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, holding 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.

Tuesday, July 18.

FIRST DIVISION.

SINCLAIR-WEMYSS, PETITIONER.

Nobile Officium—*Guardian and Ward—Powers of Tutor—Building of Mansion-house on Pupil's Estate and Borrowing on Security of Estate to Pay therefor.*

A tutor-nominate having applied to the Court for power to build a mansion-house on the pupil's estate, which was held under an entail, and for that purpose to borrow money on the security of the estate, on the ground that there was no mansion-house on the estate, that the pupil's father, now deceased, had intended to build one, and that it was desirable that the pupil should be brought up in the neighbourhood in which her property was situated, and that no suitable house for her residence was to be had in the district—the Lords *refused* the authority craved, on the ground that the proposal was neither necessary nor highly expedient.

George Sackville Sinclair-Wemyss of Southdun, in the county of Caithness, died on 30th March 1882. Previously to his death he had disentailed the estate of Southdun, but had not, as was his intention, executed a new entail, and the destination of the estate contained in the entail had therefore not been evacuated, though the estate was held by Mr Sinclair-Wemyss in fee-simple.

Mr Sinclair-Wemyss was survived by a widow and two daughters, the elder of whom was born in June 1879, and the younger in September 1880. By his disposition and settlement Mr Sinclair-Wemyss nominated his widow to be tutor and curator to his children, with all the powers pertaining to that office.

This petition was presented by Mrs Sinclair-Wemyss as tutor to her elder daughter, who was now proprietor of Southdun under the existing destination, for authority to build a mansion-house upon the estate, on a site selected and according to plans approved by her husband before his death for a mansion-house which he contemplated building. She also asked authority to borrow £3500 for that purpose upon the security of the estate, and to apply the surplus rents to that amount in defraying the cost of the mansion-house. The free rental of Southdun after deducting public burdens and interests on existing family provisions and other debts was £1175, but this was subject to an annuity in favour of the petitioner for £400, so that the pupil's clear annual income was £775.

It appeared from the statements made in the petition and at the bar that at one time Southdun was part of a larger estate, and that it had been disjoined therefrom about 1815, the larger part of the estate on which the mansion-house stood having come into other hands than those of the proprietor of Southdun. Thereafter for 40 years the proprietor of Southdun lived with a relative on an adjoining property, and so no mansion-house had been built on Southdun in his time. Mr Sinclair-Wemyss and his immediate predecessor Mr David Sinclair-Wemyss had both rented the mansion-house of Hempriggs, which was on the property adjoining Southdun, but at the time of the death of Mr Sinclair-Wemyss he had been informed that the proprietor of Hempriggs was about to resume possession of that house, and it was in view of that fact that he had procured the plan for a mansion-house on Southdun above referred to. At the time of presenting this petition the petitioner had been informed that her occupation of Hempriggs must shortly terminate. She averred—"It is absolutely essential, for the efficient management of the estate by the petitioner, as tutor to her infant daughter, the proprietrix, that she should reside upon or near the estate; and not only is there no residence upon the estate, but the petitioner is in a position to say, after making every inquiry, that there is none in the county which she could obtain as a tenant. Besides supplying a necessary want, a suitable dwelling-house for the owner would of course enhance the value of the property, at least in proportion to the cost of its erection. The two heirs next entitled to succeed to the said estate under the subsisting destinations are (1) the petitioner's second daughter, Marion Australie Sinclair-Wemyss, who was born on the 2d day of December 1880; and (2) Robert Dunbar Sinclair-Wemyss, lieutenant in the Gordon Highlanders, presently stationed at Anglesea Barracks, Portsmouth, the immediate younger brother of the said deceased George Sackville Sinclair-Wemyss, who is of full age, and who is most willing that the prayer of this petition should be granted."

No answers were therefore lodged.

Argued for petitioner—The only case in which it seemed to have been directly decided that a tutor cannot build a mansion-house on the pupil's estate was *E. of Hopetoun*, M. 5599, and the circumstances there, and the form in which the question arose, distinguished the case from the present. There was here a great expediency and a permanent benefit to the pupil's estate in the proposed erection of a mansion-house. It would give her the residence on the property she needed, and would increase the value of the estate if she ever wished to sell it. "Necessity" had been construed in such cases as the present to mean evident and positive advantage.

Authorities—Erskine, i. 7, 25; *Bellamy*, November 30, 1834, 17 D. 115 (borrowing on security of heritage to pay debt); *Somerville* (whole Court), February 6, 1836, 14 S. 451 (borrowing on security of pupil's estate); *Crawford*, July 6, 1839, 1 D. 1183 (borrowing on security of pupil's estate); *Tweedie*, January 16, 1841, 3 D. 369 (completing houses begun by the ancestor); *Vere* v. *Dale*, 1801, M. 16,389; and *Campbell*, July 17, 1867, 5 Macph. 1052 (feuing part of pupil's estate); *Lord Clinton*, October 30, 1875, 3 R. 62 (feuing part of pupil's estate). Other authorities—*Mackenzie*, January 27, 1855, 17 D. 314 (selling heritage to pay off heritable debt); *Campbell*, June 26, 1880, 7 R. 1032 (feuing part of pupil's estate); *Fogo*, December 14, 1877, 15 Scot. Law Rep, 221 (improving mansion-house on entailed estate).

At advising—

Lord President—I think that the import of all the cases taken together, and the practical result of the more liberal doctrine of recent cases, is, that to justify an application by a tutor for authority to borrow money to execute operations on the estate of the pupil, he must make out either a case of necessity, or such ob-