

a mine and unwrought, the subject may and must, notwithstanding the proviso, be entered in the roll as minerals of the value of the fixed rent because that fixed rent continues to be payable and is paid?

I cannot say that the statute is clear on this point. For while it declares both "mines and minerals" to be included within the description of lands and heritages, it provides only as to mines not being assessed if not worked during the year. The statute seems almost to assume that although the subject described as a mine shall not be assessed under these circumstances, the subject described as minerals is always to be assessed if it has a yearly rent or value. Reading the interpretation clause along with clauses 3 and 6, I am not prepared to differ from your Lordship upon this point, because I think that the statute if it was intended to exclude such minerals from valuation could scarcely have been drawn as it is. But I am bound to say also that it is so framed with respect to this matter as to cause great and unnecessary embarrassment in my view to assessors.

(4) The case of Newhouse relates to minerals which have never been worked at all. I am not prepared upon the facts now laid before us to hold that this is a mine within the meaning of the Act. It is the case of minerals for which a rent is payable and is paid. The fact that the minerals have not been wrought to such an extent as to yield lordships equal to the rent has already been decided to be no sufficient ground for not valuing the subjects at the rent actually payable and paid—See the case of the *Airdriehill Minerals* (No. 24). I think therefore that in this case also the determination of the Committee is wrong.

The Court were of opinion that the determination of the Valuation Committee was wrong.

Counsel for William Dixon & Co.—Jameson, Agents—W. & J. Burness, W.S.

## COURT OF SESSION.

Thursday, March 15.

### FIRST DIVISION.

MACLEOD'S TRUSTEES v. MACPHERSON AND OTHERS.

*Interdict—Breach of Interdict.*

Circumstances in which the Court pronounced a sentence of two months' imprisonment for breach of interdict.

On the 20th June 1882, in consequence of disputes as to the possession of the lands of Waterstein, forming part of the property of Glendale in the Isle of Skye, a note of suspension and interdict was presented to the Lord Ordinary on the Bills at the instance of the testamentary trustees of the late Sir John Macpherson Macleod of Duirnish and Glendale against certain tenants and crofters in the said island, in which the Court was craved "to interdict, prohibit, and discharge the said respondents from entering or trespassing upon the lands or farm of Waterstein, or any part thereof, and from pasturing or herding their sheep, horses, or cattle thereupon, or upon any part thereof,

and from allowing their sheep, horses, or cattle to stray thereupon, or upon any part thereof, and from otherwise interfering with or encroaching upon the said lands or farm of Waterstein or any part thereof, and from obstructing, molesting, or interfering with the complainers in their occupation of the said lands or farm, or with their tenants, servants, stock, and implements on the said lands or farm." This note and suspension were duly served upon the respondents, but no answers were lodged for any of them, and on 6th July 1882 the Lord Ordinary passed the note and granted interim interdict as craved. Notice of this deliverance was duly served on the respondents on 12th July 1882.

On 19th December 1882 a petition and complaint was presented to the First Division at the instance of the said trustees, setting forth that the petitioners were under the necessity of complaining to the Court of various breaches of the interdict granted in the month of July preceding, and setting forth that John Macpherson, Donald Macleod, and John Thomson, on whom the interdict had been served, had broken the interdict by, *inter alia*, pasturing their sheep and cattle on the complainers' lands. It was further alleged by the complainers that the persons on whom the interdict was served had by means of a violent and illegal combination, and in breach of said interdict, molested and interfered with the servants of the petitioners in the exercise of their duties upon the farm, and by violence and intimidation had prevented them from carrying into effect the orders of the petitioners by clearing Waterstein of stock which was not lawfully there. It was further averred that in all these proceedings the persons above named had actively participated. This petition and complaint was ordered by the Court to be served upon the respondents, but the officer returned an execution setting forth that this was not accomplished owing to the violent conduct of the people in the district who had met him and prevented him from executing service on the respondents.

On 26th January 1883 the Court made an order directing that the respondents should be apprehended and brought to the bar in custody, and this having been done on the 20th February, and application having been made on their behalf for an opportunity of lodging answers, and this having been consented to by the complainers, this interlocutor was pronounced:— "The Lords having resumed consideration of the proceedings, and heard counsel for the parties, in respect the said respondents have found sufficient caution, each of them under a penalty of £100, that they will attend personally all diets of Court in this cause, Discharge the said respondents from custody, and of consent allow them to lodge answers to the petition and complaint within forty-eight hours."

In their answers the respondents denied generally the allegations made against them in the petition and complaint, and maintained that they were not guilty of contempt of Court or of breach of interdict. In particular, they denied that they had put their stock on Waterstein, and averred that any of their stock which had gone there had strayed there for want of a fence.

By interlocutor of 23d February 1883 the complainers were allowed a proof of their averments,

and the respondents a conjunct probation, and this proof was taken before Lord Shand on the 9th March. On the 15th March, after hearing counsel for the parties, the Court found that the respondents had each and all of them been guilty of a breach of the interdict of 6th July 1882.

The LORD PRESIDENT, in delivering the sentence of the Court, said—John Macpherson, Donald Macleod, and John Morrison, the most serious part of the charge against you in this petition and complaint is thus expressed—that “the persons upon whom the interdict was served, and after it was served, have, by means of a violent and illegal combination, and in breach of said interdict, prevented the petitioners from exercising their proper and exclusive rights of proprietorship over the said farm of Waterstein, and that they have molested and interfered with the servants of the petitioners in the exercise of their duties on said farm, and by violence and intimidation have prevented them from carrying into effect the orders of the petitioners, and clearing the ground of Waterstein of stock which had no right to be there. In all these proceedings the present respondents have actively participated.” That charge we are all of opinion has been clearly proved against the whole of you. Fortunately such scenes of violent resistance to lawful authority are of very rare occurrence in this country in modern times. Scotland is a land of peace and order, and therefore of liberty; for without peace and order there can be no true liberty. But this happy condition of our country would very soon be reversed if any person or class of persons were permitted with impunity to take the law into their own hands, and for the purpose of promoting their own rights and interests, or what they believe to be their own rights and interests, to set at defiance the orders of a Court of Justice. It becomes necessary, therefore, to check such lawless proceedings at once, and the Court are, after consideration, unanimously of opinion that they must pronounce against each of you a sentence which, in the circumstances, may perhaps be thought too lenient, but which will yet sufficiently mark our sense of the serious character of the offence you have committed—a sentence of two months' imprisonment. We are all the more inclined to take this lenient course because we think you have been probably misled by very bad advice—the advice of persons who, if they are not evil-disposed and malevolent, are open to the charge of almost incredible folly. I would counsel you earnestly to shun such erring guides for the future if you would avoid much more serious consequences than you have experienced in the present. If anyone suffers a legal wrong the law will redress it, and the Courts are open to rich and poor alike. If the law is wrong, and ought to be altered, the only remedy is to be found in legislation; and in both Houses of Parliament there is no lack of men who will champion the poor man's cause and secure him justice. The one thing, above all others, that cannot be tolerated in a civilised community is resistance to the law and disobedience of judicial orders and decrees. This must be checked, if necessary, by far more severe penalties than the sentence we have now pronounced.

The Court pronounced the following interlocutor:—

“The Lords having resumed consideration of the petition and complaint, with the answers for the respondents, and the proof adduced, and heard counsel thereon for all parties, Find that the said respondents have each and all of them broken the interdict granted by Lord Kinnear on 6th July 1882: Therefore decern and adjudge the said respondents to be each imprisoned for the space of two months from this date, and thereafter to be set at liberty; and for that purpose grant warrant to officers of the Court to convey the said respondents from the bar to the prison of Edinburgh, thereafter to be dealt with in due course of law.”

Counsel for Complainers—J. P. B. Robertson—A. Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondents—D.-F. Macdonald, Q.C.—M'Kechnie—G. Wardlaw Burnet. Agent—Robert Emslie, S.S.C.

Thursday, March 15.

## SECOND DIVISION.

### BONTHRONES v. BONTHRONES.

*Evidence—Proof of Mandate by Parole—Revocation of Will.*

In an action of proving the tenor of a will of which the execution was admitted, *held* competent to prove by parole that the will had been destroyed by the person in whose custody it was, at the request of the testator.

*Proving the Tenor—Trust-Disposition and Settlement—Causa amissionis.*

*Held*, on a proof, that the will of a testator had been destroyed at his request, made with a view of revoking it, by the heir-at-law, in whose possession it was.

This was an action of proving the tenor of a trust-disposition and settlement which had been executed in 1868 by Mr John Bonthrone, a brewer and maltster in Auchtermuchty. By this deed he conveyed his whole heritable and moveable estate to trustees, with directions to hold it for behoof of his son and daughter (the latter being then married) equally in liferent, and their children, equally between the two families, in fee. In the event of both of his children dying without issue his trustees were to convey a certain heritable property to a nephew John Bonthrone, one of the pursuers in the present action, and thereafter to realise his whole other heritable and moveable estate and divide it equally amongst certain nephews and nieces, including the pursuers John Bonthrone and Mrs Morgan.

Mr Bonthrone died on 11th October 1881. After Mr Bonthrone's death no will was found. His son predeceased him unmarried, and his daughter, Mrs Ireland, who resided at St Andrews, took up her father's whole succession on the footing that he had died intestate, being served his nearest lawful heiress in general, and decerned his executrix-dative *qua* next-of-kin.

The present action was raised on 13th Septem-