ceeded was, I think, what I have just stated.

I quite concur, therefore, with your Lordships in holding that the party founding on this document cannot maintain his position.

LORD SHAND—I am of the same opinion. There is no doubt that this case admits of being distinguished from that of *Dunlop* in two important respects—(1) The deed here may fairly be said to be quite complete in itself, including the date when it was written. It deals with the entire estate, heritable and moveable, of the writer. It does not appear to be a mere draft, and it wants only the subscription to make it in all respects an exhaustive and effectual settlement. The writing in *Dunlop's* case was not of this complete nature. And (2) the deed has been found in circumstances much more favourable to its being sustained as a testamentary writing than was the case in *Dunlop*. In respect of these important particulars, the case is one more favourable to the deed than *Dunlop's* case was. At the same time, I have come to the conclusion that the true principle of the decision in that case was really that enunciated by Lord Stair, viz., that when a holograph testamentary deed found in the repositories of the deceased is unsigned, it is to be held as an incomplete act, from which the party has resiled. It is admitted that the parties who maintain the validity of the deed are unable to exclude the view that the testator by not subscribing the deed intended to take time to consider whether he should sign it at all, or, at all events, whether he should alter it in some respects before signing it. No doubt the document lay for a long time in the deceased's repositories, but just as he might have taken one or two days to make up his mind about completing it, so he may have taken weeks or months, having the deed always under his control. In these circumstances the parties who say the deed is valid really ask the Court to weigh probabilities, and to say, that as the probability is that the deceased meant to leave this document as his will, it should therefore receive effect.

I think it would not be a satisfactory state of the law that a question should be put in this form to the Court, and that the Court should sustain the will on the ground of what they consider was the probable intention of the writer. There is one way of putting the question of probability out of view, and that is by the testator signing the deed; and I think the view expressed by Lord Stair is the safe and proper view of the law on the point.

As regards the classes of cases regarding bills and obligatory documents usually delivered by the debtor, and notarial docquets, I think they have been decided on special grounds which do not apply to a testamentary writing like the present; and on the whole matter I concur in thinking that this deed is invalid.

The Court pronounced the following interlocutor :—

"Find and declare that the writing referred to in the case as a testamentary paper of the deceased Alexander Skinner is not a valid will of the said deceased," &c.

Counsel for First Party—J. P. B. Robertson—Graham Murray. Agents—H. & H. Tod, W.S.

Counsel for Second Party — Mackintosh — M'Lennan. Agent—James Skinner, Solicitor.

Tuesday, November 13.

SECOND DIVISION.

[Lord Lee, Ordinary.

FOSTER AND OTHERS (BLYTH'S TRUSTEES) v. SIR MICHAEL SHAW STEWART, BART.

Property — Bounding Title — Description by Measurement—Ground gained alluvione *from River.*

A riparian proprietor disponed in 1815 a piece of ground, described by measurement as amounting to 218 falls 13 yards and 1 foot, and also by boundaries, one of which was "the river Clyde at low water on the north." Thereafter the river receded till in 1883 the low water-mark was 130 feet north of what it had been in 1815. *Held*, in an action at the instance of the successors of the disponee against the successor of the disponer, that the disponee having by the conveyance been made riparian proprietor, and the disponer having retained nothing, the pursuers, as riparian proprietors, were entitled to the ground so gained from the river.

By feu-contract dated 24th and 31st August 1815 Sir Michael Shaw Stewart, Bart., feued to James Stevenson and others, merchants in Greenock, carrying on business under the firm of the Clyde Pottery Co., "All and whole that piece of ground lying on the north side of the high road leading from Greenock to Port Glasgow, of the following mensurations, viz., one hundred and forty feet in length along the front of the said high road, the like number of feet in length at the back thereof at low water-mark, and five hundred and six feet in breadth on each side from the said high road to low water, amounting in measure to two hundred and eighteen falls twenty-three yards and one foot or thereby, computing each fall to contain thirty-six superficial yards, and bounded as follows, viz., by the said high road on the south; by an intended street of fifty feet wide from the high road to low water-mark on the east; by the river Clyde at low water on the north; and by the ground feued to the Whale Fishing Company on the west, with the teinds, parsonage and vicarage, thereof, and free ish and entry thereto from the said high road, street, and sea, lying within the old parish of Greenock and shire of Renfrew." Sir Michael was proprietor of the lands and barony of Greenock, of which the subjects formed part, "cum totis fundis et terris intra fluxum et refluxum maris jacen. contigue ex adverso terris de Wester Greenock in quantum eadem sunt boundatæ versus mare."

Since 1815 the river Clyde has receded, and the low water-mark was in 1882 about 130 feet further north than it was in 1815 The subjects forming the Clyde Pottery were at the date of this action (February 1883) vested to the extent of one-half *pro indiviso* in George Foster and others (Blyth's trustees), and to the extent of the other half *pro indiviso* in Robert Blyth and others (Foster's trustees). The Clyde Pottery was in 1882 taken by the Glasgow and South-Western Railway Company under powers contained in their Act of Parliament, and compensation was claimed by Blyth's trustees and Foster's trustees on the footing that their property extended to the low water-

mark of 1883 and not that of 1815. Sir Michael Shaw Stewart, Bart., successor of the disponer of the lands, as proprietor of the lands and barony of Greenock, maintained that he was the proprietor under his title (above quoted) of the piece of ground between the low water-mark of 1883 and the low water-mark of 1815. In these circumstances this action was raised against him by Blyth's trustees and Foster's trustees to have it declared that they had "the sole and exclusive right and title in and to All and Whole that piece of ground lying on the north side of the high road leading from Greenock to Port Glasgow, and bounded as follows, videlicet, bounded by the said high road on the south; by a street of fifty feet wide from the high road to low water-mark on the east; by the river Clyde at low water-mark on the north; and by the ground feued to the Whale Fishing Company on the west, with the teinds, parsonage and vicarage, thereof, and free ish and entry thereto from the said high road, street, and sea, lying within the old parish of Greenock and shire of Renfrew: And that the defender has no right or title in or to the said piece of ground or any portion thereof."

The pursuers averred that the piece of foreshore in dispute had been possessed and used as their own exclusive property by them and their predecessors.

The defender, in addition to relying on his title quoted above, produced a disposition in his favour by the Commissioners of Woods and Forests, dated 25th May 1858, by which he had acquired all right to the whole *alveus* of the river between high and low water-mark *ex adverso* of all and whole the lands of Easter Greenock.

The pursuer pleaded—"(1) The pursuers are entitled to decree of declarator as concluded for, in respect of (1st) the terms of their title; (2d) *et separatim*, the terms of their title and possession had thereon. (2) The property of the pursuers being bounded on the north by the river Clyde at low water-mark, they are entitled to all alluvial ground formed above the said low water-mark *ex adverso* of the property possessed by them."

The defender pleaded—"(3) The title founded on by the pursuers being a bounding title, and the measurements therein set forth being taxative, the pursuers are not entitled to decree of declarator as concluded for. (4) The ground in question being the property of the defender by virtue of his titles, and never having been feued out by him or his predecessors, he should be assoilzied with expenses. (5) On a sound construction of the feu-right founded on, no right of property is thereby conveyed in any ground to the north of the then existing low water-mark."

The Lord Ordinary (LORD LEE for LORD ADAM) found, declared, and decerned in terms of the conclusion of the action.

"*Opinion.*—The pursuers are proprietors of a feu acquired by their predecessors from the late Sir Michael Shaw Stewart, the predecessor of the defender, in virtue of a feu-contract dated 24th and 31st August 1815.

"The feu is described therein as follows:—'All and Whole that piece of ground lying on the north side of the high road leading from Greenock to Port Glasgow, of the following mensurations, viz., 140 feet in length along the front of the said high road, the like number of feet in length at the back thereof at low water-mark, and 506 feet in breadth on each side from the said high road to low water, amounting in measure to 218 falls 23 yards and 1 foot or thereby, computing each fall to contain 36 superficial yards, and bounded as follows, viz., By the said high road on the south; by an intended street of 50 feet wide from the high road to low water-mark on the east; by the river Clyde at low water on the north; and by the ground feued to the Whale Fishing Company on the west, with the teinds, parsonage and vicarage, thereof, and free ish and entry thereto from the said high road, street, and sea, lying within the old parish of Greenock and shire of Renfrew.'

"It will be observed that there is here a description of the subjects both by measurement and boundaries, and that the boundary on the north is said to be 'the river Clyde at low water.'

"It does not appear that there was at the date of the feu-contract any discrepancy between the description by measurement and the description by boundaries. But what has taken place is that the river Clyde has receded about 130 feet to the northward, thus leaving a piece of ground of that breadth between what was the low water-mark of the river at the date of the feu-contract and at the present date. This piece of ground is the subject of dispute in the present action, and is claimed both by the pursuers and by the defender. The immediate cause of the action would appear to be that the Glasgow and South-Western Railway Company have taken the property belonging to the pursuers, and it has become necessary now to determine whether or not it includes this piece of ground.

"The pursuers aver that they and their predecessors have possessed and used the piece of ground in question as their own exclusive property; but they do not say for what length of time, and having regard to the nature of the pleas maintained by the parties, I do not think it necessary that a proof should be allowed on that matter.

"At the date of the feu-contract, the granter, Sir Michael Shaw Stewart, was proprietor of the lands and barony of Greenock, of which the subjects formed part, 'cum totis fundis et terris intra fluxum et refluxum maris jacen. contigue ex adverso terris de Wester Greenock in quantum eadem sunt boundatæ versus mare.' He had therefore a grant of the shore *ex adverso* of the subjects down to low water-mark; but whether he had or not he cannot be allowed to challenge his own grant. It appears to me, therefore, that when Sir Michael granted the feu-contract, the subjects in which are described as bounded by the river Clyde at low water on the north, he parted with every particle of property he had on the shore *ex adverso* of these subjects.

"I think it is also clear that the parties to the contract intended that the feuar should in all time have a river or sea boundary, because the subjects are conveyed 'with free ish and entry thereto from the said high road, street, and sea.' The 'sea' here can mean nothing but the river Clyde. It is said, however, by the defender, that this does not necessarily imply an ish and entry directly from the sea, and that the obligation will be sufficiently complied with by giving an ish and entry from the sea through the interjected land. It is clear, however, that such

an ish and entry is an entirely different thing, and a much less valuable right than a right to bring boats and vessels directly up to the subjects feued; and I think the latter right and not the former was in the contemplation of the parties.

"If the description by boundaries had stood alone in the feu-contract, I do not think that there would have been any doubt of the right of the pursuers to follow the retiring water, and that the land added by accretion to their subjects would have belonged to them. But the feu-contract also contains a description of the subjects by measurement. It gives not only the superficial area, but it describes the subjects as being '506 feet in breadth on each side from the said high road to low water.'

"The defender maintains that this description is taxative, and that the pursuers are in no case entitled to a greater breadth of land than 506 feet. It is not true now that it is 506 feet from the high road to low water, it being, in fact, 130 feet more; and it may be doubted whether it was true for any length of time, seeing that such a boundary as that of 'low water-mark' is necessarily a shifting boundary. The water was probably receding more or less imperceptibly at the date of the contract. But it might have been that in place of receding, the water might have advanced upon the land, and in that case I do not see how the pursuers could have refused to pay the feu-duty stipulated, although they would not have had the breadth of feu or the superficial area described in the contract. What I think was intended to be given by the feu-contract was a piece of ground of a certain specified length along the high road leading from Greenock to Port-Glasgow, and extending down to the low water-mark. I think the description by boundaries is quite sufficient to give them that, and therefore that they are entitled to prevail in this action.

"I think the case of *Gibson* v. *Bonnington Sugar Refining Company*, 7 Macph. 394, has some analogy with the present case. There the superficial area of the subjects conveyed in the feu-contract was, as here, specified in the description, and the length of each of the four sides containing it was given by measurement, and it was laid down on a plan signed as relative to the contract. The subjects were, in fact, bounded by the Water of Leith, and the question arose whether the feuar was entitled to the *alveus* of that river *ad medium filum aquæ ex adverso* of his feu. The Court held that he was a riparian proprietor so entitled. So I think in this case the pursuers being in fact bounded by the sea, had a right to acquire any land that might be added to their feu by accretion. Such land could not belong to the Crown, because they had conveyed their rights in the foreshore to Sir Michael Shaw Stewart; nor could it belong to him, because he in his turn had conveyed his rights therein *ex adverso* of the subjects in question to the pursuers."

The defender reclaimed, and argued—The pursuers were not entitled to declarator of right to the piece of foreshore in dispute; while the feu-contract under which they held the subjects conveyed by the defender's predecessor described the subjects by boundaries, it did so also by measurements. That being so, the description must be held as taxative. 506 feet was the greatest breadth of land to which they were entitled. The fact that the river Clyde had receded since the date of their feu-contract did not entitle them to more than was feued to them at that date—Bell's Prin. 738; Rankine on Land Ownership, 87; *Hunter* v. *The Lord Advocate*, June 25, 1869, 7 Macph. 906 (Lord President's opinion). In the case of *Smart* v. *The Magistrates of Dundee*, November 21, 1797, 3 Pat. App., p. 606, the expression "enclosed yard" was held to prevent the disponee from claiming anything lying outside the boundaries. The case of *Gibson* v. *The Bonnington Sugar Refining Company* was distinguishable from the present. There the boundary was a river within the subject given. The subjects were conveyed "with free ish and entry thereto from the sea." This could only imply a right reserved between the ground conveyed and the sea.

The pursuers replied—The case of *Hunter* v. *The Lord Advocate* was a direct authority in favour of their position as to the defender having parted with his whole rights seaward. There the boundary being the "sea-flood," it was held that the superior had no title to alluvial ground subsequently deposited between the feus and the sea. Where the charter was a bounding one, and there were measurements as well, they were not taxative, and did not preclude a feuar from maintaining a right under the feu-contract to an extent greater than the measurement specified in it—*Ure* v. *Anderson and Others*, February 26, 1834, 12 S. 494. The case of *Smart* v. *The Magistrates of Dundee* was not in point. In it the boundary was stationary, viz., a stone wall, and the granter of the conveyance was a royal burgh whose charter gave them rights of property beyond the wall.

At advising—

Lord Young—The dispute between the parties regards a piece of ground 140 by 130 feet, which since 1815 has been gained *alluvione*, or otherwise legitimately, from the river Clyde. The decision of it of course depends on whether the pursuer or defender is the riparian proprietor at the place, for it is according to a familiar rule of law that ground so gained attaches *accretione* to the adjacent land, which it in fact extends, and so is the property of the owner thereof. The pursuers derived their title as owners to what they represent to be the riparian ground at the place from the defender's predecessor, and the *prima facie* strength of their right to the ground in dispute may be inferred from the fact that a declarator affirming their proprietary right to the riparian ground, with the river boundary, expressed in the very words of the conveyance granted to them (or their predecessors) by the defender's predecessors, and which confessedly still subsists, would manifestly and admittedly establish it. They accordingly conclude for such declarator and nothing more, and the question is whether they are entitled to it.

There is no dispute as to the validity and subsistence of the feu-contract of 1815. It conveys to the grantees a piece of ground 140 feet by 506 feet, lying between the high road on the south and the river on the north—giving the road as the south, and "the river Clyde at low-water" as the north boundary. The river was the granter's own north boundary, so that he conveyed all he had in that direction, retaining nothing in the river or between it and the ground conveyed. It is

indeed now suggested that his title to the foreshore, or the space between high and low water-mark, was so doubtful that his successor (the defender) in 1858 amended it by purchasing a title to it from the Crown. The suggestion is idle enough, for 1st, the defender cannot plead want of title in derogation of his own grant (or that of his ancestor); and 2d, his supervening title of 1858 accrues to the grantee *accretione.* It shows, however, clearly enough that in 1815 the granter of the conveyance made the grantee riparian proprietor, exactly as he was before—leaving himself nothing whatever on the river bank, whether his proper boundary was high or low water. In short, he retained nothing at that place to be increased *alluvione* or otherwise by legitimate gain from the river, and, on the other hand, would lose nothing by the encroachment of the river.

We were favoured with an argument and a reference to authorities on the effect of the statement in the conveyance that the breadth of the ground from the road "to low water-mark" was 506 feet as taxative, and so controlling the boundary of low water-mark if at variance with it. Nothing could be more idle, for it is admitted that they exactly corresponded or coincided, so that there is no room for dispute, and in fact none, as to what was conveyed in 1815. If the pursuers had to show that the ground in question was conveyed to their predecessors in 1815, they would necessarily fail (although the defender might have no title to question their right), for it was not then in existence as a subject of property or conveyance, but was the *alveus* of a navigable tidal river, and always under water. What they have to show is, that by the conveyance of 1815 they were made the riparian proprietors at the place—that is, owners of the ground which has since been gained from the river *alluvione.* No riparian or seaboard proprietor who legitimately gains on the sea or river can properly show a prior title to the accretion itself, or to anything except the ground to which it accresces according to the common law. Had the conveyance of 1815 not been granted, the defender could have shown no more in support of his own claim.

Another argument was stated by the defender, which I only notice, for I think it quite unfounded. It was based on the grant of free ish and entry from the sea, which, it was urged, implied a right reserved between the ground conveyed and the sea. Counsel could not say what the right was, and admitted that the ground extended to low water-mark as it existed at the date of it, the granter having nothing beyond. This shows that the grant was superfluous, whereby *nihil fuit operatum.* There is a similar superfluous grant of entry from the highroad, which is the south boundary.

The defender relied on the case of *Smart* v. *Magistrates of Dundee*, July 6, 1796, 3 Paton 608, but it is plainly distinguishable, as a reference to a short but clear enough report will show. The points of difference on which, so far as we may judge from the facts and arguments, the judgment rested were pointed out during the argument, and I do not consume time now by repeating them, beyond observing—1st, that the boundary there was a stone wall, which could neither expand nor contract, while the boundary here is low water-mark of a tidal river, which may do either, and frequently does; and 2d, that there the granter of the conveyance was a royal burgh, whose charter it was held gave them proprietary rights beyond the wall, which rights they retained.

I am of opinion that the judgment of the Lord Ordinary is right, and I agree in the opinion which he has expressed, only stating additional reasons for upholding his conclusion.

LORD CRAIGHILL—The Lord Ordinary has decided in favour of the pursuers, and I agree in the conclusion to which effect is given by his decision. The plea upon which the defender disputes the right of the pursuers to the new ground is, that the title founded on by the pursuers is a bounding title, the measurement of the feu therein set forth being taxative. The result of this view of the matter would be, as things have occurred, the separation of the feu from its northern boundary, which is the Clyde at low water-mark. But in my opinion the measurement is not taxative, and consequently the ground to which the pursuers may be entitled cannot be held to be thereby fixed. In the circumstances of the case it appears to me that the measurement could not reasonably be regarded as taxative, because even when the feu was granted the extent of the feu must have been a varying quantity. If the measurement specified in the charter was made when the tide was an average or ordinary tide, the size of the feu must have been less when the tides were neap, and more when the tides were spring. In other words, the north boundary was a shifting bouudary, the result being that the extent of the feu was not fixed, but was more or less according to the varying position of the low water-line. It therefore seems to to me to be impossible to hold that the measurement on which the defender relies was taxative, and that the charter was a bounding title. The nature of the circumstances, and therefore the necessity of the case, are inconsistent with such an interpretation of the charter.

But even on the hypothesis that the pursuers' was a bounding charter, my opinion is that the ground must be regarded as the property of the pursuers. In the first place, there is no one else to whom it can belong. It cannot be the defender's, he having no ground to which it could be an increment. His predecessor parted with everything above low water-mark when in 1815 he granted the feu to the predecessor of the pursuers, and of course he had and could have no property in the bed of the sea. The receding tide, therefore, could not increase his estate, for he had nothing to which the ground left dry could be an accretion, and as an independent subject he possesses no title on the strength of which his claim could be allowed. In the second place, the new ground was an increment of the ground of the defender to which *alluvione* it was annexed, and as the accretion took nothing from the defender, or from any other, it is immaterial that it lies outside the limits defined by the measurement of the feu set forth in the charter by which the feu was created.

All the decisions appear to me to be consistent with, and some of them to be direct authorities for, the views which I have now presented, and of course with the judgment which the Lord Ordinary has pronounced.

Lord Rutherfurd Clark concurred.

The Lord Justice-Clerk was absent.

The Court adhered.

Counsel for Pursuers—J. P. B. Robertson—Graham Murray. Agents--Gordon, Pringle, Dallas, & Co., W.S.

Counsel for Defender — Solicitor - General (Asher, Q.C.) — Guthrie. Agents — Carment, Wedderburn, & Watson, W.S.

Tuesday, November 13.

SECOND DIVISION.

[Lord Fraser, Ordinary.

HEMMING *v.* DUKE OF ATHOLE.

Superior and Vassal—Feu-Charter—Reservation of "all Deer that may be found at any time within the Bounds of Estate."

A proprietor, who held his lands under a disposition which contained a reservation to the superior of "all deer that may be found at any time hereafter within the bounds" of the estate, brought an action to declare that the superior, who had let the adjoining lands as a deer forest, had no right or title to go on his lands for the purpose of hunting or stalking deer, and further to interdict the superior, and all others acting on his authority, from going on the lands for that purpose. The Court *granted* decree as craved, being of opinion that the reservation conferred on the superior, not a franchise of hunting on the pursuer's lands, but merely a right of property in the deer taken on them.

Question, Whether a mere estate of superiority can sustain a franchise of hunting deer on the vassal's lands?

Richard Hemming, proprietor of the lands of Glasschorrie and Riechal, Blair-Athole, brought this action against the Duke of Athole, his superior in the lands, for declarator "that the defender had no right or title to go upon the said lands of Glasschorrie and Riechal in pursuit or for the purpose of hunting or stalking deer;" and further, "to have the defender, and all others acting in his name or with his authority, or pretending to derive right from him, interdicted from going upon the said lands in pursuit of or for the purpose of hunting or stalking deer."

The pursuer bought the lands in 1852 from Captain Beaumont, R.N. They had been originally acquired in feu in 1737 from the Duke of Athole by Gilbert Steuart of Fincastle, and the charter contained a reservation in the following terms:—"Reserving to us and our foresaids the haill mines and mineralls that may be found within the bounds of the sd. shealling and grassings, of whatever nature or quality, with the liberty of digging, winning, and leading away of the same, and building houses for the accommodation of the mynners, But with this condition, that we and our foresaids be oblidged to satisfy the ffeuars and possessors of the lands for the time for what damnage shall happen thro' breaking the ground, building the houses, and making ways through the lands, and in searching for, winning, and away-leading of the said mynes and mineralls: And we bind and oblidge us and our heirs and successors duly and lawlly. to infeft and saize the said Gilbert Steuart of Fincastle and his forsds. in the foresaid lands and sheallings of Glasschoirie and Reichal; But reserving to us and foresaids all the deer that may be found at any time hereafter whn. the bounds of the said sheallings: To be holden," &c. In the precept of sasine contained in the said original feu-right and disposition, infeftment was directed to be given as follows:—"To be holden of us for yearly payment of the said feu-duty of one hundred merks and other prestations @ written; and with and under the reservation of the deer and mines and mineralls as above mentioned." This reservation entered the pursuer's title.

The pursuer stated, and it was admitted, that the defender was proprietor of certain lands adjoining his, and had let a portion of his property with the shootings, and with permission to the tenant to hunt deer over the ground belonging to the pursuer. He averred that in the shooting season of 1882 this tenant entered upon and traversed his (pursuer's) property in pursuit of deer; further, that from time immemorial "no such right or privilege of hunting and killing deer on the pursuer's property has been exercised by the defender or his predecessors, or anyone acting with their authority. But the defender now asserts that he has such a right, and means to exercise it himself, or by his servants or tenants, without leave of the pursuer."

The defender averred that the permission given to his tenant to hunt deer over the pursuer's land was given in exercise of the right to the deer "reserved to his authors and himself in the original feu-right and subsequent writs which form the pursuer's title, which reservation duly qualifies the pursuer's infeftment."

The pursuer pleaded—"(1) The defender has no right, as superior or otherwise, to enter upon the pursuer's lands for the purpose of hunting deer. (2) In respect that the defender asserts a right and intention to traverse the pursuer's lands in pursuit of deer, the pursuer is entitled to interdict as craved."

The defender pleaded—"(2) In respect of the reservation in the pursuer's title in favour of the defender, the defender should be assoilzied."

The Lord Ordinary (Fraser) pronounced this interlocutor:—"Finds that the pursuer is proprietor of the lands and sheallings of Glasschorrie and Riechal, and that the defender is the superior of the said lands: Finds that in the original feu-charter, dated in 1737, the defender's predecessor granted the said lands to the predecessor of the pursuer with a reservation in the following terms:—'But reserving to us and foresaids all the deer that may be found at any time hereafter whn. the bounds of the said sheallings; To be holden,' &c.: Further, finds that in the precept of sasine contained in said original feu-charter infeftment was directed to be given as follows:—'To be holden of us for yearly payment of the said feu-duty of one hundred merks and other prestations @ written; and with and under the reservation of the deer and mines and mineralls as above mentioned': Finds that said reservation is contained in the pursuer's own title, and qualifies his right: Finds that the defender