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 interponed 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 Rumgally, in the county of Fife, was pursuer, and Miss Robina Thoms, residing at Rumgally aforesaid, daughter of the said deceased Alex. Thoms of Rumgally, 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 Rumgally, 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 Rumgally, 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 Rumgally. 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 Rumgally, 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 Rumgally. 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 Rumgally, 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-

ance of the estate of Rumgally, and then the question came to be, whether in so far as it did that, and carried the lands of Rumgally, it was obtained fraudulently by Miss Thoms and her agent Mr Welch. The case of the pursuer seemed to be that Mr Alexander Thoms did not mean that the estate should be carried by that deed, and that it should be an exception to the general terms. But he said that although in form it might import, and did import the conveyance of the lands of Rumgally, the putting of it so as to allow them to be included in the general words of the deed was a result that was fraudulently obtained by the defender Miss Thoms or her agent Mr Welch. The defender, on the other hand, he understood, said there was no fraud in the matter; that Mr Alexander Thoms fully intended that the settlement should convey Rumgally as well as the rest of his estate. No fraud was proved to have been committed in making the deed which imported the conveyance of it; on the contrary, the defender said it was proved there was no fraud. It was alleged by the pursuer that the fraud which was generally alluded to in the issue was accomplished by certain persons, and was more applicable to the conduct of Mr Welch, as acting for Miss Thoms, than directly to her. It was contended that the instructions to Mr Welch in preparing the deed were not such as to convey Rumgally; that the deed was not submitted to him in draft, that it was not read over to him when he executed it, that he understood it to be a conveyance of the moveable estate, and that he believed he was not doing anything to convey the Rumgally estate. If the pursuer proved enough of these circumstances to make out a fraudulent proceeding, whereby a conveyance was made, the terms of which conveyed Rumgally, while that was not in accordance with the will of the maker, that made a case for the pursuer. It was possible even there might be a case where there was no written or verbal representation at the time the deed was executed. If Mr Alexander Thoms, intending not to include Rumgally in his settlement, made Mr Welch, fully aware, and instructed him to make a deed which would convey all his property, but would not convey Rumgally, and if Mr Welch knowing that to be the purpose of Alexander, prepared a deed which was in general terms, which he knew would convey Rumgally, though not mentioned, and which he knew would convey Rumgally while he knew Mr Thoms did not wish it, and placed that deed before him and allowed him to sign it, that would be a fraudulent proceeding. But it was necessary to the success of the pursuer in the case that it be made out that there were fraudulent representations, though not by words and by letter, by acting. In reference to that the pursuer rested upon the fact, in the first place, as said in the record, that Mr Alex. Thoms was not aware he had any power over the estate. That he apprehended was not now insisted in, because Alexander Thoms had expressed to Mr John Thoms that he had such power. But he made the contrary statement that he did not mean to exercise it; that he intended the estate of Rumgally to descend to his brother and brother's family; he treated them as if they were to be his heirs, frequently spoke of them as if they were to be his heirs, and remained on the most friendly terms with his brother down to the latest day, and it was not to be supposed or presumed in any way that he disappointed those expectations. It also appeared that John Thoms, on the occasion of the death of his brother David, did not take advantage of an informality or insufficiency in the will, but allowed David's manifest intentions to be carried into full execution, so as to let his brother Alexander participate in the succession. It would also appear from some of the evidence they had heard that John aided his brother in raising money for purposes that his brother required, so that they were on friendly terms, and John appeared to have acted towards him in that respect, as was becoming him, though it appeared that he did not pay any attention to the daughter. There were, on the other hand, occasions on which it appeared that Mr Alexander Thoms expressed a different intention to certain witnesses who had been examined. He seemed to have used expressions which indicated that his brother would not succeed to the estate. Still he had full powers of disposal of the estate, and his intentions and views in regard to it might vary at different times. They next came to the question whether the deed was fraudulently obtained. Deceased was a man, according to the evidence, not inattentive to his own interests, not stupid, and not easily deceived. According to John's account of him in that matter, he was more inclined to deceive others; and it was further said that he knew something about the law, having been an apprentice to a writer; but he did not think there was any evidence that he was a conveyancer, and understood without explanation the full import and effect of deeds unless they were of a simple kind. This certainly was of a simple kind, and professed to convey his whole property, "heritable and moveable, real and personal." He had all along in this case been desirous to set before the jury the history of the making of the deed, and the persons who could speak most of it, that they might have the opportunity of seeing and hearing the persons, and judging from what they said what reliance could be placed on them, and how they stood the investigation made about it. Mr Welch had been called. He said that Mr Thoms spoke to him about the understood defect in the entail, and thought he had power over the estate. There could be no doubt that it had been considered and talked about many years before. Mr Wilson, writer, Cupar, said he told him so, and the mother was said to have spoken to him about it. Mr Welch said the conversation was introduced to him, and he said if he saw the deed he could tell what he thought about it. He went and saw the deed and communicated the result to Mr Thoms, who seemed satisfied to find that what he thought had been confirmed. It then appeared that in January 1861 he proposed to Welch to make this settlement, that he wished all his property to be conveyed to Robina, and on Mr Welsh citing to him the terms of a deed which would convey everything, he said that was just what he wanted. A draft was shown to Mr Thoms, and he said it was in nearly the same terms as Mr Welch had repeated to him; and a deed was prepared, compared by Mr Thoms with the draft, and executed; and some days after he brought to Mr Welch the title to Rumgally, which he said he wished to be put beside the deed for Robina. Mr Welch at the conclusion of his evidence, stated positively that Mr Thoms intended that Rumgally should be comprehended in the deed, and knew perfectly well that it was so. If the jury could give credence to Mr Welch's statement as to the manner in which the deed was prepared, there was no fraud in the case. The case of the pursuer was that Mr Welch, knowing it was not Mr Thoms' purpose to convey Rumgally, nevertheless made a deed which he knew would carry the estate, and got Mr Thoms, under these circumstances, to sign it by leading him to understand and believe that it was not a deed which would carry the estate. They would consider whether such a case had been established to their satisfaction. It would require exceedingly strong evidence. It was not presumed that the gentleman who prepared the deed had committed perjury. They heard the manner in which he gave his evidence, they heard the cross-examination, in which it was attempted to shake his evidence, and they would judge whether it was shaken. If they were of opinion that it was a deed which had been made out as Mr Welch had stated, then he thought they could have no other alternative but to find for the defender.

The jury retired at ten minutes past one, and returned into Court after an absence of three hours, with a verdict by a majority of nine to three in favour of the defender.