it was sufficiently proved that the absentee had survived his sister, and had not since been heard of, and granted authority as craved.

The second application was an application for authority to make up a title to moveable estate, proceeding on section 4 of the statute, which gives on the expiration of fourteen years the same powers to the Court as the 5th section on the expiration of twenty years. The absentee in this case, Malcolm M'Gregor, eldest son of Duncan M'Gregor in Greenock, sailed from Greenock in 1856, and deserted his ship at San Francisco on 12th September 1857, and never thereafter communicated with his relatives or friends. His father died on 9th June 1867, and the estate which was desired to be taken up under the present petition was Malcolm's interest in that estate; the petitioner was a brother, who was Malcolm's heir *in mobilibus*. On his father's death inquiries were made by advertisement and otherwise in California. The only evidence however that was obtained to show that he had been again heard of was a lettter from H. M. Consul in San Francisco, dated 18th November 1867, and addressed to a writer in Greenock who was making inquiries on behalf of the family. That letter bore—"I inserted the advertisement in two local papers, and I lately have been informed that Malcolm M'Gregor was for some time working in the copper mines of Molineux County, and left there over a year ago for Amador County. I have now advertised in an Amador paper, which I hope will succeed in finding him; directly I hear anything I will again address you." No more information was ever obtained.

The Lords granted authority as craved, hold ing that the absentee had been shown to have survived his father.

Counsel for Petitioner Tawse — Gillespie. Agents—Tawse & Bonar, W.S.

Counsel for Petitioner M'Gregor—Robertson —Macfarlane. Agents—Thomson, Dickson, & Shaw, W.S.