

which was done upon the footing that the conveyance should contain the reservation which was inserted in it. The narrative clause of the disposition I observe narrates that the oversman decreed that the conveyance should be one "excepting . . . all freestone, coal, ironstone, limestone, slate or other mines or minerals under the said lands." It is difficult, I think, to see any reasonable objection to this declarator of that right which was so expressly reserved. The one word used in the declaratory conclusion which is not in the decree-arbitral or the reservations in the conveyance itself is "shale." We know that in the *Torbanehill* case there was much litigation as to whether shale could be accounted coal in the sense of a lease, but there was even then no dispute that shale was a mineral. But if there be any question on that head it was not argued to the Lord Ordinary nor mentioned on record, and I deal with the case on the footing that the declarator is a declarator of what is contained in the decree arbitral and the reservation clause of the disposition.

Now, I observe that the clause of reservation is, as the defenders argue, to be interpreted with reference to the special Act. But the only clause said to be inconsistent with the reservation is the 28th. I see in that clause nothing inconsistent with the declarator asked or the reservation on which that declarator proceeds. Notwithstanding the declarator the railway company would still be entitled to remove minerals if that was necessary for the construction of their line, either handing them over to the Earl, or paying their price as provided in the Act of Parliament.

I think that the pursuer is entitled to the declarator which he seeks.

LORD RUTHERFURD CLARK—I concur. We must determine the question by referring to the date on which the defenders granted the disposition. I therefore set aside the case of *Nisbet Hamilton* as having no bearing on this case. I am satisfied on looking into the conveyance that it contains an express reservation of minerals, and the donee gets no title whatever to them under the conveyance. This, so far as I can see, is his only title, and I think it is consistent with the terms of the statute. I think that we should give decree of declarator, and that we can properly include shale in the decree, as I think shale is included in the expression minerals.

LORD TRAYNER—I agree with the conclusion arrived at. The Earl of Hopetoun was in 1838 proprietor of the land and the minerals, and he gave part of his property to the defenders' predecessors by disposition. They obtained no more than he gave them by that disposition, and it was subject to an express reservation of minerals. The defenders' predecessors therefore took nothing by the disposition; under their title they have no right to the minerals whatever. They were, and still are, the property of Lord Hopetoun, the

pursuer, unless they were conveyed from him by some other authority than that conveyance, which did not convey them. The defenders say that they became their property in consequence of Act of Parliament—being section 28 of the special Act. I agree with your Lordships that that section does not give them any such right or impinge in any way on Lord Hopetoun's right to the minerals. Therefore, on the ground that the Earl of Hopetoun is proprietor of the minerals, and that his rights thereto are not trenching on by the disposition, I think he is entitled to the decree of declarator which he asks for.

The Court recalled the interlocutor of the Lord Ordinary, and granted decree in terms of the conclusions of the summons.

Counsel for the Pursuer—Dickson—C. K. Mackenzie. Agent—James Hope, W.S.

Counsel for the Defenders—Rankine—Jameson. Agent—James Watson, S.S.C.

Wednesday, May 17.

FIRST DIVISION.

R. & C. ROBERTSON, PETITIONERS.

Diligence — Bill — Messenger-at-Arms — Sheriff-Officer.

The petitioners were holders of a bill which the acceptor had failed to meet when it fell due. The bill had been protested, the protest had been recorded and extracted, and a charge given to the acceptor. The petitioners stated that the acceptor was possessed of property and effects in Shetland, and that there was no messenger-at-arms resident in Orkney or Shetland, and they craved the Court "to grant warrant to any sheriff-officer in Shetland or Orkney to carry into execution the said extract registered protest by arrestment, poinding, and sale, and other competent diligence." The Court granted the application.

Counsel for the Petitioners—Galloway. Agents—Carmichael & Miller, W.S.

Thursday, May 18.

SECOND DIVISION.

[Sheriff of Inverness, Elgin, and Nairn.]

MOORE v. REID.

Reparation — Slander — Charge of Dishonesty against Servant in Inn by Resident therein—Malice—Privilege.

A maidservant in a hotel raised an action for damages for slander against a resident in the hotel. The pursuer averred that while she was cleaning