Along with his report Mr Walker lodged a specification of such a wall as he considered would be suitable.

The Lord Ordinary having made avizandum with Mr Walker's report, pronounced an interlocutor and note in the following terms:—

"The Lord Ordinary having heard counsel for the parties, and resumed consideration of the process, with the report by Mr Walker, No. 22 of process, Finds that the minister of the parish of Half Morton is entitled to have his manse garden inclosed with a wall; but that the wall decerned for by the Presbytery is of a more expensive description than is necessary or proper. Remits to the respondents, the Presbytery of Langholm, to recall their deliverances complained of, in so far as they relate to the approval of specifications and estimates for, or in reference to, the erection of a wall round the manse garden occupied by the respondent, the Rev. William Burnett, or to any assessment for or in connection with the estimated cost thereof; and with instructions to require the heritors of the parish of Half Morton to erect a wall round the garden of the manse of Half Morton, as recommended in Mr Walker's said report, and in conformity with the specification prepared by him, No. 24 of process, and that within such time as to the presbytery shall appear fitting and reasonable: Provided always, that the work, if undertaken by the heritors, shall be executed by them at the sight and to the satisfaction of the presbytery; and with instructions to the presbytery that, failing such undertaking and performance on the part of the heritors, the presbytery shall receive such estimates as may be necessary towards the erection of the said wall, in conformity with said report and specification by Mr Walker, and thereafter to proceed further according to law, and decerns accordingly, and finds neither party entitled to expenses.

(Signed) "E. F. MAITLAND.

"*Note.*—The suspender objects to the competency of the deliverance of the presbytery, on the ground that it did not proceed upon a report that a garden was expedient or necessary. The Lord Ordinary is of opinion that in a case like the present, where there never was a garden wall, such a preliminary report was not necessary in order to entitle the presbytery to procure specifications and estimates and proceed upon them. At the debate the suspender took a separate objection to the presbytery's deliverance of 27th February, on the ground that it remitted to the architect to prepare specifications and estimates 'in terms of the report given in by him at last meeting,' while, in point of fact, his former report did not refer to the garden wall at all. This is undoubtedly an inaccuracy in the deliverance, but the Lord Ordinary does not think it is of such a kind as to invalidate the action of the presbytery in the matter if otherwise competent.

"The Lord Ordinary does not think that the existence of a common thorn hedge, without a wall of any kind, can be held to fulfil the obligation upon the heritors to inclose the manse garden—Connell Par., 292; Ersk. ii, 10, 57. That obligation being, as he thinks, unfulfilled, he is of opinion that the proper course is to require the heritors to erect a suitable wall, of a permanent kind. But there seemed to be room for question as to whether the wall for which the presbytery decerned was not of a more costly description than heritors can be legally compelled to erect, and a remit was made to Mr Walker to report on that matter. His report shows that the proposed wall was of a considerably more expensive kind than the minister is entitled to require.

"No expenses are given to either party. The complainer has been unsuccessful in his main contention that the minister was not entitled to a garden wall; but the present proceedings have given him a substantial remedy which he could not otherwise have procured. (Initd.) "E. F. M."

Parties acquiesced.

Counsel for Suspender—J. M. Duncan. Agents—Jardine, Stodart, & Frasers, W.S.

Counsel for Respondents—A. S. Cook. Agents—Paterson & Romanes, W.S.

(Before Lord Ormidale.)

LORD ADVOCATE *v.* HOME DRUMMOND.

Revenue—Succession Duty Act—Entail. An estate was entailed on A and the heirs whatsoever of his body, whom failing on B (A's sister), whom failing on C *nominatim*, her eldest son, and the heirs whatsoever of his body &c. A died without heirs of his body and B succeeded. B died and C took the estate. In a claim by the Crown for succession-duty, *held* (by Lord Ormidale, and acquiesced in), that C being a *nominatim* substitute, the case of *Lord Advocate* v. *Sultoun* applied, and that C, as taking by disposition from the maker of the entail, was liable in duty at the rate of 3 per cent.

This was a special case presented to the Court for judgment on the amount of succession-duty on the lands of Ardoch, payable, on the death of Mrs C. S. Moray or Home Drummond, by George Stirling Home Drummond, Esq., her eldest son, and her successor in the entailed estate of Ardoch.

The case narrated that in 1849 William Moray Stirling, of Abercairney and Ardoch, executed an entail of the lands of Ardoch, the destination being "to myself and the heirs whatsoever of my body; whom failing, to the said Mrs Christian Moray or Home Drummond," (his sister, and wife of Henry Home Drummond, Esquire of Blair-Drummond); "whom failing, to the said George Home Drummond, her eldest son, and the heirs whatsoever of his body; whom failing, to the said Charles Home Drummond, second and youngest son of the said Mrs Christian Moray or Home Drummond, and the heirs whatsoever of his body; whom failing, to Her Grace Anne Duchess of Atholl, my niece, only daughter of the said Mrs Christian Moray or Home Drummond, and wife of His Grace George Augustus Frederick John Duke of Atholl, and the heirs whatsoever of her body."

William Moray Stirling died in November 1850, without heirs of his body, and Mrs C. S. Moray or Home Drummond, the first substitute in the entail, was served heir of tailzie and provision in special of the entailer, and was infeft in January 1852. She died in November 1864, and the defender, George Stirling Home Drummond, thereafter presented a petition to the Sheriff of Chancery at Edinburgh, upon which the Sheriff, narrating the said petition, found, *inter alia*, that "the petitioner is the eldest son and nearest lawful heir of tailzie and provision in special of the said Mrs Christian Stirling Moray or Home Drummond, his mother," and therefore the Sheriff served him "nearest lawful heir of tailzie and provision in special of the said Mrs Christian Stirling Moray or Home Drummond, his mother, in the lands and others above described."

At the time of the execution of the entail Mrs Christian Stirling Moray or Home Drummond had arrived at the age of sixty-nine years, and she had no other children than those named in the entail, viz., the defender, his younger brother Charles Home Drummond, and his sister, now the Duchess Dowager of Atholl. Mrs Christian Stirling Moray or Home Drummond never had any other children.

The case further narrated that in the year 1809 the late Mrs Anne Moray Stirling of Ardoch executed an entail of that estate. The destination in the procuratory of resignation in this deed is to "myself, and the said Charles Moray Stirling, my husband, and longest liver of us, in liferent, and to the said William Moray, our second son, and the heirs male of his body, in fee; whom failing, to Charles Moray, third son procreated betwixt the said Charles Moray Stirling and me, and to the heirs whatsoever of the body of the said Charles Moray; whom failing, to any other son or sons to be procreated betwixt the said Charles Moray Stirling and me, successively in their order according to their seniority, and to the heirs whatsoever of the body of such son or sons respectively; whom failing, to James Moray, eldest son procreated betwixt the said Charles Moray Stirling and me, and the heirs whatsoever of the body of the said James Moray; whom failing, to Christian Moray" (the defender's mother), "eldest daughter procreated betwixt the said Charles Moray Stirling and me, and the heirs whatsoever of her body,' &c. At the date of that entail Christian Moray was not married. She was married in April 1812. The said William Moray, afterwards William Moray Stirling, died on the 9th November 1850, without heirs of his body. The said Charles Moray predeceased the said William Moray Stirling, without heirs of his body, and no other sons of the above marriage were born after the said Charles Moray. The said James Moray, the eldest son of the above marriage, also predeceased the said William Moray Stirling, without heirs of his body.

In 1849 William Moray Stirling disentailed the estate of Ardoch, with consent of Mrs Moray or Home Drummond, her husband for his interest, and her two sons, the defender and his brother, and then re-entailed it by the deed of which the destination is given above. The object of this transaction appeared to be to free the succession to Ardoch from a condition in the former entail, that in the event of the heir in possession of Ardoch succeeding to Abercairney, which was destined to the same series of heirs, he should convey Abercairney to his second son, which condition was omitted in the second entail.

By 16 and 17 Vict., cap. 51, sec. 2, the income of property to which a person becomes beneficially entitled by reason of a disposition, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person, are each a succession, and the predecessor is described as follows; "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."

The Lord Advocate now claimed succession-duty upon the defender's succession to the said lands of Ardoch and others at the rate of 3 per cent., according to his relationship to William Moray Stirling, on the authority of the judgment of the House of Lords in the case of the *Lord Advocate* v. *Baron Saltoun*, 3 Macqueen, 659.

The defender maintained that he was liable to succession-duty only at the rate of 1 per cent. on his succession, in respect that he took the succession by devolution by law from his mother; and that, even supposing the rule to be that in cases in which a substitute is called, either *nominatim* or by designation, as the head of a new stirps, the successor takes by disposition of property, yet that rule must be qualified so as not to be made to apply to cases of direct descent from parent to child. In every such case, although the child be called *nominatim* or by designation, the case is one of devolution from parent to child, and the duty must be assessed accordingly. Farther, if the defender had succeeded under the entail of 1809, in the destination of which he was called as heir of the body of his mother, Christian Moray, he would undoubtedly have taken the estate by devolution of law, and would have paid only 1 per cent. duty. By his consent that entail was broken, and the estate re-entailed on the same series of heirs, but the defender being now the ascertained nearest heir of the body of Christian Moray, the destination was altered in terms, and the defender's name was inserted. This ought not to prejudice the defender. He still succeeded as heir of the body, by *devolution of law*, and to hold that the mere fact of his being named in the new deed made him take by *disposition*, would be to decide entirely according to form, and to disregard entirely the substance of the transaction.

Solicitor-General Millar and Rutherfurd for Lord Advocate.

Fraser and Spittal for defender.

The Lord Ordinary (Ormidale) pronounced this interlocutor:—

"*Edinburgh 16th July*, 1867.—The Lord Ordinary in Exchequer Causes, having heard counsel for the parties, and considered the argument and proceedings, Finds that the entailer, William Moray Stirling, is the predecessor of the defender within the meaning of the Act 16 and 17 Vict., cap. 51, and therefore that succession-duty is due by the defender at the rate of 3 per cent., and decerns accordingly in terms of the information, No. 4 of process: Finds the defender liable in expenses: Allows," &c.

"*Note*—The defender takes in the present instance not by devolution of law, but in virtue of the express nomination of the maker of the entail, by whom he is constituted a fresh stirps. It appears, therefore, to the Lord Ordinary that the decision in *Lord Advocate* v. *Saltoun* is a precedent in point, and must rule the present case. The circumstance that the defender happens to be an heir of the body of Mrs Christian Moray or Home Drummond cannot, in the Lord Ordinary's opinion, be allowed to affect the matter, and neither does he think that the former entail founded on by the defender can be competently taken into view."

The defender acquiesced.

Agent for Lord Advocate—Angus Fletcher, Solicitor of Inland Revenue.

Agents for defender—Jardine, Stodart, and Frasers, W.S.

Saturday, November 9.

SECOND DIVISION.

RODGER *v.* CRAWFORDS.

Lease—Assignation—Competition—Registration of Long Leases Act—Possession—Statutory Form of Assignation and Notarial Instrument. 1. In