

The Railway Company did not deny liability, but considered the claim of damages excessive; and it was to that point that the attention of the jury was specially directed.

SCOTT and WATSON for pursuer.

YOUNG and JOHNSTONE for defenders.

The jury assessed the damages at £1100.

Agent for Pursuer—A. K. Morison, S.S.C.

Agents for Defenders—Hope & Mackay, W.S.

Friday, June 12.

FIRST DIVISION.

RUSSEL AND SON *v.* GILLESPIE.

Agreement—Mineral Lease—Underground Working—Construction. Construction put upon a clause in a mineral lease, which declared that the underground workings should not be carried nearer to the mansion-house, offices, garden, and steadings, than so many yards.

In the Torbanehill mineral lease, granted by the defender to the pursuers in 1850, it was stipulated that the underground workings should not be carried nearer to the mansion-house than 100 yards, nor nearer to the offices or garden than 30 yards, nor nearer to the steadings than 20 yards. The minerals having greatly risen in value, disputes arose as to the meaning of the above stipulation, and the pursuers, the lessees, brought an action of declarator to establish their rights. The questions in dispute are explained in the note of the Lord Ordinary (BARCAPLE), who gave effect to the contentions of the pursuer. His Lordship said:—

“The first question is, Whether, in giving effect to the provisions that underground workings are not to be carried nearer to the buildings than the distances prescribed, the distance is to be measured from the external walls at the surface of the ground, or from the underground projections of the foundation. The defenders maintain that, on this point, the words of the lease are quite distinct, and must be read in their plain literal sense. The Lord Ordinary is of opinion that the provision requires construction. It is not disputable that the underground workings must stop at a point which will be actually more than the prescribed distance from any part of the buildings, and that this distance will be greater in proportion to the depth of the workings. The distance must be measured, not from the buildings themselves, but from a perpendicular line projected downwards from some part of them where it reaches the level of the workings. The popular meaning of the words of the lease does not suggest the notion that it is the projecting foundations of the buildings that are referred to, and that construction seems to be excluded by the immediate context. The same expressions are not used in prescribing the distances within which operations shall not be carried on upon the surface, and carts or carriages shall not be allowed to pass through the park. The Lord Ordinary thinks it is impossible to read these provisions as having reference to the underground foundations, or to hold that the words have different meanings in the same clause.

“The Lord Ordinary thinks that the provision as to the mansion-house cannot, with reference to the present question, be extended so as to include the court-yard attached to it. There might be an uncovered court in a recess, partly surrounded by a

mansion-house, which would justify such a construction. But looking to the position of this court and its construction, the Lord Ordinary does not think it can be reasonably held to have been the meaning of parties, that it was to be comprehended in the provision as to the mansion-house. He entertains the same opinion in regard to the open space enclosed with a wall in front of the offices.

“The Lord Ordinary would have arrived at these conclusions independently of the evidence of engineers and architects which has been adduced. But in so far as that evidence may be entitled to weight in such a question, it supports the views of the pursuers.

“The Lord Ordinary does not think that, at any time, the whole space between the garden-wall and outer fence, composed of a hedge and ditch, could properly be called a garden. When the lease was entered into in 1850, no part of it was so used; and the Lord Ordinary thinks that there was nothing to suggest to either party that the provision as to the garden applied to anything external to the garden wall. On the whole, he is of opinion that, according to understanding of parties, grounded on the natural meaning of the words used and the state of the subjects, the provision had reference only to the enclosed garden and the garden wall.

“He is also of opinion that the pond and dovecot cannot be held, with reference to this question, to be part of the offices. In point of fact, they are not parts of the offices, and it would be a very extensive construction which should hold them to be so. But it seems to be conclusive of the question, that the road which passes between them and the offices is said in the clause, which it is sought to construe, to pass on the north side of the offices.”

The defenders reclaimed.

GIFFORD and ASHER for them.

YOUNG, CLARK, and GLOAG for respondent.

The Court were of opinion that the unroofed court attached to the mansion-house was, in this question, to be held as part of the mass of buildings constituting the mansion-house, and, on that point, therefore they differed and found for the defenders, but on the other points they agreed with the Lord Ordinary; Lord Deas differing on the question of the garden, and holding that the outer garden, as well as that enclosed within walls, was intended to be included in the term “garden” in the clause of reservation.

Agents for Pursuers—Wilson, Burn, and Gloag, W.S.

Agents for Defender—Morton, Whitehead, and Greig, W.S.

Friday, June 12.

ROBERTSON (TAYLOR'S FACTOR) *v.* TAYLOR AND OTHERS.

Donation—Husband and Wife—Donatio Mortis Causa—Parol—Acquiescence—Jus Mariti. Circumstances in which held that a sum of money given by a husband to his wife on deathbed was a *donatio mortis causa*, proveable by parol.

Trust—Memorandum—Proof. Held, on a proof, that trustees were entitled to take credit for certain payments to beneficiaries, made by them in terms of a memorandum found in the repositories of the deceased.

Annuity—Trust—Burden—Fee—Liferent. Held.