ticular destination were to be presumed; but I entirely deny the competency of going to other parts of the deed to make out that the dispositive clause gives a liferent to Mrs Chancellor when it expressly gives a fee.

So Mrs Chancellor and Mrs Mosman having survived all the granters, and Mrs Collyer having predeceased all the granters, the property, on the death of the longest liver of the granters vested in Mrs Chancellor and Mrs Mosman, equally between them, and belongs to their heirs. So I am of opinion that the first and second parties are each entitled to one-half of the subjects.

LORD DEAS—I agree with your Lordship in the chair, that the result of this case must depend entirely upon the dispositive clause, and it seems to me that the meaning of the dispositive clause depends upon whether the word "or" is to be taken as meaning "or" or "and." Now, although this question depends entirely upon the dispositive clause, yet if there is an ambiguous word in that clause I think that it is allowable to look at the other clauses in the deed to see if they throw light upon the dispositive clause, and, in the present case, looking at the whole deed, I think that the most probable meaning of the dispositive clause is, that the property is to go to those surviving the granters, and that it therefore vested in Mrs Chancellor and Mrs Mosman.

LORD ARDMILLAN—I agree with your Lordship in the chair. On the first and most important point, viz., that we must give entire effect to the dispositive clause, and that, unless it is defective or dubious, we are not entitled to go further. The dispositive clause here gives the succession to Mrs Chancellor and her two daughters, or the survivor or survivors of them, and that means to those surviving the last of the disponers. Now Mrs Chancellor's daughter Mary predeceased all the Misses Robertson, and there is no room in this case for the rule *si sine liberis*, so the result is that Mrs Chancellor and her daughter Helen were at the death of Miss Marianne Robertson entitled to the estate equally between them.

LORD KINLOCH—I find it difficult, indeed impossible, to construe satisfactorily the deed of 1845, executed by these five ladies. In the narrative clause they declare it to be their intention that Mrs Chancellor should have the liferent of the property, and her two daughters the fee; the result of which would be that Mrs Chancellor would enjoy during her lifetime the whole annual proceeds of the property. Yet in the dispositive clause, literally construed, Mrs Chancellor is made a joint fiar along with her two daughters, with the benefit of survivorship, the granters expressly declaring that they "grant, alienate, and dispone to and in favour of the said Helen Hamilton Chancellor, Mary Forbes Chancellor, and Helen Raeburn Chancellor, or the survivors or survivor of them, all our said property." The effect of this is to give Mrs Chancellor only one-third of the proceeds during the joint lives. If I could read the dispositive clause as importing, by a retrospective reference, a liferent to Mrs Chancellor and a fee to her daughters or the survivor, I would willingly give it this effect. But I feel I cannot take such a liberty with this primary and leading clause of the deed. As it stands, it imports, by clear language, a joint fee to the mother and daughters. I cannot insert the words as regards the mother, "in liferent for her liferent use allenarly." To do so would be against all principle, and would form a perilous precedent in conveyancing. I am therefore forced to the conclusion that, however inconsistent the dispositive clause may be with the narrative of the deed, I can give to that clause no other than its own legal interpretation; that is to say, hold it to import a joint fee to the mother and daughters, with the benefit of survivorship.

The question remains, What is the legal scope and extent of the benefit of survivorship. I am of opinion that the words have reference to the period of the death of the last deceasing Miss Robertson; and that their effect is to give the fee to the survivors or survivor at that date. The destination is not a general one to the three ladies "and the survivor," or, according to the phrase in our older deeds, "and the longest liver of them." It is to the three ladies, "or the survivors or survivor of them." This, I think, does not mean the ultimate individual survivor of the three disponees; it means the survivors or survivor, either one or more, at the death of the last Miss Robertson. If two then survived, the fee I think vested absolutely in these two, and went in equal shares to their heirs. There was no second survivorship provided for as regards these two. In legal character the clause as to survivorship was not one of substitution at all. It was one of conditional institution, that is to say, it embodied a conditional institution of the survivors at the last Miss Robertson's death. When these survivors were fixed by this event, the conditional institution was satisfied—there was no legal right beyond—and the fee became absolute in the individuals jointly, and descended to their respective heirs.

In this view, as Mrs Chancellor and Mrs Mosman both survived the last Miss Robertson, the property vested in them jointly, and the first and second parties, as their heirs respectively, are entitled to it in equal proportions.

I am clearly of opinion that there is no room for the application of the principle *si sine liberis*, so as to bring the children of Mrs Collyer into their mother's room.

Agents for First Partty—MacAllan & Chanellor, W.S.

Agent for Second Party—James F. Tytler, W.S.

Agents for Third Party—M'Ewen & Carment, W.S.

Friday, July 19.

SECOND DIVISION.

SPECIAL CASE—LORD ADVOCATE *v.* CARLOS PEDRO GORDON.

Revenue Duty on Entailed Succession—Statute 16 *and* 17 *Vict.* §§ 2 *and* 10.

Under an entail by which an estate was disposed to A, as institute, and a certain series of heirs, whom failing to B and the heirs-male of her body, the destination to B and the heirs-male of her body having come into operation, and the last heir in possession having died without leaving any heirs-male of his body, the present possessor (uncle of the last heir in possession) succeeded as next heir-male of B.—*Held* that the heir of entail last in possession was, in the sense of the Succession Duty Act, the predecessor of the present possessor.

By the deed of entail of the estate of Wardhouse and Kildrummy, executed in 1740, the estate was disponed to Arthur Gordon, the entailer's eldest son, as institute, and a certain series of heirs, whom failing to Mary Gordon and the heirs-male of her body. John Joseph Gordon, the last heir in possession of the estate, died in 1866, and was succeeded by his uncle Carlos Pedro Gordon, as next heir-male of Mary Gordon. The Crown proposed to charge Carlos Pedro Gordon with succession duty at the rate of 5 per cent., and maintained that in the sense of the Succession Duty Act his nephew was his predecessor, and he took the estate by devolution from him. The heir in possession maintained that the entailer was his predecessor; that he took by way of intestative limitation from him, and his succession was liable to be assessed at the rate of 1 per cent. This Special Case was brought to try the point, and the questions submitted for the opinion and judgment of the Court were—

"(1) Who is to be regarded in the sense of the Succession Duty Act as the predecessor of the said Carlos Pedro Gordon?

"(2) What is the rate of duty to which the succession of the said Carlos Pedro Gordon is liable?"

The following interlocutor and note of the Lord Ordinary (ORMIDALE) fully explains the circumstances:—

"*Edinburgh*, 19*th June* 1872.—The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings, finds (1) that the deceased John Joseph Gordon, the heir of entail last in possession of the estate in question, is to be regarded, in the sense of the Succession Duty Act, as the predecessor of Carlos Pedro Gordon; and finds (2) that the rate of duty to which the succession of the said Carlos Pedro Gordon is liable is 5 per cent.

"*Note.*—The Lord Ordinary has found this case to be attended with considerable difficulty, and that difficulty would, he thinks, have been still greater had it not been for the judgment of the House of Lords in the case of the *Lord Advocate* v. *Lord Saltoun*, 21 D. 124, and 3 Macq. 659, and the light which has been thrown on the subject by the discussion which took place in that case, as well in this Court as in the Court of last resort. Although the case of *Lord Saltoun* is not exactly the same in regard to all its circumstances as the present, the Lord Ordinary is of opinion, for the reasons to be immediately explained, that the principles upon which it was decided in the House of Lords, reversing the judgment of this Court, are applicable to and must govern the present case.

"By the deed of entail of the estate in question in the present case, executed in 1740, the estate was disponed to or settled on Arthur Gordon (the entailer's eldest son), as institute, and a certain series of heirs, whom failing to 'Mary Gordon, spouse of James Gordon of Beldornie, and the heirs-male of her body, which failing the heirs whatsoever of her body, all which failing, to the heirs and assignees of the last possessor of the said estate who shall succeed thereto and be infeft therein in virtue of this present settlement, the eldest heir-female excluding heirs-portioners, and succeeding without division.'

"The previous heirs having failed, and the destination to 'Mary Gordon, spouse to James Gordon of Beldornie, and the heirs-male of her body' having come into operation, the estate devolved in 1762 upon Alexander Gordon, grandson of Mary Gordon and James Gordon; from Alexander Gordon it descended to his son John David Gordon; from him to his son Peter Charles Gordon; and from him to his son John Joseph Gordon, the last possessor, all as heirs-male of Mary Gordon, spouse of James Gordon of Beldornie, in terms of the entail.

"John Joseph Gordon, the last heir in possession of the estate, having died in 1866 without leaving any heirs-male of his body, but leaving three sisters, the estate devolved on Carlos Pedro Gordon, the present possessor, as next heir-male of Mary Gordon. Carlos Pedro Gordon is the uncle of the last possessor of the estate, being a younger brother of his father.

"The transmission of the estate, as now referred to, is made very plain by the genealogical tree appended to the Special Case.

"The first question submitted in the Special Case for the determination of the Court is, Who is to be regarded in the sense of the Succession Duty Act as the predecessor of Carlos Pedro Gordon? Is it the last possessor of the estate, John Joseph Gordon, or the maker of the entail? If the former, Carlos Pedro Gordon must be held, in the sense of the Succession Duty Act, to have taken by 'devolution of law,' in which case the rate of duty will, in terms of sec. 10 of the Act, be 5 per cent. If the latter, he must be held to have taken, in the sense of the Act, by 'disposition,' in which case the rate of duty payable by him will be 1 per cent.

"By the Succession Duty Act it is provided (sec. 2) that 'every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession;" and the term "successor" shall denote the person so entitled; and the term "predecessor" shall denote the settler, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.'

"Having regard to this clause of the Act, it might not inaccurately be said that Carlos Pedro Gordon has taken partly by 'disposition' and partly by 'devolution of law,' inasmuch as while, on the one hand, the deed or disposition of entail is the origin of his right, on the other hand, it was only after establishing, in accordance with the ordinary rules of the law of succession applicable to his position, that he was heir-male of Mary Gordon substituted to John Joseph Gordon, the last possessor of the estate, that he could assert any claim to it. It is in this way that the difficulty which attends the present case arises.

"It appears, however, to the Lord Ordinary that the difficulty has to a considerable extent been removed by the judgment in *Lord Saltoun's* case, and the very ample discussion which preceded it, both in this Court and in the House of Lords. It may now, the Lord Ordinary thinks, be held as settled —(1) That as the Succession Duty Act applies to the whole United Kingdom, its language must be interpreted in a popular sense, without regard to the technicalities of conveyancing or of title,

whether of English or Scotch law, so that the same rule may govern the taxation of the succession to property in every part of the United Kingdom; (2) that where the succession is by 'disposition,' the granter or settler of the disposition, that is to say the maker of the deed of entail in the present case, is the predecessor, and where by 'devolution of law,' the last possessor of the estate is the 'predecessor;' (3) that substitute heirs of entail succeeding not *nominatim* or as one of a fresh *stirps*, but in their order in accordance with the ordinary rules of the law of succession applicable to the case, under a general destination to heirs whether male or female or other character, take by devolution of law; (4) that, as a corollary to the last rule, the predecessor of the heir so taking is not the maker of the entail, but the last heir who possessed the estate; and (5) that when a party succeeds under an entail as an heir named by the entailer in his deed of entail, or as one of a fresh *stirps* called to the succession by the entailer, he is to be held as taking by disposition, and not by devolution of law.

"In accordance with these rules, it was decided in *Lord Saltoun's* case that the party succeeding to the estate there in question, being expressly nominated by the maker of the entail as the head of a fresh *stirps* to take failing certain other heirs, was to be dealt with as having succeeded by disposition. Bnt in the present case Carlos Pedro Gordon has not been expressly named by the entailer, and does not succeed as one of a fresh *stirps*. He takes as one of the class of heirs-male of Mary Gordon, succeeding in his order on the death of the last possessor John Joseph Gordon; and this being so, the last possessor John Joseph Gordon must, in the opinion of the Lord Ordinary, be held to be the predecessor of Carlos Pedro Gordon, who, on his part, must consequently be held to have succeeded by devolution of law.

"Although Carlos Pedro Gordon is not expressly nominated to the succession by the entailer, and is not one of a fresh *stirps*, but succeeds merely as one of the heirs-male of Mary Gordon, called generally as a class to the estate, yet as he is the uncle and not the lineal descendant of the last possessor John Joseph Gordon, it has been contended that *Lord Saltoun's* case cannot be held to govern the present, and that Carlos Pedro Gordon must be held as taking by disposition from the maker of the entail, and not by devolution of law from the last possessor John Joseph Gordon, as his 'predecessor.' This was maintained, as the Lord Ordinary understood, on the ground that it was only where a party succeeded not as an heir-male or female, or in any other restricted character, but as heir-general or at-law, that he can be held to take by devolution of law. The Lord Ordinary, however, has been unable to discover in *Lord Saltoun's* case any authority for this construction of the statute; on the contrary, he has been unable to read the opinions, as reported, of the noble and learned Lords who took part in the determination of that case, without concluding not only that they did not proceed upon any such construction, but that, having regard to their reasoning, they must be held to have considered it unsound. Thus the Lord Chancellor (Campbell), after stating (p. 677 of Macqueen's Report) that 'in the present case the appellant is named and circumstantially described in the deed, he takes directly from the donor by virtue of the deed, and she unquestionably was the settler, disponer, or ancestor from whom, in one sense, his interest in the estate was derived,' goes on to observe—'I would not by any means presume to express any opinion beyond what was necessary for this particular case, but I may say that, in harmony with the decision which I venture to propose, viz., that here the maker of the settlement is the predecessor, and not the last preceding possessor, I consider it equally clear that if the appellant were to die leaving a son, the son would take by devolution, the appellant being considered his predecessor, and so it would go on by devolution from generation to generation till a new *stirps* came under the entail.' Nothing, as it appears to the Lord Ordinary, could well be more in point to the present case, for Carlos Pedro Gordon is not one of a new *stirps*, expressly called by the entailer in a certain event to succeed, but one of the heirs-male of the body of Mary Gordon, the head of the last *stirps*. If he had succeeded not in his order according to the legal rules applicable to his class as an heir-male of the body of Mary Gordon, but as a fresh *stirps* called by the entailer, or as expressly named in the deed of entail, he would be in the position of Lord Saltoun, and would, like him, have had the entailer as his predecessor; but here the heirs-male of Mary Gordon, of whom Carlos Pedro Gordon, the present possessor of the entailed estate, is one, must be held to have taken, and to take by devolution of law, each in his order being the predecessor of the one immediately following him, till, in the words of Lord Campbell, a new *stirps* 'came in under the entail.' In like manner Lord Cranworth, in *Lord Saltoun's* case, uses expressions equally, if not more clearly, calculated to exclude the construction of the Act contended for by the private party in the present case, for he says (p. 680 of Report)—'Where a successor derives his title by descent, whether as heir-general or as heir-in-tail, there, by a reasonable construction of the Act, the person from whom he claims as his ancestor is the predecessor, so that it then becomes unimportant to consider from whom the title was originally derived by settlement or will.' There are other observations, in the opinions of all the noble and learned Lords in *Lord Saltoun's* case, to the same effect, and in none of them can the Lord Ordinary find—although that case related to the succession of heirs under a deed of entail—that heirs must be heirs-at-law in order to render applicable the rule that, except in the case where a substitute is called by the entailer *nominatim*, or as the head of a fresh *stirps*, they are to be held to be respectively predecessor and successor to each other. Not only can the Lord Ordinary find no such construction pointed at in the report of the case of *Lord Saltoun* as applicable to heirs of entail, but he finds much in it to the contrary.

"On principle, and general reasoning also, as well as the authority of *Lord Saltoun's* case, the Lord Ordinary thinks that here Carlos Pedro Gordon must be held to have taken not by disposition, but by devolution of law. In a destination to heirs of the body of Mary Gordon, the deed of entail does not specify the individuals who are to succeed; and any person taking under a destination, as Carlos Pedro Gordon has done in the present case, must do so, not simply by force of the deed of entail, but by reason, further, of his being at common law the heir of the body of Mary Gordon. In the words of Lord Neaves in *Lord Saltoun's* case (Court of Session Reports, p. 133), 'the destination being in favour of a certain class

of legal heirs, which it is left to the law to work out, it seems reasonable to say that this series of persons would take by devolution of law, and might be held to derive right from the party to whom they are thus substituted in the character of heirs, the deed leaving it to the law to ascertain and fix their rights in relation to that party as their ancestor. In that view each of the heirs of this class would be held as the predecessor of the immediately succeeding proprietor, and would pay succession duty accordingly; and the same principle might, though not with equal force, apply to every class of legal heirs, such as heirs-male of the body, heirs-male,' &c. This view of the matter, besides being reasonable in itself, appears to the Lord Ordinary to be in accordance with the opinion of the noble and learned Lords who took part in determining *Lord Saltoun's* case, and more especially with the reasoning of the Lord Chancellor in that case.

"Without dwelling longer on the matter, the Lord Ordinary may state his ground of judgment in the present case, supported, as he thinks it is, by the case of *Lord Saltoun*, thus:—When the party who succeeds to an estate does so in respect of his having been called by the maker of the entail *nominatim*, or as one of a fresh *stirps*, he may be said to take by the express direction of the maker of the entail, who consequently is his predecessor, from whom his interest is derived; but, on the other hand, when the party who succeeds to an entailed estate does so not by the nomination of the entailer, or by his express direction as one of a fresh *stirps*, but as one of a class of a series of heirs in succession to a preceding heir of the same class, whether of the body male or female, or of other character, it must be held that his interest is derived from his immediate ancestor, who in that case must be held to be his predecessor. It is in accordance with the rule as thus stated that the Lord Ordinary has answered the questions submitted in the Special Case for the determination of the Court."

RUTHERFORD and Solicitor-General (CLARK), Q.C., for first parties.

WATSON and MILLER, Q.C., for second parties.

The Court adhered.

Agents for Reclaimers—Campbell & Lamond, C.S.

Agent for Respondent—Angus Fletcher, Solicitor of Inland Revenue.

Friday, July 19.

DUNCAN'S TRUSTEES *v.* SHAND.

Promissory-Note—Act 1696, *c.* 25.

A document which does not contain the name of a creditor cannot be sustained as a promissory-note, and is null under the Act 1696, c. 25.

This was an action at the instance of Mr Macdonald, general treasurer of the Free Church, and Mr James Balfour, W.S., as trustees of the late Dr Duncan, Professor of Hebrew in the Free Church College, against Miss Shand, residing in 25 Charlotte Square. The summons concluded for payment to the trustees by Miss Shand of the sum of £100, with interest, for which sum the pursuers stated Miss Shand had granted a promissory-note to the late Dr Duncan, which document they stated was in his possession at the date of his death. Miss Shand resisted the claim, on the ground that the note was not a valid document of debt, as it was silent as to the payee; also that a document blank in the creditor's name was struck at by the Act of 1696, c. 25. It was, moreover, alleged that Dr Duncan, as a recognition of kindness and pecuniary assistance afforded him in his student days in Aberdeen by Miss Shand's mother, had, when he became aware she was in difficulties, offered her the money, which she accepted, but that he had intended, and indeed stated at the time, that the money was not to be repaid to him. The defender further averred that, as she expected to receive a large sum of money from another source, which, however, has not yet been paid to her, she delivered to Dr Duncan the following document:—

"*Edinburgh, 2d February* 1869.—I promise to pay on demand the sum of one hundred pounds sterling, value received. ISABELLA SHAND."

She stated, moreover, that during Dr Duncan's lifetime, Mr Balfour had called upon her, and pressed her to repay the money, but that when she went to Dr Duncan about it, he had disapproved of Mr Balfour's conduct, and renewed his assurances that she would never be asked to repay either principal or interest. She also alleged that Dr Duncan wrote a letter to that effect, which she left with one of Mr Balfour's clerks to be handed to him. In addition, it was contended that the document was not left by Dr Duncan in his repositories, but had been removed therefrom without his knowledge or consent long before his death. The pleas in law for the defender were—(1) The document founded on was not a valid document of debt; (2) that it had been taken possession of by the pursuers without lawful cause, and was improperly in their custody.

The Lord Ordinary (MURE), before answer, allowed both parties a proof of their averments applicable to the possession by the late Dr Duncan of the promissory-note in question.

The defender reclaimed.

CAMPBELL SMITH for her.

TRAYNER for the defenders.

At advising—

LORD NEAVES—This is a case of some nicety and some importance. The action was brought at the instance of the trustees of the late Dr Duncan, and is directed against Isabella Shand. It is founded on what is said to be a promissory-note, said to have been granted by the defender, and intended to be delivered as a document of debt in favour of the late Dr Duncan, in these terms—(*reads document*). It is not said that this document is holograph, but it appears to be so, and that statement, if necessary, might be added to the record. The question is, whether that statement should avail the party founding on the document. Now, it appears to me that the document, as it stands, is not a promissory-note. It is a writing in which Isabella Shand promises to pay £100 on demand, but it is not said to whom the money is to be paid, and there is no creditor's name, therefore it is quite different from a common promissory-note. I take it to be the law that the name of the promissee must be set forth in the document. That is not done here. Whether it can be supplied is another question. The document is incomplete and inconclusive. Another separate objection is, that it is blank in the creditor's name.—It is silent as to the party to whom payment is to be made.

The answer to this is, that there are cases in