Wednesday, December 3.

FIRST DIVISION.

[Lord Trayner, Ordinary.

HARRISON *v.* THE NORTH OF SCOTLAND BANK, LIMITED, AND HARRISON.

Reduction—Incapacity from Intoxication—Essential Error—Mora.

Observations by the Lord President, Lord M'Laren, and Lord Kinnear upon the significance to be attached to delay in raising an action of reduction after the party complaining was in full possession of the circumstances upon which the action was founded.

The circumstances under which this action was raised are set forth in the opinion of Lord Adam. The Court refused to reduce the deed complained of, being satisfied upon the evidence that the pursuer John Harrison was neither under essential error when he signed it upon 6th June 1885, nor so intoxicated as to be incapable of understanding its full purport. In the course of the evidence, however, it appeared that the pursuer John Harrison had fully and carefully considered the deed when in a condition of sobriety, and was in complete possession of its terms and effect by 17th July 1885. The summons was not signeted until 15th December 1888. The occurrence of this delay in raising the action was the subject of observation by the Court.

At advising—

LORD ADAM—This is an action of reduction brought by John Harrison and his wife, who were the individual partners of the firm of Richmond & Company, against the North of Scotland Bank, Limited, and Arthur Henry Harrison, a brother of the pursuer John Harrison, with the object of setting aside a deed executed by the pursuer upon 6th June 1885. The grounds of reduction set forth are—(1) that John Harrison was at the time he signed the deed so intoxicated as to be incapable of understanding its purport; and (2) that, in any event, it was granted by the pursuers under essential error, which was induced by misrepresentation upon the part of the defenders.

Now, this was a second deed following upon an agreement of 23rd May 1885, by which the firm of Richmond & Company had conveyed their whole business and assets to Arthur Harrison, who had undertaken personally, and by his firm of Harrison & Company, considerable financial obligations upon that firm's behalf, and the idea of the arrangement which took effect in that deed was, that Arthur Harrison should conduct the business of Richmond & Company until the balance due to his firm and himself was cleared off, or until John Harrison, whose intemperance was interfering with the success of the business, should again become able to undertake the management. The third article of that agreement was in these terms—"In respect the said first parties" (that is, the pursuers here) "have granted to the North of Scotland Banking Company certain conveyances of heritable and other property in security of obligations to the said bank, it is agreed that these securities shall subsist till the whole of the presently existing claims of the said bank against the present firm of Richmond & Company, or the first parties as partners thereof, or against the second party" (that is to say, Arthur Harrison), "or his said firm of Harrison & Company, have been fully discharged." The conveyances of heritable property here mentioned had been made to the bank in the preceding year in security of advances made, and of course the bank was bound on repayment of these advances to reconvey these properties to the pursuers. Now, the difference between this agreement and that subsequently executed upon 6th June 1885, which it is sought to reduce, is, that under the latter the pursuers renounced all claims competent to them under and by virtue of the back-letters they had obtained, and which they redelivered to the bank, and it was agreed that upon repayment of the advances the bank should convey the subjects they held in security, not to the pursuers, but to Arthur Harrison. The question now is, whether these are good grounds for reducing this deed of 6th June?

Now, it appears to me that the question is entirely one of fact, and upon a consideration of the evidence I think the judgment of the Lord Ordinary is right. I am of opinion that the account given by the defenders' witnesses is more trustworthy and credible than that given by John Harrison and the witnesses who support him, and sitting, as we must do in a case of this kind, to exercise the functions of a jury, I do not think we can come to any other conclusion upon the issues before us than this—that John Harrison was not incapable of understanding the deed when he signed it, and that he was not under essential error as to its terms. It is, I think, impossible to come to any other judgment in view of the account given in evidence of his behaviour when the deed was presented to him for his signature. I may refer, in particular, to the evidence of Mr Mollyson, the secretary of the North of Scotland Bank at Lerwick, who says—"John Harrison then came in. There was no one with him that I saw. After we had been some time in the drawing-room we were told that he was ready to receive us, and we were taken into his library or office. He said—'Come away, gentlemen,' and made some little bantering remarks. He was sober. He may have had a glass of spirits, but I am perfectly certain that he was sober. The deed was produced by Mr Fyfe, who proposed to read it over. John said he would read it himself. He took the deed and read it over clause by clause. In the course of reading it he stuck at certain points and got quite violent. Once or twice he left the room and returned again. I think the point at

which he got violent was where he saw he was really being denuded of the whole estate—his ships and everything. He read the whole deed. He made remarks while reading it, sometimes violent remarks. He said Mr Fyfe had deceived him. (Q) In what way?—(A) That he had made, I suppose, explanations to him different from what he had seen in the deed. Mr Fyfe explained that the deed was practically an embodiment of the agreement. (Q) Did Mr Fyfe explain any part of the deed to him?—(A) Yes, and Mr John Harrison understood the whole deed perfectly well; I had no doubt of that. I made a remark when I saw him get into a violent state, to the effect that it was a matter of indifference to the bank whether he signed the agreement or not, because he was tied neck and heel; his whole property was the bank's already. The bank had determined to advance no more money unless the agreement was signed, and had so instructed their agent. That was explained to John, and he understood it. When he left the room in a violent passion, I think his brother and Mrs Harrison went after him and brought him back. He was away for a short time. When he came back he was quite ready to sign. (Q) Did he say he was ready to sign:—(A) Yes. Mr Matthewson, the tutor, was called in as a witness, and John signed in his presence. I had no doubt whatever that he was perfectly sober." Now, it seems to me that the reason of John Harrison's reluctance to sign the deed was just that he did understand its purport, and the reason he ultimately signed it was that he would have been sequestrated if he had not. It is said, however, that the agent for the bank misled him by stating to him that there was no difference between the deeds. But the agent was speaking of the deeds merely from the bank's point of view, from which there was certainly no difference, and Arthur Harrison's agent, who is also said to have misled John Harrison, did not in my opinion do more than merely state a different view as to the result the deed would bring about. But whatever these persons did say, it did not affect the judgment of John Harrison or induce him to sign the deed. I think he had formed for himself an independent and perfectly accurate view of its effect, and that view he explained to his wife, who is the other pursuer. In these circumstances I think the reclaiming-note should be refused.

LORD M'LAREN—One consideration urged by the counsel for the defenders is very material in a case of this kind. I mean that in an action of reduction brought upon such grounds as are disclosed in this record the party alleging that he has been wronged must make his challenge within a reasonable time. That rule, I think, is generally applicable to actions of reduction upon any grounds, and for this reason, that it is a condition of an action of reduction that there must be *restitutio in integrum*—parties must be restored to the position which they respectively occupied before the deed was executed. And generally it will be impossible to give that restitution where the party complaining allows a considerable period to elapse during which transactions have taken place on the faith of the deed. That consideration does not, however, apply very strongly to this case, because the recission of the deed of June 1885 would only have the effect of setting up the deed of May 1885, under which the management of the property was to be exactly the same, there being really no material difference except as regards the person to whom the bank should be accountable. There is another reason why I think that the Court will generally require that reductions depending on extrinsic grounds should be brought within a reasonable time—always a short time—I mean as a guarantee of good faith. Because if the party who alleges that he has been defrauded or that he has been deceived by representations — not necessarily fraudulent—made to him by the other party, allows time to pass after having fully considered the deed and found out wherein the deed is prejudicial to him, it is difficult to believe his statement that he executed the deed under essential error, or under the influence of fraud or pressure, in the face of the evidence to the contrary afforded by his silence. In such cases the silence of the party alleging that he is aggrieved after he has had an opportunity of considering his position is evidence that in point of fact he had nothing to complain of. In this case the deed complained of was executed in June 1885, and the summons was signeted in December 1888, and in the absence of any satisfactory explanation of the cause of this delay I should be disposed on this ground to reject this claim altogether. But probably it is more satisfactory to the parties that the case should be dealt with on the merits. On that subject I am entirely of the opinion expressed by Lord Adam and by the Lord Ordinary. In the first place, I am of opinion that the case of intoxication fails entirely, and I shall abstain from entering further on that subject.

On the matter of error I have great difficulty in understanding what is the nature of the error alleged, because the evidence does not disclose any extrinsic fact as to which an erroneous impression was communicated to the pursuer by the defenders. What the pursuer says is that he was led into error as to the meaning and effect of the deed under reduction. Of course, after the decision in the House of Lords in the case of *Stewart* v. *Kennedy*, this must be allowed to be a relevant reason of reduction. But the case fails on the evidence, because I am satisfied that the pursuer fully understood the deed put before him for his signature, that he was influenced in signing by the knowledge that it was necessary that he should sign in order to avoid immediate bankruptcy, and that he was not influenced by any representations as to the nature and effect of this deed or of the deed signed in May 1885. He was told no doubt that there was little difference between the deeds, and that it was for his

interest to sign. These statements were made to a man of business who had read the deeds, and who had shown by his previous remarks that he understood there was a difference between them.

I therefore cannot take it that the pursuer was in any way misled by these representations, and as all the grounds of reduction have failed, I think the defenders should be assoilzied.

LORD KINNEAR—I am of the same opinion, and in particular I agree in attaching importance to the occurrence of delay before the raising of the action. Not that the mere passage of time operates as a bar to the action being sued, but because it is a significant and a most material consideration upon the question of fact which the action is raised to try.

But apart from that, I should agree upon the evidence as to what actually took place that the conclusion of the Lord Ordinary is well established upon both points. I think it is very clear that the pursuer John Harrison was not at the time he signed the deed incapable of understanding its meaning and effect; and upon the second point I think that he was not induced to sign it either in essential error or by misrepresentation. The whole evidence, to my mind, conclusively establishes this, and in particular the passage referred to by Lord Adam throws a very clear light upon John Harrison's mental condition when the deed was presented for his signature. He read it clause by clause until he came to the point at which provision was made for reconveyance of the estate to Arthur Harrison, when he flew into a passion and said Mr Fyfe had deceived him. If he had said that after signing the deed I could quite understand the force of the point made, but when the remark was made before he signed, it only makes more clear the reason of his anger, and the state of knowledge he was in when he signed. He gets the deed and reads it; he finds it differs from the previous deed, and he becomes in consequence angry, and says he was misled; but upon reconsideration, and after his wife had reasoned with him, he signs the deed, and does so in full knowledge of its terms.

LORD PRESIDENT—I take the same view of the evidence in this case as your Lordships, but I also attach importance to the length of time that elapsed from the date when the pursuer was fully aware of the provisions of the deed before challenge of it was made by action. The delay that occurred throws a good deal of light upon the question of fact as to whether the deed was signed erroneously, and the two parts of this case aid one another materially in pointing to the same conclusion.

The Court adhered.

Counsel for the Reclaimers—H. Johnston — M'Lennan. Agent — George Andrew, S.S.C.

Counsel for the Respondents — Comrie Thomson—Ure. Agent—Alexander Morison, S.S.C.

Thursday, December 4.

FIRST DIVISION.

STAIR AGNEW, PETITIONER.

Public Records—Process—17 *and* 18 *Vict. c.* 80, *sec.* 55—*Burnt Registers—Procedure Followed in Restoring Parish Registers which had been Destroyed by Fire.*

The schoolhouse of Forteviot, in the county of Perth, the residence of William Sprunt, the registrar of births, deaths, and marriages for the parish of Forteviot, was burned on 21st September 1890, and the register books in the custody of the registrar were more or less injured or destroyed by fire.

The present petition was presented by Stair Agnew, C.B., the Registrar-General for Scotland, under the 55th section of 17 and 18 Vict. c. 80.

The petitioner stated that in most cases any entries which had been rendered illegible in the register books in the registrar's custody could be replaced from the duplicates of said registers which were in the petitioner's possession, but that both the duplicates of the register of deaths (which had been in the registrar's possession) had been totally destroyed, that the deaths registered in the parish during that year had been six in number, and that the petitioner had received complete information from the registrar as to all these deaths, so that new registers could be made up without difficulty.

The petitioner accordingly prayed the Court "to order this petition to be intimated on the walls and in the minute-book, and thereafter, on being satisfied of the accuracy of the statements made in this petition in regard to the whole or partial destruction of the said registers, to authorise the petitioner to complete such of the registers as require it by inserting therein copies of such of the entries therein as have been destroyed or rendered illegible, and to authorise new duplicates of the registers which have been totally destroyed to be made at the sight of the petitioner from the duplicates in his possession, and to direct that each of the said new duplicate registers, and each of the copies of entries so inserted in the registers which have been partially destroyed be authenticated by the signature of the petitioner; and to declare that when so authenticated they shall thereupon become in all respects of the same force and validity as the originals, and to authorise new register books to be supplied by the petitioner to the said William Sprunt, or the registrar for the time being, who shall engross therein in the ordinary way the particulars of all the entries which were contained in the said duplicates pertaining to the years 1889 and 1890, and to direct that each of the said new registers be thereafter authenticated by the signature of the petitioner, and to declare that when so authenticated they shall have the same force and validity as the originals."

Section 55 of the Act 17 and 18 Vict. c. 80,