

Counsel for Petitioner—Gloag. Agents—  
Ronald, Ritchie, & Ellis, W.S.

Counsel for Respondent—Maclaren. Agents—  
Macandrew & Wright, W.S.

Friday, December 17.

FIRST DIVISION.

[Lord Shand.

M'Laurins v. Staffords.

(Before Seven Judges.)

Issues—Reduction—Essential Error—Inductive Cause.

In an action of reduction of a *de presenti* deed of gift granted by the pursuer in favour of the defender on the grounds (1) of essential error; and (2) of fraud on the part of the defender and the agent employed by the pursuer to draw the deed—held not necessary to insert in the issue that the essential error was “induced by the defender.”

This was an action at the instance of Mrs M'Laurin and her husband, both residing in Oban, against Mrs Stafford and her husband, both residing in Pollokshields, and others, beneficiaries under a deed which bore to be granted by the pursuers in favour of the defender Mrs Stafford, dated the 12th and recorded the 23d November 1874. This deed, along with a ratification of it by Mrs M'Laurin of same date, the pursuers sought in this action to have reduced. Mr and Mrs Stafford alone appeared as defenders.

Mrs M'Laurin and her husband were respectively seventy-five and seventy-eight years of age, and their knowledge of the English language was defective. They had been long proprietors of the Old Woodside Hotel, Oban, and thereafter Mrs M'Laurin feued some ground in her own name, and built and furnished the hotel known as the “Craigard Hotel.” Mrs M'Laurin also bought for £750 an adjoining piece of ground with a villa upon it, called Braehead, which she furnished and used as an adjunct to the hotel. Upon this villa she borrowed money to the extent of £600.

Mr and Mrs M'Laurin had a family of seven children, two of whom died without issue. Of the remaining five, the two youngest were Ronald M'Laurin, who died three years previously to the raising of this action, leaving a widow and two children; and the defender, who, against her parent's wishes, had married Mr Stafford, then a medical student, in November 1869. Previously to her son Ronald's death in May 1872 the pursuer Mrs M'Laurin, with her husband's consent, had made a settlement, giving Ronald and his wife and the survivor of them the liferent of the Craigard Hotel and the fee to their children, subject to certain annuities, amongst others one to Mrs Stafford.

In the same year, after Ronald's death, Mrs M'Laurin executed a disposition and settlement, leaving Braehead, with its furnishings, to Mrs Stafford, and on 14th August 1873, Mrs M'Laurin, with her husband's consent, conveyed it absolutely by disposition to her. The pursuers alleged that it was on the inducement of Mrs Stafford that these deeds were executed, and that

several sums of money were also obtained by her from her mother for certain purposes and misapplied.

The pursuers further averred that Mrs Stafford pressed upon her mother to alter the testamentary settlement made in May 1872, in consequence of which Mr Lawrence, Mrs M'Laurin's agent, was instructed to prepare a deed embodying the changes to which she had agreed. The deed under reduction, which was a *de presenti* deed of gift in favour of Mrs Stafford, was then prepared, signed, and recorded, and with reference to it the averments of the pursuers were as follows:—“At the time when the said deed was signed by the pursuers, although it was read over in their presence, as this was done rapidly and without explanation, neither of the pursuers understood its import. Mr Lawrence, who prepared the said deed, was the ordinary law-agent of the pursuers, and they relied upon his having taken care as their agent that the said deed was in strict accordance with the instructions which Mrs M'Laurin had given him. The pursuers had no idea that Mr Lawrence had been taking any instructions (as was the fact) from Dr and Mrs Stafford as to the preparation of the said deed. The defenders, Dr and Mrs Stafford and Mr Lawrence, or one or other of them, falsely and fraudulently represented to the pursuers that the deed was merely an alteration of the testamentary settlement of May 1872 of the nature agreed to by Mrs M'Laurin, as above mentioned, and the pursuers signed it in this belief. If the pursuers had known the terms of the deed, and that it was irrevocable, they would not have signed it. They never intended to execute, and never gave any authority for the preparation of an irrevocable deed, and never intended to dispose of their property in the manner set forth in said deed. The said deed was subscribed by or for the pursuers without any consideration being granted therefor, and under essential error as to its tenor, meaning, and effect, as above set forth. The pursuers signed the said deed under essential error, as aforesaid, induced by the said Dr and Mrs Stafford and Mr Lawrence, or one or other of them. They knew that the pursuers, when they subscribed the said deed, or caused it to be subscribed, did not know its tenor, meaning, or effect, and that they never authorised its delivery. The said deed was impetrated from the pursuers by fraudulent concealment practised by the said Dr and Mrs Stafford, and Mr Lawrence, or one or other of them, they well knowing that the pursuers were not aware of the tenor, meaning, and effect of the said deed, and that they would not have signed the said deed if they had been aware of its tenor, meaning, and effect. The said deed was impetrated from the pursuers by false and fraudulent representations as to the tenor, meaning, and effect of the said deed, made to them by the said Dr and Mrs Stafford and Mr Lawrence, or one or other of them, as above set forth. Or otherwise, Mr Lawrence, in consequence of misunderstanding Mrs M'Laurin's said instructions, or being misled by communications to him on the subject from the defenders, made under the profession that they were authorised by Mrs M'Laurin, prepared the said deed in the terms in which it was afterwards executed under the error in fact, that it

was in accordance with Mrs M'Laurin's instructions, and that it gave effect to the pursuers' wishes in regard to the disposal of the estate therein mentioned, and Mr Lawrence thereafter induced the pursuers to sign the said deed under the same error in fact on his part."

The pursuers pleaded—"The pursuers are entitled to decree of reduction as concluded for—(1) Because the said deed was signed by them under essential error. (2) Because in signing the said deed the pursuers were under essential error induced by the said Dr and Mrs Stafford and Robert Lawrence, or one or other of them. (3) Because the said deed was obtained from the pursuers by fraudulent concealment practised by the said Dr and Mrs Stafford and Robert Lawrence, or one or other of them. (4) Because the said deed was obtained from the pursuers by false and fraudulent representations as to its tenor and effect made by the said Dr and Mrs Stafford and Robert Lawrence, or one or other of them."

The defenders denied the whole material averments of the pursuers, and the following issues were, after discussion, approved of by the Lord Ordinary for the trial of the cause:—"Whether the pursuers, in granting the disposition dated on or about the 12th day of November 1874, of which No. 7 of process is an extract, were under essential error as to the tenor and effect of the said deed? Whether the pursuers were induced to grant the said deed by fraudulent concealment practised by the said Doctor and Mrs Stafford, and Robert Lawrence, or one or other of them; or false or fraudulent representations made by them, or one or other of them, as to the tenor and effect of the said deed?"

The defenders reclaimed, and after hearing before the First Division, the Lord President intimated that the Judges were divided in opinion whether the words "induced by the defenders" should be inserted to define the "essential error" in the first issue, as contended for by the defenders, or not. In these circumstances the case was ordered to be argued on this point before seven Judges.

At the hearing before the seven Judges, the Lord Justice-Clerk and Lords Ormidale and Gifford having been called in, the defenders argued—It was not enough to prove error to have the deed set aside; the error must be "induced by the defenders." A mere mistake on the part of a person *sciens et prudens* would not warrant reduction. The kind of error was also generally inserted in the issue. It was different where the error was such as the party could not guard against; in that case a general issue was allowable.

Authorities—*Maclagan v. Dixon*, Dec. 4, 1832; 11 S. 165; *Conston v. Miller*, Feb. 26, 1862, 24 D. 607; *Alexander v. Alexander*, Jan. 12, 1866, 4 Macph. 291; *Ritchie v. Ritchie's Trustees*, Jan. 13, 1866, 4 Macph. 292; *Purdon v. Rowat's Trustees*, Dec. 19, 1856, 19 D. 206; *Munro v. Strain*, Feb. 14, 1874, 1 R. 522; *Hogg v. Campbell*, 2 Macph. 848, 36 Scot. Jur. 423; *Harris v. Robertson*, Feb. 16, 1864, 2 Macph. 664; *Lord Wemyss v. Campbell*, June 6, 1858, 20 D. 1090; *Waddell v. Waddell*, March 17, 1863, 1 Macph. 635.

The pursuers argued—This was a case of pure essential error. In such a case, the deed being gratuitous, there was no authority for the con-

tention of the defenders. If an agent made a mistake as to the meaning of his clients, that error would entitle them to have reduction. On the matter of "error," with the exception of the rule as to *onus*, English law was the same as our law.

Authorities—*Dickson v. Halbert*, Feb. 17, 1854, 16 D. 586; *M'Conechy v. M'Indoe*, Dec. 23, 1853, 16 D. 315; *Johnston v. Johnston*, March 11, 1857, 19 D. 706, 3 Macqueen (H. of L.), 619; *Wilson v. Caledonian Railway Co.*, July 6, 1860, 22 D. 1408; *Adamson v. Glasgow Waterworks Comrs.*, Jan. 23, 1859, 21 D. 1010; *Murray v. Murray*, Feb. 12, 1839, 1 D. 484; *Gibson v. Jeyes*, 6 Vesey 276; *Cooke v. Lamotte*, 15 Beaven 234.

At advising—

LORD PRESIDENT—The Court are of opinion in this case that the first issue should be approved of without the variation proposed by the defender.

The following issues were therefore finally adjusted for the trial of the case:—"Whether the pursuers, in granting the disposition dated on or about the 12th day of November 1874, of which No. 7 of process is an extract, were under essential error as to the substance and effect of the said deed? Whether the pursuers were induced to grant the said deed by fraudulent representation or fraudulent concealment practised by the defenders, and Robert Lawrence, solicitor in Oban, or one or other of them?"

Counsel for the Pursuers—Dean of Faculty (Watson)—Asher. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Defenders—Balfour—J. P. B. Robertson. Agent—Thomas White, S.S.C.

Friday, December 17.

OUTER HOUSE.

[Lord Rutherford Clark.

AITON'S FACTOR—PETITIONER.

*Judicial Factor—Discharge—Accounts—Audits.*

In an application for discharge by a judicial factor there was produced in process an extrajudicial discharge which had been granted to him by the sole beneficiary, and it was stated that the accounts of the factor had been examined by an accountant acting on behalf of this beneficiary. In these circumstances it was urged for the factor that there was no necessity for a judicial audit, but that he might be at once discharged, or at all events that a warrant should be granted for delivery of his bond of caution. The Lord Ordinary, upon the authority of the case of *White*, (July 17, 1860, 22 D. 1473) granted the warrant for delivery of the bond of caution, but as there had been no judicial audit, refused to grant a discharge.

Counsel for Petitioner—Scott-Moncrieff. Agents—Scott-Moncrieff & Wood, W.S.