

Eng. Rep.]

GAUNT V. FYNNEY—MORRIT V. DOUGLAS.

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dispose of that, that the defendant had been in possession for more than five years without remonstrance on the plaintiffs' part. A bill for an ejectment by way of mandatory injunction could not be supported under these circumstances, and that part of the bill must also be dismissed. His Lordship continued: There is left only one more question; that of the obstruction of the window in the plaintiffs' old stable by the board, placed against it, and also by the roof of the defendant's engine-room. As to this, I have felt some embarrassment. On the other hand, it seems to me that an unlawful obstruction by the defendant of an ancient, though not very valuable, light of the plaintiffs had been established. On the other hand, this obstruction took place nearly six years before the bill was filed, under the very eyes of the plaintiffs or their servants, who can never have gone into the stable without perceiving it; and the light does not appear to have been for any practical purpose missed or wanted since its obstruction. A bill for an injunction in such a case would (I think) before the passing of Lord Cairns' Act, have been dismissed, and the plaintiffs would have been left to their remedy at law. Since this Act, if the bill were not dismissed, I should certainly agree with the Master of the Rolls in thinking the case one for an inquiry as to damages, and not for an injunction. But, finding myself obliged to leave the plaintiffs to their legal remedy (if any) as to the other matters complained of, and being of opinion that the obstruction of light is so connected with the other alleged trespass as to make it possible that some injustice might be done if damages as to the light were given here, and the plaintiffs at the same time left in possession of all their legal remedies as to the plinth of their wall and the disputed slip of land, I have come to the conclusion that the bill ought to be altogether dismissed, without prejudice to any action which the plaintiffs may be advised to bring. The costs of the suit will follow the event; the plaintiffs' appeal petition will be dismissed with costs. There will be no costs of the defendant's appeal; but the deposit will be returned.

## COURT OF PROBATE.

MORRIT V. DOUGLAS.

*Testamentary Suit—Execution—Acknowledgment—  
Know and approve of the contents.*

The two attesting witnesses were called in to witness the testator's will, which had been written by another person. The testator's mark was on the will when they were asked to sign, but they did not see him make it. The testator said nothing about the will to them, and the will was not read over to him.

*Held*, not to be duly executed, and that the testator did not know and approve the contents.

[27 L. T. N. S. 591—Dec. 10, 1873.]

GEORGE MORRIT, farmer, late of Barley, in the county of York, died 18th Jan. 1863, leaving a will bearing date 9th May, 1862, which after disposing of all his property was executed in the following form:

In witness whereof I have subscribed my name, this ninth day of May in the year of our Lord one thousand eight hundred and sixty-two.

THOMAS MORRIT + my mark

In witness of the testator's signature we have subscribed our names in the presence of the testator, and in the presence of each other.

THOMAS MORRIT + my mark.

GEORGE ROBINSON } Witnesses.  
HENRY PARKINSON }

The will appointed no executors, and was propounded by the defendant, Mary Anne Douglas, the testator's daughter, and one of the residuary legatees. The plaintiff, the testator's son, pleaded in opposition undue execution, and that the testator did not know and approve of the contents, inasmuch as the will was not read over to him at the time of the execution, and that he was not aware of the contents. The plaintiff also gave notice that he insisted on proof in solemn form, and to cross-examine the witnesses. The case was tried before the court without a jury. George Robinson, one of the attesting witnesses, was dead, and Henry Parkinson, the other attesting witness, gave the following account of the transaction:

I recollect being called in to the house of Richard Douglas, who then resided at Barley. When I got into the house I saw Thomas Morrit, the testator, sitting in an arm-chair. Mary Ann Douglas, the defendant, and one Thomas Davis, were in the room. She and her husband got up and went out of the room. Thomas Davis said to me and Robinson, the other witness, "I want you to sign this will, it is of no use reading it over to you," and Robinson said, "No it does not matter to us." Thomas Davis then went out of the room. There was no other person in the room but Thomas Morrit, the testator, when Robinson and I signed our names. There was a mark on the will when we signed our names, but I cannot say who made it. The deceased never signed his name nor made any mark to any document in my presence. The will was not read over in my presence, nor did the testator speak of it or refer to it in any way whatever. The only conversation that took place in the room was, George Robinson asked the testator how he was, when he replied, "I am mending." The testator had broken his thigh a short time previously, and I don't think he was quite in his own mind.

Cross-examined:

The witness further said, Robinson and I went out when we had signed, I only noticed one mark on the will, it was the first.