

Counsel for the Defenders—The Lord Advocate, Mr Hector, and Mr R. Lee. Agents—Messrs Hamilton & Kinnear, W.S.

This case arises out of a question of disputed boundary in a proposed mineral lease by the pursuer, Mr Steuart of Carfin, to the defenders, the Mossend Iron Company; and the following are the issues:—

“Whether the Muirpit dyke, in so far as it is described in the lease No. 5 of process as a northern boundary of the mineral field thereby let, is situated to the south of the pursuer's pit, marked 6 on the Ordnance plan, No. 124 of process; and whether the defenders have wrongfully failed to implement their part of the said lease, to the loss, injury, and damage of the pursuer.” Amount claimed, £7425. Or,

“Whether the defenders subscribed the said writing (No. 5 of process) under essential error as to the situation of said Muirpit dyke?”

On the calling of the case to-day, Mr Broun, for the pursuers, put in a minute consenting to the case being disposed of upon the same footing and to the same effect as if a verdict had been returned for the defenders under both issues; and the authority of the Court having been interposed thereto, the case was accordingly taken out of Court.

#### BISHOP v. RUSSELLS.

Counsel for Bishop—Mr Monro and Mr Macdonald. Agents—Messrs Ferguson & Junner, W.S.

Counsel for Russells—The Lord Advocate and Mr Orr Paterson. Agents—Messrs J. & A. Peddie, W.S.

In these conjoined actions the parties were John Bishop, miner, Armadale, Bathgate, and the representatives of the late Thomas Russell of Fauldhouse. The issues sent to trial were as follows:—

##### I. Issue for the said John Bishop.

“Whether, on or about 29th April 1851, the late Thomas Russell let to the said John Bishop and the now deceased John Weir, residing at Govan, the coal of the Benhar seam on the farm of Fauldhouse Hills, under exception of the part thereof which belongs to the Duke of Hamilton; and whether the lease of date 2d June 1859, granted by the said William Russell and others, the representatives of the said deceased Thomas Russell, to George Simpson, residing at Hartfield, and the possession had by him thereon down to 30th March 1864, was to the loss, injury, and damage of the said John Bishop?”

Damages laid at £3000 sterling.

##### II. Counter-issues for the said William Russell and others.

1. “Whether the name ‘Thomas Russell,’ adhibited to the document, No. 34 of process, is not the genuine signature of the late Thomas Russell, Esq. of Fauldhouse?”
2. “Whether the name ‘George Clark’ and ‘William Storry,’ adhibited to the document, No. 34 of process, as attesting witnesses, or either of them, are not the genuine signatures of George Clark, writer in Bathgate, and William Storry, apprentice to the said George Clark, respectively?”
3. “Whether the document, No. 34 of process, is not the deed of the late Thomas Russell, Esq. of Fauldhouse?”

The jury, after two hours' absence, returned a unanimous verdict for the defenders in the first issue, and for the pursuers in the counter issues.

Monday-Thursday, April 2-5.

(Before the Lord President).

THOMS v. THOMS (*ante*, p. 82).

*Reduction—Fraudulent impetration of a deed.* In an action of reduction of a deed on the ground

that it had been fraudulently impetrated from the granter—verdict for the defender.

Counsel for Pursuer—Mr Patton, Mr Gifford, and Mr Balfour. Agent—Mr A. J. Napier, W.S.

Counsel for Defender—The Solicitor-General, Mr A. R. Clark, and Mr Shand. Agents—Messrs Hill, Reid, & Drummond, W.S.

In this case, John Thoms, residing at Seaview, St Andrews, immediate younger brother and heir-at-law, and also heir of tailzie and provision of the deceased Alexander Thoms of Rungally, in the county of Fife, was pursuer, and Miss Robina Thoms, residing at Rungally aforesaid, daughter of the said deceased Alex. Thoms of Rungally, was defender.

The issue sent to the jury was as follows:—

“Whether the general disposition and settlement by the now deceased Alexander Thoms, dated 23d January 1861, and of which No. 9 of process is an extract, in so far as it imports a conveyance of the lands of Rungally, was fraudulently impetrated from the said Alexander Thoms by the defender and Charles Welch, writer in Cupar, on her behalf, or one or other of them?”

The late Alexander Thoms of Rungally, who died on the 15th August 1864, left a settlement which was dated 23d January 1861, in which he conveyed to his illegitimate daughter “all and sundry the whole property, heritable and moveable, real and personal, of whatever kind and denomination soever” belonging to him at the time of his death, and the pursuer, who was brother of the deceased, sought to have it set aside in so far as regarded the estate of Rungally. This estate was entailed by the father of the deceased; but in consequence of a flaw which the entail contained, it was contended that he had power to dispose of the estate as he pleased. A great deal of evidence was led on both sides as to the terms on which Mr Thoms and his brother's family had lived—the witnesses on the one side maintaining that there was no break in the friendship, and that Mr Thoms' sayings and conduct indicated that he never had any intention of putting the estate past his brother's family; while on the other, witnesses were brought forward to depone to his great affection for his daughter, and to his having used expressions to the effect that his friends were building themselves up upon getting the property after his death, but they would find themselves much mistaken.

The LORD PRESIDENT, in charging the jury, said that the question before them was in reference to the deed of settlement made by Alexander Thoms on the 23d January 1861; and the question was whether that deed, in so far as it imported the conveyance of the lands of Rungally, was fraudulently obtained by the defender, and by Mr Welch for her, or one or other of them, from the deceased Alexander Thoms. They were not trying any question as to the other property of the deceased, which there could be no doubt he left to his daughter. The question had solely reference to Rungally. These lands were said to have been entailed. The deed of entail had been made by the father of Alexander Thoms in the form of a bad deed of entail, which did not impose any fetters upon his eldest son Alexander. Whether that was accidental or intentional he did not know, but it did not impose any fetters upon him. It was nevertheless a deed of entail, and any who succeeded after could be fettered by it; and if he had made no deed, it would have gone on as a perfect entail. Alexander made no other settlement except the deed of 1861. He had power to dispose of Rungally, not being fettered, and it was said that he disposed of it by the deed of 1861. In the general case, a deed in the form of the deed of 1861 was quite applicable, and well known as a deed that would convey every property belonging to the maker, if he had left no other deed to give a different construction, and if there were those circumstances which proved or showed that it was intended to make no other. They were to assume in this case that the deed imported the convey-