

had confidence. It was Mr Napier's fault if he lost this contract with the company; he could not now complain of undue preference being given to another party, seeing he refused to bind himself to the company to keep his steamer on the line.

Their Lordships recalled the interlocutor of Lord Mure, and refused the petition of Mr Napier, with expenses.

THOMS v. THOMS.

Mortis Causa Settlement—Reduction—Essential Error—Fraudulent Impetration. Issue granted to a pursuer to prove fraudulent impetration of a deed from the granter, but issues to prove that it was executed under an erroneous belief and under essential error refused.

Counsel for Pursuer—Mr Patton and Mr Gifford. Agent—Mr A. J. Napier, W.S.

Counsel for Defender—The Lord Advocate, the Solicitor-General, Mr Gordon, Mr Clark, and Mr Shand. Agents—Messrs Hill, Reid, & Drummond, W.S.

This is an action of reduction and declarator at the instance of John Thoms, residing at Sea View, St Andrews, against Robina Thoms, the illegitimate daughter of his brother, the deceased Alexander Thoms, of Rungally, in the county of Fife. Alexander Thoms died without lawful issue on 15th August 1864, and the pursuer is his heir-at-law and heir of conquest. At the time of his death, Alexander Thoms was possessed of the estate of Rungally, which is worth about £25,000, some lands in Ceres Muir, adjoining said estate, worth about £1500, and also some personal property.

The pursuer averred that Rungally was held by his brother Alexander under a deed of entail dated 6th February 1805, made and granted by his father, and that he was the heir of tailzie and provision in the said estate. It was alleged by the defender that none of the prohibitory, irritant, and resolute clauses in the deed of entail applied to her father, the donee or institute, and that he therefore held the property subject to his absolute disposal.

The defender had made up titles to the estate and also to the lands in Ceres Muir, and was at present in possession of the same. This she did in virtue of a *mortis causa* general disposition and settlement, executed by her father on 23d January 1861, by which he conveyed to her and her heirs and assignees all his property, heritable and moveable, real and personal. This deed the pursuer now sought to reduce. He averred that his brother did not, and did not intend to, convey the estate of Rungally; that he always believed that he held the estate under the fetters of a strict entail, and that it would devolve upon his death on the pursuer as the heir of entail. But he also averred that the general disposition and settlement was fraudulently impetrated from his brother by the defender, and by Charles Welch, writer in Cupar, or by one or other of them, the said Charles Welch acting as her agent, or, at all events, acting for her, and in the view of promoting her interest; that this was done on the false and fraudulent pretence that the deed conveyed nothing but personal or moveable property, and that the granter was induced to sign it solely on this representation and in this belief. The deed, it was also averred, was written by the said Charles Welch without any draft thereof having been prepared or submitted; it was signed without having been read over to the deceased, and without its import being explained to him further than the assurance that it conveyed nothing but his personal estate; and immediately after being signed it was, for the purpose of more effectual concealment of its real terms, carried off by the said Charles Welch, and thereafter constantly retained by him in his own exclusive custody until it was produced by him at a meeting of friends after the funeral. It was also averred

that at the date of the deed Alexander Thoms was in an infirm state of health, and almost entirely blind; and that the defender and Welch as her agent, or one or other of them, took advantage of his weakness and facility, and so fraudulently impetrated the deed from him. The pursuer's statements were denied by the defender.

The following issues were prepared for the trial of the cause, viz. :—

1. Whether Alexander Thoms, sometime of Rungally, now deceased, the brother of the pursuer, executed the general disposition and settlement, dated 23d January 1861, and of which No. 9 of process is an extract, under the belief that the said deed did not convey the lands and estate of Rungally, held by the said Alexander Thoms as heir of entail under the disposition and deed of entail by his father, dated 6th February 1805?

2. Whether Alexander Thoms, sometime of Rungally, now deceased, the brother of the pursuer, executed the general disposition and settlement, dated 23d January 1861, and of which No. 9 of process is an extract, under the essential error that the said deed did not convey the lands and estate of Rungally, held by the said Alexander Thoms as heir of entail under the disposition and deed of entail by his father, dated 6th February 1805?

3. Whether the said general disposition and settlement by the said deceased Alexander Thoms was fraudulently impetrated from the said Alexander Thoms by the defender and Charles Welch, writer in Cupar, on her behalf, or one or other of them?

The defender objected to these issues on the ground—

1st, That the pursuer is not entitled to a proof of the circumstances averred by him in support of his construction of the deed, and that, at all events, the first issue is not properly adapted to try that part of the case.

2d, That there is not a relevant case of essential error set forth on record; and

3d, That the third issue, which is the only one the pursuer is entitled to, ought to set forth specially the fraudulent representation to which it refers.

A discussion took place last session, and to-day the Court decided that the pursuer was not entitled to the first and second issues proposed, but the third was allowed, qualified by the clause "in so far as it conveys or pretends to convey the lands of Rungally."

SECOND DIVISION.

A. v. B.

Bankruptcy—Trustee—Appeal—Expenses. Held (Lord Benholme diss.) that a trustee in bankruptcy, who rejected a claim as insufficiently vouched, without investigating it, was liable in the expenses of a successful appeal against his deliverance.

Counsel for the Trustee—The Lord Advocate and Mr Watson. Agent—Mr Somerville, S.S.C.

Counsel for the Claimants—Mr Gordon and Mr Mackay. Agent—Mr Alexander Howe, W.S.

This case arose out of two claims by a legal firm made on the sequestrated estate of a deceased party who had for a series of years acted as their cashier. The claimants allege that by means of under-summation and over-summation respectively of the debit and credit columns, their cashier had defrauded them of two sums, applicable to different periods, of £3188, 2s. 0d. and £6049, 8s. 2d. The claimants made affidavit to this effect in terms of the Bankrupt Act, and produced their cash-books with the various entries relied upon, which they argued was sufficient evidence of their being the writ of the bankrupt. The trustee rejected the claim as being insufficiently vouched. The claimants appealed to the Lord Ordinary (Kinloch), who recalled the deliverance of the trustee, and remitted to him to rank the appellants in terms of