visions before conceived in favour of the children of this marriage are hereby declared to be in full satisfaction to them of all bairns' part of gear, legitim," &c. The words are, "which provisions before conceived in favour of the children of this marriage," and we must look to the earlier part of the deed to see what provisions are made for the children of the marriage, and what children of the marriage are so provided for? Now, we have a provision by which the granter undertakes and binds and obliges "himself, and the heirs of entail who shall succeed to him" in the entailed estates "to make payment to the child or children procreated of the said intended marriage other than and excluding the heir who shall succeed to the said Earl in the said entailed earldom, baronies, and others, and the representatives of those children who shall predecease the said Earl," of certain sums. Therefore there is an express exclusion of the eldest son from the provisions thereby made in favour of the children, and consequently by the conception of the deed it is the eldest son on whom the obligation is laid. He binds and obliges himself and the heirs of entail who shall succeed him. The person who succeeds as heir of entail is the eldest son, and he is to make provision for his brother and sisters. The clause is express, "other than and excluding the heir." That clause therefore fixes down the provisions, and not only so, but fixes the children to whom the clause which I have mentioned refers, the children who have had provisions conceived for them in the earlier part of the deed. The heir therefore being expressly excluded from the pecuniary provisions of that part of the deed, I can find no words in any other part of the contract which can in my opinion, on any fair construction, be held to constitute a provision of any kind made by the father for the eldest son, or making him a beneficiary in any respect under the marriage-contract. Upon that short ground I have come to the same conclusion as your Lordship, that the Lord Ordinary is right in the view which he has taken in the first part of his opinion relative to the construction of this clause, and it is not therefore necessary to enter into any examination of the more general questions raised by the parties and dealt with in the interlocutor. The question depends upon the construction of a clause which is very distinctly worded in the marriage-contract itself, and upon the fair construction of that clause I think the opinion which your Lordship has expressed is well founded.

Upon the other point, namely, the plea in bar, I also agree with your Lordship. There is no appearance of any knowledge on the part of the present Lord Kintore of the existence of a claim of this sort that could be made on his account. It was within three years after the death of his father that the question was raised, and I think both parties were plainly in ignorance of what the marriage-contract provided in that respect, or what the respective claims were to legitim. And as the Lord Ordinary points out, with the exception of the furniture in certain houses which the present Lord Kintore expressly states on the record his readiness to return, the annuities, and the £2000 which was presented by the present defender to the Countess of Kintore, the pursuer's wife, I think there is nothing that can be held substantially to amount to a taking possession of the movable estate or entering into any arrangement with reference to it which can bar the present Lord Kintore from raising this question. I think the principles which were laid down on that subject in the opinions in the case of *Lord Panmure*, in one branch of it, and in the case of *Keith*, are quite conclusive on that point.

Lord Adam—The question here depends primarily upon the construction of the clause in the antenuptial contract which is printed in the appendix; and the question is, whether or not Lord Kintore is included under the description in that clause of children of the marriage? Now, upon a construction of that clause I agree with your Lordship that "children of the marriage" there can only apply to those children in whose favour provisions are conceived in the preceding part of the contract. Now, the only suggestion which was made at the bar of any provision in Lord Kintore's favour was this, that his father and mother in the previous part of the contract had named tutors and curators to him, and had provided in a certain way for his upbringing while he was in pupillarity. My own view is that it is idle to call that a provision constituted in his favour in the sense of this contract. I think all the provisions in this contract instead of being in his favour are in one sense against his interest. He is in no sense a creditor under the contract or a beneficiary under the contract, and therefore I can only come to the conclusion that as no provision has been conceived in his favour in this contract, he is not included under the words "children of the marriage" in this clause, and that therefore his claim to legitim is not excluded by the clause.

Now, that appears to me to be the whole case that it is necessary for us to decide, and I think we are not called upon, and it would not be desirable in this case, to decide the other question which the Lord Ordinary has decided, viz., taking the case on the supposition that he had been included in the clause as one of the children of the marriage. I think it is quite unnecessary to enter upon that.

With reference to the other question—that of bar—I agree with your Lordships and the Lord Ordinary, and have nothing to add.

Lord Deas was absent.

Lord Shand having been absent at the debate, gave no opinion.

The Court adhered.

Counsel for Pursuer—J. P. B. Robertson—Darling. Agents—Murray, Beith, & Murray, W.S.
Counsel for Defenders—Sol.-Gen. Asher, Q.C.—Keir—Guthrie. Agents—Morton, Neilson, & Smart, W.S.

Friday, June 20.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

DUNLOP AND ANOTHER *v.* DUKE OF HAMILTON.

Property—Servitude—Excambion—Reservation of Liberty to Work Minerals—Incorporeal Right.

By contract of excambion a proprietor conveyed lands which contained minerals to

a neighbouring proprietor in exchange for others of equal value, reserving to himself and his heirs and successors in the lands obtained in exchange for them, "if conveyed with that privilege," the liberty of working the minerals, under the declaration that he or they should have no right to use the surface for that purpose, but must work them from other lands which might belong to him or them. Thereafter he conveyed to a purchaser the lands he obtained in exchange without any mention of the "privilege" of working the minerals so reserved. *Held*, in a question raised more than eighty years afterwards, between his heir and the successor of the neighbouring proprietor, that the reserved right of working the minerals was a right of property therein, subject to the restriction that the surface should not be entered on, and not a mere privilege of the nature of a servitude which might be lost by non-use during the prescriptive period, or which had fallen by the conveyance, without mention of the privilege of the lands received in exchange.

John Dunlop of Rosebank acquired the lands of Smiddy Croft by disposition dated 9th November 1792. In 1793 the Duke of Hamilton and Dunlop entered into a contract of excambion of certain lands. As the ducal estates of Hamilton were entailed, the excambion had to be preceded by an application in the Sheriff Court for authority to enter into it under the Montgomery Act (10 Geo. III. c. 51), which was accordingly done by joint-petition to the Sheriff of Lanarkshire by both of the contracting parties. The Sheriff having, in terms of the Act, remitted to two persons of skill to inspect and adjust the value of the lands proposed to be excambed, and to settle the marches and report, authorised the excambion in terms of the report, which stated the lands proposed to be excambed to be of equal value, and recommended the reservation of minerals after mentioned. The parties then concluded a contract of excambion whereby, on the narrative, *inter alia*, that Dunlop was proprietor of the lands of Smiddy Croft, nearly adjoining to the policy and pleasure-grounds of Hamilton Palace, and that the Duke was on that account desirous of acquiring them, and was willing to excamb for them a part of equal value of his lands of Mid and East Coatts, Dunlop disponed in excambion to the Duke part of the lands of Smiddy Croft, with this reservation, viz. —"Reserving to the said John Dunlop and his heirs and successors in the foresaid parts of the lands of Mid and East Coatts, if conveyed with that priviledge, the liberty of working coal and other metals, fossils, and minerals in the foresaid parts of the lands of Smiddy Croft above disponed, by pitts, shanks, or eyes put down in such lands adjoining to the said lands of Smiddy Croft as they may acquire hereafter; but declaring allways, as it is hereby particularly declared, that they shall have no liberty to pitt, shank, or make eyes, roads, ways, or passages to or from the same, for working of any coal, or other metals, fossils, and minerals upon the surface of the foresaid part of the lands of Smiddy Croft, unless by the express consent of the said Duke, his heirs and successors therein." The Duke on his part disponed in excambion to Dunlop certain parts of the lands of East and Mid Coatts, which lay at a corner of his estates, distant from the policy and pleasure grounds. The minerals therein were then let to tenants named Farie, and the contract of excambion reserved the minerals to the Duke in the following terms: —"Reserving to the said Duke, his heirs and successors, the liberty of working coal and other metals, fossils, and minerals in the foresaid parts of the lands of Mid and East Coatts above described, and of making roads, ways, and passages to and from the said workings, the said Duke or his foresaids, or their tacksman of the said works, being obliged to pay to the said John Dunlop, his heirs and successors, for such surface damage as they may incur by the said workings and roads to and from the same, according as the said damages shall be ascertained by two men to be mutually chosen by the parties, and that this reservation as to surface working and roads, ways, and passages shall continue during the present lease allenarly set of the said coals to James Farie senior and James Farie junior of Farm, in terms of the said leases; and also reserving to the said Duke, his heirs and successors, after the expiration of the leases to the said James Farie senior and James Farie junior, liberty of working whatever coal, and other metals, fossils, and minerals, may remain in the foresaid parts of the lands of Mid and East Coatts above described, by pitts, shanks, or eyes put down in their grounds, or such others as they may acquire adjoining to the lands above disponed to the said John Dunlop; but not to pitt, shank, or make eyes, roads, ways, and passages for such workings upon the surface of foresaid grounds after the expiration of the leases to the said James Farie senior and James Farie junior, unless by consent of the said John Dunlop, his heirs and successors."

John Dunlop took infeftment by instrument of sasine in the lands of East and Mid Coatts disponed to him by the contract of excambion. In 1801 he sold to David Dale his estate of Rosebank, along with the parts of the lands of East and Mid Coatts conveyed to him by the Duke. There was no mention in the transaction of the minerals in Smiddy Croft reserved to him by the contract of excambion.

Dunlop died in 1820. The pursuer of this action, James Dunlop of Tollcross, as his grandnephew, was his nearest and lawful heir, and expede a service to him as such.

In July 1883 the present action of declarator, interdict, and payment was raised by James Dunlop and James Wyllie Guild, C.A., in Glasgow, the trustee under a trust-deed granted by James Dunlop & Company, ironmasters in Glasgow, and the said James Dunlop (who was the sole partner) as an individual, against the Duke of Hamilton, a successor of the Duke with whom the contract of excambion was made. The conclusions of the summons were for declarator that the whole coal and other metals, fossils, and minerals in and under so much of the lands of Smiddy Croft as was conveyed to John Dunlop by the contract of excambion, belonged to and were vested in John Dunlop at the time of his death, and now belonged in property to the pursuers, and that they had "the sole and exclusive right of working, winning, and carrying away the said coal," subject only to the conditions in the contract of excambion; for interdict against the defender working the coal himself or by ser-

vants or tenants; for decree ordaining the defender and his servants and tenants to remove from all pits, mines, workings, ways, and levels therein; to account for his intromissions with the coal and other minerals; and for payment of £20,000 as the balance of his intromissions.

The pursuers alleged that the minerals of Smiddy Croft had remained vested in John Dunlop till his death in 1820, and that the pursuer James Dunlop had now right thereto; further, that neither the defender nor any of his predecessors had in any way possessed these minerals, or let or worked them either during the life of John Dunlop or since his death till within a few years of the raising of this action; that the defender had recently let the coal in certain lands adjoining Smiddy Croft to be drawn through the mineral strata under these lands; and that he had recently let the minerals in Smiddy Croft itself to a tenant, who was in course of working the same.

The defender admitted that he had recently let the minerals in Smiddy Croft to a tenant. He set forth that he had, after acquiring the *dominium utile* of Smiddy Croft, consolidated the same with the superiority thereof, of which he was already the proprietor, and had possessed the said lands for upwards of the prescriptive period on the consolidated title.

The pursuers pleaded—"(1) John Dunlop having acquired the minerals in question by the disposition of 9th November 1792, and never having been divested thereof, the pursuer James Dunlop, as his nearest and lawful heir, is in right of the said minerals, and as the defender has let the same and otherwise intromitted therewith, and disputes the pursuers' right thereto, the pursuers are entitled to have decree in terms of the conclusions of the summons. (2) Upon a sound construction of the said contract of excambion, the property of the minerals in and under the lands of Smiddy Croft therein mentioned remained vested in the said John Dunlop, subject only to the limitations of the modes of use expressed in the said contract."

The defender pleaded, *inter alia*—"(1) No title to sue. (4) The said reserved right being one of servitude has been extinguished *non utendo*. (5) *Separatim*, The said right being a mere personal privilege, and by the terms thereof only conceived in favour of John Dunlop and his heirs succeeding in the lands of Mid and East Coatts, so long as they remained proprietors thereof, the defender should be assoilzied."

The Lord Ordinary pronounced this interlocutor:—"Finds and declares, interdicts, prohibits, and discharges, and decerns and ordains in terms of the conclusions of the summons, other than the conclusion for count, reckoning, and payment," &c., and granted leave to reclaim.

"*Opinion.*—The question is, whether the right reserved to John Dunlop by the contract of excambion of 1793 in the coal and other minerals in the lands of Smiddy Croft is a heritable right transmissible to his heirs, or a privilege transmissible only by special assignation, and which has fallen in consequence of its not being assigned?

"By the contract of excambion the lands of Smiddy Croft, which adjoined the pleasure grounds at Hamilton Palace, and which belonged in property to John Dunlop of Rosebank, were excambed for a part of the lands of Mid and East Coatts, which were part of the entailed estate of Hamilton. The general import of the deed appears to be that the surface of one parcel of the lands shall be given against the surface of the other, the minerals under each being reserved to the original owner, under certain conditions as to the manner in which the minerals shall be worked. At the date of the contract the coals in Mid and East Coatts were under lease to James Farie of Farm, and the Duke of Hamilton conveys the lands, 'reserving to the said Duke, his heirs and successors, the liberty of working coal and other metals, fossils, and minerals in the foresaid parts of the lands of Mid and East Coatts above described, and of making roads, ways, and passages to and from the said workings,' surface damages to be ascertained by arbitration, but with a declaration that the 'reservation as to surface working and roads should continue' only during the existing lease, and that after its expiration the Duke and 'his heirs and successors should have the liberty of working whatever coal and other metals, fossils, and minerals might remain in the foresaid parts of the lands of Mid and East Coatts above described, by pits, shanks, or eyes put down in their grounds, or such others as they may acquire adjoining to those lands proposed to be given off to the said John Dunlop, but not to pit, shank, or make eyes, roads, ways, or passages for such workings upon the surface of the grounds so proposed to be given off to the said John Dunlop,' except of consent and with a special exception of a particular part of the lands.

"The minerals in Smiddy Croft were not under lease, so that there was no existing right to be protected, and they are conveyed with a reservation which is thus expressed—'Reserving to the said John Dunlop, and his heirs and successors in the foresaid parts of the lands of Mid and East Coatts, if conveyed with that privilege, the liberty of working coal and other metals, fossils, and minerals in the foresaid parts of the lands of Smiddy Croft above disponed, by pits, shanks, or eyes put down in such lands adjoining to the said lands of Smiddy Croft as they may acquire hereafter; but declaring always, as it is hereby particularly declared, that they shall have no liberty to pitt, shank, or make eyes, roads, ways, or passages to or from the same, for working of any coal or other metals, fossils, and minerals upon the surface of the foresaid part of the lands of Smiddy Croft, unless by the express consent of the said Duke, his heirs and successors therein.'

"It is maintained for the pursuer that the right so reserved by Mr Dunlop is a right of property in the minerals, restricted only by the condition that the reservation shall not carry with it any accessory right to use the surface which has been conveyed, for the purpose of reaching the estate below the surface which has been reserved. On the other hand, it is maintained by the defender that the property in the minerals was conveyed to his predecessor under burden of a privilege which is said to be an incorporeal right of the nature of servitude. It is clearly not a servitude, because the right is not a right to take coals for the service of a particular tenement or for a definite purpose, but a general and unlimited right to work, use, and dispose of the coal. Nor is it constituted as a new right by the contract of excambion. It is reserved, as it stood, in the disponer antecedently to the contract. The con-

veyance therefore operates upon the surface alone, and carries no right in the minerals to the disponee. In the case of *Bain* v. *The Duke of Hamilton*, 3 Macph. 821, it was held that a reservation in a feu-charter of 'full power, right, and liberty to win coals and coalheughs within the bounds' of the lands granted out, was an effectual reservation of the entire right to the coals which was previously vested in the superior, and that no right in the coals had been transferred to the grantee. There appears to me to be no solid ground of distinction between the present case and that of *Bain*. And in so far as regards the reservation by the Duke of Hamilton, I do not understand it to be suggested that there is any distinction. It is not said that any right in the coals and other minerals below the lands of Mid and East Coatts was conveyed to Dunlop and his heirs, and by the same reasoning no right to the coals and minerals in Smiddy Croft can be held to have been conveyed to the Duke of Hamilton.

"But the contention is that by force of the words 'if conveyed with that privilege,' the reserved right is made dependent on the continued possession of Mid and East Coatts, and therefore that as these lands have been conveyed without mention of the privilege, the right must be held to have fallen. There can be no right, it is said, in the heir of John Dunlop, because he is no longer proprietor of Mid and East Coatts, and there can be no right in the present owners of these lands, because the privilege has not been conveyed.

"I think the argument untenable. One could understand a question arising, although none appears to have arisen, between the heir and the singular successor of Dunlop. The lands might have been conveyed in such terms as to suggest a doubt whether the right to the coals in Smiddy Croft had been conveyed along with them. But it is impossible that the failure to convey to the purchaser of Mid and East Coatts should operate as a conveyance to the Duke of Hamilton. No right to work, use, or dispose of these coals was conveyed to the Duke by the contract of excambion. For Dunlop reserved his right entire as it stood in him before the contract. And nothing has happened since by which the right can be held to have passed.

"But if the reserved right has not been conveyed away to anyone by John Dunlop, it passed at his death into his *hæreditas jacens*, and now belongs to the pursuer. The notion that it lapsed by the conveyance of Mid and East Coatts is unintelligible. It could not pass otherwise than by conveyance or inheritance. It was not disputed in argument that Dunlop himself would have still retained it if he had sold these lands in his lifetime. If he had acquired adjoining land which enabled him to reach his coals, and had been engaged in working them when he sold Mid and East Coatts, it can hardly be suggested that his right to work would instantly have ceased and determined in consequence of the sale, and if it remained in him notwithstanding the sale, it follows that it continued in him till his death, and passed into his *hæreditas jacens*."

The defender reclaimed, and argued—The case was distinguishable from that of *Bain*, on which the Lord Ordinary had based his judgment. He was wrong in refusing to give effect to the defender's argument, which he had clearly stated in his note. The reservation here was clearly meant to be something less than a right of property, and the deed pointed out what it was, viz., a privilege. It was therefore an incorporeal right, and attached to possession of the lands of Coatts, and not having been transmitted, fell, and the right of property was thereafter in the defender, unburdened. The distinction between a reservation of a right of property in minerals and of a mere privilege of working them was pointed out by the Lord Chancellor in *Duke of Hamilton* v. *Graham*, July 28, 1871, 9 Macph. H.L. 102; and the Lord President in *Harvie* v. *Stewart*, November 17, 1870, 9 Macph. 158; also *Davidson* v. *Duke of Hamilton*, May 15, 1822, 1 S. 411, where nothing was reserved but the "privilege and liberty of winning" coals.

The pursuers replied—The nature of the right here reserved was one of property, and no distinction could be founded on the words of the clause here between a right of property in the minerals and an incorporeal right of privilege to work them. The case was ruled by *Bain* v. *Duke of Hamilton* (*supra cit*).

Additional authority—*Duke of Hamilton* v. *Bentley*, June 29, 1841, 3 D. 1121.

At advising—

Lord Justice-Clerk—In this case I entirely agree with the view of the Lord Ordinary. I read this contract of excambion as so framed that, on the one hand, the property of the surface of the lands excambed was given out by each party to the other, but, on the other hand, as there were or might have been minerals on the lands, I think these were intended to be reserved to each proprietor; and further, in respect that the use of the surface might to a certain extent be implied in that reservation, I think the contract was framed in the way we have it before us to regulate that. I cannot read the contract of excambion in any other sense. If such a result must be held to have been the plain and obvious intention of parties, I think there is nothing in the words of the contract to conflict with that, the result arrived at being the mutual reservation of the property of the minerals in the lands excambed; as the natural access to these minerals was on the adjoining land belonging to the party who disponed the surface. The contract of excambion contains certain provisions as to the mode of working the reserved minerals, but I cannot detect the slightest intention of parties to create an innominate kind of right, which should be half real and half personal, to subsist during the lifetime of the parties, and come to an end according as the lands were transferred or not transferred to the proprietor of East and Mid Coatts. I cannot see any indication of an intention of that kind. I do not consider that there is any difficulty in the case at all. Dunlop's reservation is just the counterpart of that of the Duke. It reserves to him and his heirs and successors "the liberty of working coal and other metals, fossils, and minerals in the foresaid parts of the lands of Smiddy Croft above disponed, by pitts," &c. That necessarily implies a reservation of property; no other right than that can be intended by it as far as the mere words are concerned. Then follows a declaration that John Dunlop and his successors shall have "no liberty to pitt, shank, or make

eyes, roads," &c., for the purpose of working the minerals, whereby the real purpose of this clause is shewn to be, that each party should retain the right, not only to the minerals, subject to the excambion of the surface, but subject also to certain restrictions as to working and mode of access. It is not to my mind unimportant to see how this contract came into existence. The valuators to whom the Sheriff made a remit under the Montgomery Act do not appear to have paid the slightest attention to the value of the minerals in coming to their valuation, but assumed that each party was left in possession of his own minerals as fully as he had had them before the excambion.

Lord Young—I am of the same opinion, and I think it is a very simple case. Smiddy Croft, which formerly belonged to Mr Dunlop, lay in the vicinity of Hamilton Palace and policies, and the Duke naturally desired to possess it. It contained minerals—at least if it did not the whole question is at an end—but probably the Duke had no desire to work these minerals himself, and as there was no risk of anyone else doing so, he had no occasion to buy them. But he wanted the surface, and so he agreed to give in exchange part of the lands of Mid and East Coatts. The minerals of these lands were then under lease, held of the Duke as proprietor, and the bargain was for the excambion of the surface, or rather of the property of part of Smiddy Croft, against that of part of Mid and East Coatts—excluding the minerals. Dunlop was not to part with the minerals of Smiddy Croft, and the Duke was not to part with those of Mid and East Coatts, —that is to say, each was to reserve them, and they did so. The reservation of the minerals of Smiddy Croft by Dunlop was practically useless unless he acquired ground from which to work them, because he had bargained away the right to work them from the surface of Smiddy Croft, and had bound himself not to do that, but otherwise he remained proprietor as before, the prospect of ever making anything of the minerals being either a sale to the Duke or himself acquiring some lands in the neighbourhood through which he might work them. The reservation of the minerals of Smiddy Croft corresponded to that of those of Mid and East Coatts. Suppose that Dunlop had brought a declarator that the right to these minerals was reserved to him on the very day after the contract of excambion had been signed, what answer would the Duke have had? Suppose Dunlop brought a declarator that he and his heirs and successors in Mid and East Coatts, or anyone to whom he might communicate the privilege, had exclusive right of working the coal in these lands, that would just be a declarator of what the deed itself says, and would indeed on that account be of a kind too obvious to found any decree, unless the Duke was disputing Dunlop's right. But if Dunlop could in 1793, immediately after the excambion, have negatived the Duke's right in respect of the reservation, there is nothing in the world to prevent his successor doing it now, unless the existence of the reservation depended on the condition that it was to be prolonged only for such time as Dunlop and his heirs should remain proprietors of Mid and East Coatts, or unless Dunlop sold that property to some-one else, with an express conveyance of the reserved right to work the coals. That was the defender's second point, and I agree with your Lordship and the Lord Ordinary that it is entirely untenable.

Lord Craighill concurred.

Lord Rutherfurd Clark—I also agree. I think that according to the true construction of this contract of excambion, the property of the minerals in Smiddy Croft was reserved to Dunlop, and the moment that is determined all difficulty ceases, because the property was with Dunlop, and must be held by some-one, and must descend to some heirs. It is said that a certain series of heirs is pointed out here, and that these only were intended to take, and as they have not done so it must pass somewhere or other. Wherever it goes it certainly cannot pass to the Duke, except on the footing that he is the heir of provision of John Dunlop. So that I am not affected by the difficulty of that construction of the deed.

The Court adhered.

Counsel for Pursuers (Respondents)—Keir—Pearson. Agents—John Clerk Brodie & Sons, W.S.

Counsel for Defender (Reclaimer)—Mackintosh—Low. Agents—Tods, Murray, & Jamieson, W.S.

Wednesday, June 25.

FIRST DIVISION.

[Lord Ordinary on the Bills.

STEWART, PETITIONER.

Writ—Erasure in essentialibus—*Testing Clause—False Description.*

The trustee on a sequestrated estate refused to rank preferably one of the heritable creditors of the bankrupt, on the ground that the bond and disposition in security which had been granted in his favour was erased and vitiated *in essentialibus*, and that the testing-clause was manifestly false. The bond contained a description of the subjects disponed in security, after which it was stated that these were the subjects more particularly described in a disposition in favour of the granter, "dated the twenty-seventh September and recorded . . . the twelfth day of November in the year 1880." The testing-clause ran as follows:—"In witness whereof, I have subscribed these presents . . . (the words the 'twenty-seventh September, &' on the thirty-fourth line, the word 'Twelfth' on the thirty-fifth line, and the word 'November' on the thirty-sixth line, all of page first hereof, and counting from the top thereof, being written on erasures before signing, and one word on the thirty-sixth line of said first page, counting as aforesaid, being delete before signing), at Aberdeen the 5th day of October 1880, before these witnesses." *Held* that as the subjects of the security could be identified from the rest of the deed, even if the words written