A subsequent disentailing deed was made on the 31st January, 1877, by Alexander Brown and Mary Brown, the vendor, to a trustee for the benefit of Mary Brown.

A. W. Brown, Hamilton, for vendor.

W. T. Evans, Hamilton, for purchaser.

MEREDITH, J.—The first objection to the vendor's title is that the devisee Alexander Brown took, under the will, an estate tail, and by deed effectually barred the entail.

If that were so, then the vendor would seem to have title by length of possession.

But, in my opinion, that devisee took a life estate only, and the estate tail male is devised to the vendor, she being the only daughter of that devisee, and "his present wife," who survived them. The survivorship is clearly of that devisee and his said wife, not of the testator.

Whether the word "now" refers to the date of the will, or, as more likely, to the time of the testator's death, the recitals in the deeds, the declaration furnished, and the possession of the land since the testator's death, shew that the land in question is that comprised in the devise in question.

It is to be observed that neither that devisee nor any one else seems ever, until after the contract in question was made, to have claimed or supposed that he took more than a life estate, or that the land in question is not that which the testator described as that whereon he "now" resides. The deed in question was executed by that devisee as life tenant, and he is therein recited to be, and is throughout described as, such.

The deed in question was made and registered in the year 1870; there seems to have never been any possession, or claim of any character made, under it; and, being on the face of the registered title deeds ineffectual, it does not stand in the way of the completion of the purchase. It would be different if any claim were being made under it so that the case would be one of selling and buying a lawsuit, as well as the land, if the contract were carried out.

Then as to the objection upon the ground that the devise to the vendor is subject to the provision that she continues to bear the testator's name during her life. There has been no breach of it yet; and it is said that such a condition cannot be attached to an estate in fee simple, and that a tenant in tail by barring the entail and enlarging his estate into a fee simple defeats a condition for taking and using the testator's name: see Jarman on Wills, 5th ed., pp. 890 and 900, and Re Cornwallis, 32 Ch. D. 388; and from one point of view at all events there appears to be a restriction of the