excessive and the transaction harsh and unconscionable, reopened the transaction and adjudged a reasonable sum, under the Moneylenders Act 1900, section 1.

The Moneylenders Act 1900 enacts, sec. 1, (1)—"Where proceedings are taken in any court by a money-lender for the recovery of any money lent after the commencement of this Act . . . and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive . . . and that . . . the transaction is harsh and unconscionable, . . . the court may reopen the transaction and take an account between the money-lender and the person sued, and may . . . reopen any account already taken between them and relieve the person sued from payment of any sum in excess of the sum adjudged to be fairly due in respect of such principal, interest, and charges as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable. . . ."

In this action the pursuers sued the defenders for the sum of £54, 11s. sterling, with interest on £16 sterling at the rate of £5 per centum per annum from the 23rd day of October 1903 until payment.

By bill dated 20th May 1901, drawn by the pursuers upon and accepted by the defenders, and payable one day after date, the defenders bound themselves to pay to the pursuers the sum of £25 sterling for value received. By a letter of agreement of the same date granted by the defenders to the pursuers, the pursuers agreed to receive payment of the bill in weekly instalments of 25s., commencing on 28th May 1901 and continuing until the whole was paid up, but in the event of the defenders failing for two successive weeks, or for three weeks altogether, to call upon the pursuers and pay the instalments, the pursuers were to be entitled to recover from the defenders at any time thereafter the whole sum or balance due on the bill; the defenders also agreed to pay to the pursuers in the event of such failure an additional sum of 6d. for each £1 or part of £1 of the total amount of the bill, and that by way of interest and for every week's failure till such time as the pursuers proceeded to recover from them as aforesaid.

The defenders fell into arrears in their repayments.

Payments of £21, 7s. were, however, made to account of principal and interest. The present action was raised on 26th October 1903.

On 23rd November 1903 the defenders before lodging defences offered £12 with expenses.

The pursuers pleaded—"(1) The defenders being justly indebted and resting-owing to the pursuers the sum sued for in respect of the bill and letter of agreement founded on decree should be granted as concluded for. (2) The letter of agreement being valid and binding, and the transaction being reasonable in the circumstances, decree should be granted as concluded for."

The defenders pleaded—(1) The interest charged by the pursuers in respect of the sum lent being excessive, and the transaction harsh and unconscionable, the Court should reopen the transaction and find the pursuers only entitled to what is fairly due by the defenders. (2) The defenders having offered a sum in excess of what is fairly due by them should be assoilzied from the conclusions of the action, with expenses from the date thereof.

LORD KINCAIRNEY pronounced the following interlocutor—

"Finds (1) that by bill dated 20th May 1901 the defenders bound themselves to pay to the pursuers £25 for value received; (2) that on the same date the pursuers and defenders entered into an agreement for the payment of interest on said advance of £25, being the letter of agreement; (3) that there is no relevant averment on record that said advance was attended with unusual risk; (4) that the interest charged on said £25 and specified in said agreement is excessive in the sense of the Act (63 and 64 Vict. cap. 51), and that the transaction was harsh and unconscionable on the part of the pursuers in the sense of the Act, and that the provisions of said Act apply to this case; (5) that certain payments have been made by the defenders to the pursuers in repayment of said advance and interest thereon; (6) that by letter dated 23rd November 1903 the defenders tendered payment of £12 with expenses in full of the debt due to the pursuers under the said bill; and (7) that the said tender was in the circumstances reasonable: Therefore decerns the defenders conjunctly and severally to pay to the pursuers the said sum of £12 on delivery by the pursuers to the defenders of the foresaid bill: Finds the pursuers entitled to expenses to said 23rd November 1903, and finds the defenders entitled to expenses since said date," &c.

Counsel for the Pursuers—M'Lennan. Agent—Robert Broatch, L.A.

Counsel for the Defenders—Graham Stewart. Agents—Mylne & Campbell, W.S.

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*Tuesday, February 16.*

## SECOND DIVISION.

## LINDSAY *v.* ROBERTSON.

*Entail—Disentail—Validity of Instrument of Disentail—Entail Amendment Act 1848 (Rutherfurd Act) (11 and 12 Vict. c. 36), sec. 32, and Schedule.*

By section 32 of the Entail Amendment Act 1848 it is enacted "that an instrument of disentail under this Act may be in the form or as nearly as may be in the form set forth in the schedule to this Act annexed."

An instrument of disentail was conform to the schedule annexed to the

Act in all particulars save one, viz., that while the statutory form declared the lands to be held "free from the conditions, provisions, and clauses, prohibitory, irritant, and resolutive, of the entail," the instrument of disentail declared that the lands were held "free from the conditions, provisions, and clauses, irritant and resolutive, of the entail," thus omitting the word "prohibitory" which occurred in the statutory form.

*Held* that the omission did not render the disentail invalid.

The lands of Auchintully were entailed under a deed of entail dated 8th December 1841, and recorded in the Register of Tailzies 30th November 1849. In the deed of entail the disposition of the lands was made "always with and under the conditions, provisions, restrictions, limitations, prohibitions, clauses irritant and resolutive, declarations, and reservations after written." The portion of the deed containing the cardinal prohibitions did not employ the term "prohibition" or prohibit," but proceeded as follows:—"And with and under the restrictions and limitations after written, as it is hereby provided and conditioned that . . . it shall not be lawful to nor in the power of any of the heirs of taillie succeeding to the said lands and estate to alter, innovate, or change this present taillie, or any nomination or other writing to be executed by me as aforesaid, or the order of succession hereby prescribed or to be thereby prescribed, nor to do or grant any deed which may import or infer any innovation or change thereof directly or indirectly, nor to sell, alienate, feu, wadset, resign, or dispone my said lands and others, or any part thereof, either irredeemably or under reversion, whereby the same may be in any manner affected, or to burden the same in whole or in part with debts or sums of money, infeftments of annual rents, or any other burden or servitude for whatever cause or occasion, onerous or gratuitous." The irritancies declared by the deed were directed against heirs of taillie, who "shall contravene the before-written conditions, provisions, restrictions, or limitations herein contained, or any of them;" and the resolutive clauses were directed against "all debts contracted, deeds granted, and acts done contrary to the conditions and restrictions before written or to the true intent and meaning hereof."

On 15th July 1881 Miss Anna Maria Rutherford Aytoun, being heir of entail in possession of the said lands, presented a petition for authority to record an instrument of disentail thereof executed by her on 4th July 1881. Authority was granted by interlocutor dated 8th September 1881, and on 9th September the instrument of disentail was duly recorded in the Register of Tailzies.

The said instrument of disentail was conform to the form of an instrument of disentail contained in the schedule appended to the Entail Amendment Act 1848 (11 and 12 Vict. c. 36), in all particulars save one, viz., that while the statutory form declares the lands to be held "free from the conditions, provisions, and clauses, prohibitory irritant, and resolutive, of the entail," the instrument of disentail executed by Miss Aytoun declared that the lands and barony in question were held by her "free from the conditions, provisions, and clauses, irritant and resolutive, of the entail," thus omitting the word "prohibitory" which occurred in the statutory form.

Section 32 of the Entail Amendment Act 1848 provides as follows:—"And be it enacted that an instrument of disentail under this Act may be in the form or as nearly as may be in the form set forth in the schedule to this Act annexed, . . . and such instrument, when duly executed and recorded in the Register of Tailzies under authority of the Court in terms of this Act, shall have the effect of absolutely freeing, relieving, and disencumbering the entailed estate to which such instrument applies, and the heir of entail in possession of the same and his successors, of all the prohibitions, conditions, restrictions, limitations, and clauses, irritant and resolutive, of the tailzie under which such estate is held." . . .

"After the recording of said instrument of disentail Miss Aytoun re-entailed the said estate of Ashintully under a deed of entail, dated 15th September 1881, and recorded in the Register of Tailzies under authority of the Court on 22nd September 1881, in favour of herself and the heirs whatsoever of her body, whom failing, the other heirs-substitutes therein mentioned. Subsequent to said re-entail Miss Aytoun married David Crawford Rutherford Lindsay, and under authority granted by the Sheriff of Perthshire executed in favour of her husband a bond and disposition in security, dated 1st January 1902, and recorded 10th January 1902, for the sum of £2014, 2s. 6d., being the amount of expenditure made by her on permanent improvements since the year 1882. On 29th April 1903 Miss Jean Rosine Robertson of Struan agreed to lend £2019, 2s. 6d. over the estate of Ashintully on a transfer to her of said bond and disposition in security, the loan to remain for a period of five years from Whitsunday 1903, and to bear interest at the rate of 3½ per cent. per annum. It was an express condition of the agreement that Miss Robertson should get an unexceptional security title. Thereafter Miss Robertson took exception to the title offered to her, and maintained that there was no effectual disentail of the lands in 1881, in respect of the omission of the word "prohibitory" from the instrument of disentail as before mentioned. Mr and Mrs Lindsay maintained that the said omission did not invalidate the disentail.

For the settlement of the point a special case was presented to the Court by (1) Mr Lindsay, (2) Mrs Lindsay, and (3) Miss Robertson.

The question of law was—"Does the omission of the word 'prohibitory' in the instrument of disentail of 4th July 1881 render the disentail invalid?"

Argued for the third party—The statutory formalities had not been complied with and the disentail was therefore invalid—*Kermack* v. *Cadell*, July 9, 1852, 24 Sc. Jur. 609; *Baird* v. *Baird*, July 15, 1891, 18 R. 1184, 28 S.L.R. 878.

Argued for the first and second parties—The instrument of disentail was valid. The form laid down in the Entail Act of 1848 was permissive not compulsory. The deed said the same thing as the form but in different words. The phraseology used in the deed was that used in section 32 of the Act itself, and was also that used in the Statute 1685, c. 22. The deed of disentail let people know effectually that the estate had been disentailed, and that was its object. Without the irritant and resolutive clauses the prohibitory clauses were of no effect, and the estate had been admittedly relieved of the irritant and resolutive clauses by the terms of the instrument of disentail. The cases of *Kermack* and *Baird* were different from the present. They dealt with sections of the Entail Acts of 1848 and 1882 respectively, in which the word used was imperative, viz., "shall" not, as here permissive, viz., "may." The analogy therefore failed, and these cases by contrast assisted the contention of the first and second parties.

LORD TRAYNER—The objection taken to the instrument of disentail is that it does not contain all the words of the form provided by the schedule annexed to the Act of 1848. I do not think that the word omitted—the word "prohibitory"—is essential or would have been of much importance even if it had been inserted. The instrument of disentail declares the lands to be free from the conditions and provisions of the entail, and of its irritant and resolutive clauses. By the deed of entail it is "expressly provided and conditioned" that "it shall not be lawful . . . to alter . . . the taillie . . . or to burden the same." I regard these prohibitions as "conditions and provisions of the entail," and think they have been validly and competently removed by the terms of this instrument of disentail. But in any case the instrument is sufficient, seeing that it frees the lands from the irritant and resolutive clauses, without which the prohibitory clauses, at least in a question with a singular successor, would be of no effect. I am therefore of opinion that the question in law should be answered in the negative.

LORD MONCREIFF and the LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

The Court answered the question in the negative.

Counsel for the First and Second Parties—Spens. Agents—W. & J. Cook, W.S.

Counsel for the Third Party—Chree. Agent—F. J. Martin, W.S.

*Tuesday, February* 16.

## FIRST DIVISION.

[Sheriff-Substitute at Alloa.

## RANKINE *v.* THE ALLOA COAL COMPANY, LIMITED.

(*Ante* July 16, 1903, 40 S.L.R. 828.)

*Master and Servant — Workmen's Compensation Act* 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 2—*Notice—Want of Notice—"Mistake or other Reasonable Cause."*

A workman in a coal mine sustained an injury on 25th October 1901, but gave no notice of a claim for compensation under the Workmen's Compensation Act 1897 until 24th March 1902. In an arbitration under this Act the Sheriff held, under sec. 2, that the proceedings were not maintainable inasmuch as the failure to give notice as soon as practicable had prejudiced the employers in their defence, and was not attributable to mistake or other reasonable cause. He found in fact that the workman had thought his injury did not come within the meaning of an accident under the Act and would not have made a claim had his recovery been as satisfactory as he expected, and that he had not regarded his injury as so serious as his doctor's advice should have led him to believe. In a case stated for appeal, *held* that the want of notice was attributable to mistake.

This was a case stated for appeal by the Sheriff-Substitute at Alloa (DEAN LESLIE), in an arbitration under the Workmen's Compensation Act 1897 between William Rankine, miner, Coalsnaughton, Tillicoultry, and The Alloa Coal Company, Limited.

In the stated case the Sheriff set forth the facts admitted or proved as follows:—"The appellant is forty-four years of age, and had been employed by the respondents as a coal miner for twenty-eight years prior to 25th October 1901.

"On 25th October 1901 the appellant, while in the Sheriffyards Pit, Alloa, which is owned by the respondents, was personally injured by an accident arising out of and in the course of his employment. In endeavouring to replace a derailed hutch by means of a piece of rail as a lever, he so exerted himself by a sudden jerk that injury was caused to his heart or aorta. The immediate effect on the appellant was faintness and weakness, but he managed to walk home.

"Appellant stayed at home for three days. On the fourth day, 29th October 1901, he returned to the pit, but finding himself unable to do his usual work, he did light work, and continued at it till the 15th November 1901.

"From 16th November to 4th December 1901 appellant was a patient in the Royal Infirmary of Edinburgh, and from the