pattern, and guaranteed equal in all respects to Macfarlane's goods,' and that the pipes were to be delivered free alongside at Glasgow: Find (3) that said pipes were made and delivered alongside the 'Fire King' at Glasgow. carried to Liverpool, and there transhipped for Buenos Ayres, and that the pursuers paid the price thereof to the defenders on delivery in March 1893: Find (4) that it is neither averred nor proved that the pursuers could not have examined the pipes so as to ascertain whether they were conform to contract either at Glasgow or Liverpool: Find (5) that previous to 20th May 1893 the pipes had been examined at Buenos Ayres, and that up to and including 10th July thereafter the said pipes were not rejected as disconform to order, and that no details of such disconformity were given before January 1894: Find in law that the pursuers did not timeously reject said pipes, and are not entitled to repayment of the price, or to damages, as concluded for: Therefore assoilzie the defenders, and decern,' &c.

Counsel for the Pursuers—Asher, Q.C. —Younger. Agents — Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders—Ure—Clyde Agents—Simpson & Marwick, W.S.

HOUSE OF LORDS.

Thursday, May 30.

(Before the Lord Chancellor (Herschell), Lord Watson, Lord Ashbourne, Lord Macnaghten, and Lord Shand.)

INGLIS *v.* GILLANDERS.

(*Supra*, p. 164.)

Succession—Trust-Disposition and Settlement—Entail—Direction to Entail Lands on Heirs of Entailed Estate—Disentail.

In his trust-settlement a testator directed his trustees to execute a deed of entail of his estate of Newmore to and in favour of a series of heirs therein specified, "whom failing to my nephew J F G, Esquire, of Highfield, and failing the whole persons above specified, then from respect to my deceased grandfather G G, Esquire, of Highfield, to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in said entail in the order set down in said entail successively, declaring that my object and intention is that, failing the above series of heirs named by me, then the said lands and estate hereby conveyed are to be held by the heir of entail of the estate of Highfield along with the said estate of Highfield."

In a codicil the truster expressed the desire that it should be understood that the destination to J F G, "who is now in possession of the estate of Highfield under the entail thereof," as well as the "subsequent destination to the heir of entail in possession of the said estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in the said entail," was made by him out of respect to the memory of his late grandfather G G of Highfield.

The trustees executed a deed of entail by which they disponed the lands of Newmore to the series of heirs other than the heirs-of-entail of Highfield in the words of the destination contained in the trust-deed, "whom failing to J F G, Esquire, of Highfield, who is the heir now in possession of the estate of Highfield under the entail thereof executed by G G, Esquire, of Highfield, . . . and failing the said J F G, then to the other heirs-substitute in said entail of Highfield in the order set down in said entail respectively, viz." — the heirs-substitute in the Highfield entail being then enumerated in their order.

The heir of entail who succeeded to the estate of Highfield after J F G, disentailed that estate, and conveyed it to trustees for behoof of a series of heirs different from those called to the succession in the original entail.

Held (*aff.* judgment of Second Division) that the testator, in directing the estate of Newmore to be entailed on the heirs-substitute in the Highfield entail, had not made it a condition of their right to succeed to Newmore, that when the succession opened to them they should be in possession of Highfield as heirs of tailzie, and therefore that the trustees had acted in conformity with the testator's directions in making the destination to the heirs of entail of Highfield in the terms above specified, and that that destination did not become inoperative when the estate of Highfield was disentailed.

Reported *supra*, p. 164.

The pursuer appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, I have had an opportunity of considering the opinion which my noble and learned friend Lord Watson is about to express, and it is only necessary for me to state that I entirely concur in the views contained in that opinion.

LORD WATSON—My Lords, the appellant and pursuer of this action is the heir in possession of the estate of Newmore in the county of Ross, under the fetters of an entail executed in October 1869, and thereafter duly recorded by the testamentary trustees of the late Francis Mackenzie Gillanders of Newmore, in pursuance of directions to that effect contained in his trust-settlement dated the 5th August 1858, and relative codicil dated the 9th July 1860.

The object of the suit is to establish that the appellant is the last heir of destination subject to the fettering clauses of the entail, and is therefore proprietor of the estate in fee-simple. He does not dispute that under the deed of entail as executed a series of tailzied substitutes are called after him; but he maintains that the unconditional introduction of these heirs-substitute into the destination was not warranted by the terms of the trust. The action concludes for reduction of the destination in so far as it relates to these heirs.

The Lord Ordinary (Kyllachy) found that the destination was to that extent disconform to the directions of the trust, and gave the appellant decree of reduction. This judgment was reversed by the learned Judges of the Second Division, who assoilzied the respondents. I concur in that result, but I have not found it necessary to consider all the reasons which were assigned for it by Lord Rutherfurd Clark in delivering the judgment of the Court.

In the argument addressed to us no serious controversy was raised in regard to the duty cast upon the trustees by the directions of the truster. His trust-deed contains a specification of the line of heirs whom he intended to take successively under the entail which he directed to be made. In settling the terms of the destination to be inserted in the deed of entail, the trustees were not bound to adopt the *ipsissima verba* of the deed of trust. On the other hand, they would not have been justified in framing the tailzied destination so as to disturb any right conferred by the language of the trust-deed, or to create any beneficial interest which would not have arisen had its language been strictly followed. I did not understand the respondents to dispute that if such an interest had been created by the trustees to the prejudice of the appellant, in their endeavour to carry out the directions of the truster, the deed of entail would be, to that extent, reducible at the appellant's instance.

I have been unable to accept the argument maintained for the respondents to the effect that the line of destination prescribed by the deed of trust was altered or modified by the codicil of 9th July 1860. In my opinion, the sole effect of the codicil is to reaffirm and emphasise the motives which induced the truster to direct that, failing his kindred of the Inglis family, the succession under the Newmore entail was to devolve upon the successors of his grandfather George Gillanders under the entail of Highfield. I therefore prefer to rest my judgment upon the terms of the destination contained in the trust-deed, which appears to me to embody the whole intentions of the testator with respect to the line of heirs to be called in the entail. I am of opinion that, had the deed of entail repeated verbatim the language used by the testator to describe the heirs whom he preferred, the appellant would have occupied the same position, and the posterior substitutes whom he seeks to displace would have had the same *jus crediti* as he and they respectively occupy and possess under the deed of entail as executed.

I now proceed to consider the terms of the trust-deed; and shall notice in the first place those branches of the destination in regard to which there is no controversy. The institute is the testator's niece Katherine Falconer Gillanders or Inglis, and to her there are substituted successively her eldest son George and the heirs-male of his body; whom failing, her second son John Gillanders and the heirs-male of his body; whom failing, her third son William and the heirs-male of his body; whom failing, the heirs-male of the body of the institute; whom failing, James Falconer Gillanders of Highfield, the nephew of the testator.

Katherine Falconer Gillanders or Inglis, the institute, survived the testator, and was the first to take under the entail of Newmore. She died in 1872 and was succeeded by her son George, the present appellant, who is now the only person in existence who could claim to succeed under that part of the destination which I have narrated. James Falconer Gillanders, the last of these substitutes, was at the date of the trust-deed heir of entail in possession of the estate of Highfield, which he continued to hold in that character until his death in the year 1881. He was succeeded by his son George, who has disentailed the estate of Highfield, and has conveyed it to trustees for behoof of a series of heirs other than those who would have been entitled under the tailzied destination. But for that circumstance the claim of the appellant to the character of last heir-substitute under the entail of Newmore could not have arisen.

The second part of the trust-destination, to which the present controversy relates, I think it better to quote at length. It runs thus—"and failing the whole persons above specified, then from respect to my deceased grandfather George Gillanders, Esquire, of Highfield, to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in said entail in the order set down in the said entail successively." These words, which exhaust the line of inheritance, were held by the Lord Ordinary "to be a destination in favour of the persons who should possess, when that part of the destination opened, the character of heirs of entail of the estate of Highfield under the Highfield entail." If that were in my opinion the true construction of the clause I should agree with his Lordship when he goes on to say, "that being so, I think it follows that that part of the destination is no longer operative, because the Highfield entail is no longer in existence."

But it appears to me that the words in question cannot be legitimately read as importing a single substitution to that effect.

Omitting the statement of the testator's motive, which cannot in my opinion affect their legal construction, they contain two distinct substitutions separated by the word

"and," which in that connection is the precise equivalent of "whom failing." The first branch, on the failure of all the heirs previously named and the heirs-male of their bodies, calls to the succession the heir in possession for the time being under the entail of Highfield. That is the only designation given of the substitute called, and it is obvious that since the disentail of Highfield the substitution has become void, because there can be no heir answering the description. If that had been the last substitution contained in the trust-deed, the validity of the claim now made by the appellant would have been beyond question. But it is followed by another substitution, which brings in *per aversionem* "the other heirs-substitute in the said entail in the order set down in said entail successively." That description brings into the Newmore line of succession, by reference, the heirs named in the entail of Highfield other than those who have already failed or other than an heir of entail in possession of Highfield who may have already succeeded to Newmore under the entail directed by the testator. It is not made a condition of the right conferred on these substitutes that an heir in possession under the entail of Highfield shall previously have succeeded under the entail of Newmore, nor is it made a condition of their right that at the time when the succession opens to them they must be in possession of Highfield as heirs of tailzie. All that an heir claiming under the last branch of the trust-destination now requires to show is that he possesses the character of an heir-substitute designated in the deed of entail under which Highfield was held at the date of the trust-deed, and that the heirs called in priority to him by the Highfield entail have failed. The effect of that construction, as was pointed out by the appellant's counsel, is to bring in under the last an heir who would have taken under the preceding substitution if the entail of Highfield had not been extinguished; but that is a result which appears to me inevitably to follow from the language used by the testator.

For these reasons, I am of opinion that, although the substitution of an heir in possession of Highfield has become ineffectual, there still remains a valid substitution of the heirs called by the Highfield deed of entail; and that the judgment of the Court below must therefore be affirmed.

LORD ASHBOURNE—My Lords, I entirely concur in the opinion expressed by my noble and learned friend Lord Watson, which I have had an opportunity of reading and considering.

LORD MACNAGHTEN—My Lords, I am of the same opinion.

LORD SHAND—My Lords, I also have had a similar opportunity and I entirely concur in the opinion and in the reasons which my noble and learned friend has given for the affirmance of the judgment of the Court below.

Interlocutor appealed from affirmed, and appeal dismissed with costs.

Counsel for the Appellant—Lord Advocate Balfour, Q.C.—D.-F. Sir Charles Pearson, Q.C. Agents—Loch & Company—Dundas & Wilson, C.S.

Counsel for the Respondent—Asher, Q.C.—C. S. Dickson. Agents—A. & W. Beveridge—Hamilton, Kinnear, & Beatson, W.S.

COURT OF SESSION.

Friday, May 31.

FIRST DIVISION.

[Court of Exchequer.

COUNTY COUNCIL OF LANARK *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Stamp-Duty—Exemption—Local Authority—Bond by County Council—Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *secs.* 11 *and* 17—*Lanarkshire (Middle Ward District) Water Act* 1892 (55 *and* 56 *Vict. cap.* 169)—*Public Health (Scotland Act* 1867 (30 *and* 31 *Vict. cap.* 101), *sec.* 120.

Section 11 of the Local Government Act of 1889 transferred to the council of each county the whole powers and duties of local authorities under the Public Health Acts of parishes within the county (excluding burghs and police burghs). Section 17 provided that for the purposes of administration of the laws relating to public health each county should be divided into districts, and that for each district there should be a district committee which should be the local authority under the Public Health Acts and as such should have within the district all the powers and duties transferred to the county council with respect to the administration of the laws relating to public health, subject *inter alia* to the provision that a district committee should have no power of raising money by rate or loan. Powers of rating and borrowing are conferred by the Act upon the county councils.

Section 120 of the Public Health Act of 1867 provides that bonds and other writings granted by or to local authorities under the Act shall be exempt from stamp duty.

Held (1) that for borrowing purposes the County Council is the local authority within each county under the Public Health Acts, and therefore that a bond granted by a county council for money borrowed by it for public health purposes was exempt from stamp duty; and (2) that, where a Special Act transferred the administration of a water supply district to the district committee of the county council, and provided that the county council should have the power of borrowing for the pur-