

There being no doubt in my mind that the defender wilfully and maliciously deserted the pursuer, according to the ordinary administration of the law in such cases the pursuer is entitled to have decree of divorce as concluded for.

On the question whether the desertion has been established, I think that the facts proved in evidence establish the desertion, and consequently, there being jurisdiction, decree of divorce ought to be pronounced.

The Lords granted decree as craved.

Counsel—W. C. Smith. Agents—Pringle & Dallas, W.S.

Tuesday, July 5.

## SECOND DIVISION.

[Sheriff-Substitute of  
Lanarkshire.

DICKSON AND ANOTHER v. MARSHALL  
AND OTHERS.

*Private Letters—Right of Receiver to Publish.*

It is always a question of circumstances whether the receiver of letters written in the course of private correspondence is entitled to publish them. Interdict against the publication of letters written in the course of a family dispute, and following upon an action and proof between the parties in the Sheriff Court, *refused*.

*Observed* that the question would have been different had there been any peculiar literary value to be protected, or if the letters of which the publication was threatened had been of a peculiarly confidential nature.

This was a petition brought in the Sheriff Court of Lanarkshire by Mrs Margaret Marshall or White and others against Thomas Dickson and Mrs Calderhead Eadie White or Dickson, his wife, in which the pursuers craved the Court "To interdict the defenders or either of them from circulating or publishing a pamphlet headed 'Correspondence between Mrs White, Miss White, Mr and Mrs Begg, Mr Thomson, and others, and Mr and Mrs Dickson, also record in action raised in Sheriff Court, with shorthand writer's notes of the proof taken, and Sheriff-Substitute's interlocutor,' and commencing with a letter from the pursuer Jane Calderhead Begg, dated Monday evening; and from otherwise making public said pamphlet or any letters written by the pursuers or any of them to the defenders or either of them without the consent of the several pursuers, the writers of said letters, being first had and obtained; and to grant interim interdict." It appeared from the averments of parties that disputes having arisen between the pursuer Mrs White and the defenders, her son-in-law and daughter, a correspondence had passed between her and them, and also between them and the other pursuers. The dispute, which related to the property of certain articles, had been taken into Court and decided by an interlocutor of one of the Sheriffs-Substitute of Lanarkshire.

The pursuers averred that the defender proposed to print and circulate without their authority, in the pamphlet against the publication of which interdict was craved, private letters by them, the publication of which would serve no useful purpose and would be hurtful to their feelings. They pleaded—"The defenders intending to publish, without consent of the pursuers, private letters written by the latter, the pursuers are entitled to interdict with expenses, all as craved."

The defenders admitted that they proposed to publish letters written by the pursuers. They averred that certain portions of the correspondence having been shown by the pursuers to a number of relatives and friends of both parties, it was in their opinion necessary to the removal of certain false impressions which had been thereby created that the correspondence should be printed and circulated as a whole. They stated that they only proposed to print and circulate 50 copies of the pamphlet containing this correspondence, and that for the perusal of persons already partially acquainted with the circumstances. They pleaded, *inter alia*—" (3) The circulation of the said pamphlet being limited as above set forth, and being for the vindication of the character of the defender Mrs Dickson, the interdict should be recalled and the defenders found entitled to expenses."

The Sheriff-Substitute (GUTHRIE) on 30th Nov. 1880 found that the defenders had not stated any relevant defence, and declared an interdict formerly granted perpetual.

He added this note:—"Interdict is asked for against circulating or publishing a pamphlet, the title of which is given in the prayer of the petition, and against otherwise making public said pamphlet, or any letters written by the pursuers or any of them to the defenders, without the pursuers' consent. The title of the pamphlet, of which eight pages are produced (having been sent by the defender Mr Dickson to Mrs White, his mother-in-law), bears that it is to include the record in an action between the parties, and also the letters of the defenders to the pursuers, as well as those of the pursuers to the defenders. But the interdict asked and granted is against the circulation of the pamphlet as a distinct subject or compilation; and this judgment determines no question as to the defenders' right to print or circulate in some other form the proceedings in the action or the letters which they have themselves written. With regard to these I give no opinion in point of law, though I take leave to suggest to the defenders that in such matters silence and endurance would probably be better, even if they have been unkindly treated.

"The law as to the right of the writer of a private letter is simple. It appears from a modern English authority (*Oliver v. Oliver*, 11 C.B. N.S. 139), as it may also be gathered from the Scotch cases on the subject reported in Morrison's Appendix S.V. Literary Property, Nos. 1 and 4, that the receiver has a property in the manuscript—in the *ipsum corpus* of the letter, but that he has no right to alter its nature or use it otherwise than as a manuscript. See also *Gee v. Pritchard*, 2 Swans. 402 (1818); *Percival v. Phipps*, 2 Ves. and B. 28; Bell's Prin. 1357.

"I am of opinion that the printing for private circulation, however limited, of letters of a personal nature passing between relations and friends is within this principle; for if it once be held that a man may print such letters for circulation within a limited circle, it is impossible to draw a line at which such circulation becomes objectionable. To hold otherwise would be to involve the tribunals in endless inquiries into delicate matters which in this country have happily been left to the good sense and good feeling of the persons concerned, except where relevant charges of slander are made.

"This being so, the defenders are not entitled to print the pursuers' letters as they propose to do, either separately or along with other matter. The pamphlet complained of includes such letters, and is therefore in its intended form a *unum quid*, which is an infringement of the pursuers' legal rights.

"The defenders founded on the case of *Percival v. Phipps* as supporting their contention that they are entitled to circulate the pamphlet for the vindication of character. That case, however, is very special in its circumstances, and differs from this materially in so far as the question related to publications in public prints, in which the party complaining had taken the initiative."

The Sheriff on appeal adhered for the reasons stated in the Sheriff-Substitute's note.

The defenders appealed to the Second Division of the Court of Session.

At advising—

**LORD YOUNG**—The parties to this case are relatives by marriage, and such a dispute as has arisen between them is much to be regretted. The mother of the appellant's wife seems to have objected to the marriage, and never to have taken kindly to the respondent. As a result of the disagreement which existed there was an action in the Sheriff Court for delivery of certain property which is referred to in the correspondence, and with which indeed the correspondence is to a great extent taken up. The appellant (respondent in the Sheriff Court) proposed, in order to inform his friends of the exact state of matters and of the nature of his own conduct, to print and circulate among them a pamphlet headed "Correspondence between Mrs White, Miss White, Mr and Mrs Begg, Mr Thomson and others, and Mr and Mrs Dickson, also record in action raised in Sheriff Court, with shorthand writer's notes of the proof taken, and Sheriff-Substitute's interlocutor." He communicated his intention to his mother-in-law by a letter, in which he expressed his intention of printing the whole correspondence, and sent to her the first eight pages of the pamphlet in proof, and then this process of interdict was raised against his publishing the letters therein contained without consent of the pursuers, who aver that the publication of such private letters will be hurtful to their feelings. The appellant says—and it is for himself to judge of the propriety of his course if the law allows it—that he thinks it concerns his interest that his friends should be acquainted with the facts of the dispute and the terms of the correspondence. The Sheriff-Substitute being of opinion that such a publication would be a violation of confidence, has inter-

dicted it. He says in his note—"The interdict asked and granted is against the circulation of the pamphlet as a distinct subject or compilation; and this judgment determines no question as to the defenders' right to print or circulate in some other form the proceedings in the action, or the letters which they have themselves written." I have a difficulty in comprehending this sentence. The respondent by the threatened publication is either threatening to violate a right or he is not. If he is, the form of doing it cannot be of much materiality. Without dwelling therefore on that matter, I am of opinion that the appellant is violating no right of the pursuers'. We are familiar with many cases where it has been deemed right by parties for their interest or in their justification that the whole proceedings in an action in which they have been engaged should be published. I have known many such instances, and it is a novelty to me that such publication is against the right of another party who does not wish such publication. Undoubtedly the publication of correspondence of a literary character may be interdicted on the ground of copyright. A literary man travelling abroad and sending home a daily journal of his proceedings, with or without the view of publication, might, if publication were threatened, ask protection from violation of his literary property. I might take other illustrations—for example, the case of private and confidential letters from one friend to another, written in the exuberant confidence of private friendship. In such a case we might interfere to prevent the publication of what was evidently the outpourings of one mind and heart to another. But we do not need to conceive cases in which the Court might interdict publication on other considerations than those we have here. I have looked through the letters, and am of opinion that there is no law to disentitle the respondent to do in the matter as he will. I have my own opinion as to the expediency of the course he is pursuing, but he must like other men judge of that for himself. I am of opinion, on the ground I have just stated, that the judgment of the Sheriff-Substitute must be set aside.

**LORD CRAIGHILL**—In this case the respondents in the appeal, who were the petitioners before the Sheriff, ask interdict against the proposed publication by the appellants of letters which were written by the respondents to the appellants, and that interdict has been granted by the Sheriff. Hence the present appeal.

The question is one of importance; for, on the one hand, it would be to be regretted were it the law that any letter written on the faith of confidential communication might as a matter of course, and notwithstanding the opposition of the writer, be published to the world. On the other hand, it would be a hard and unreasonable rule were it the case that even though the writer could not in any way be injured, and though the receiver has a reasonable purpose to serve, the opposition of the former is an absolute bar to publication. Law and the reason of the thing is to be found between these two extremes; and when I say the law, I mean to express what is my understanding not only of the rule recognised in Scotland, but of that also which is observed in England. The reason of the rule,

indeed, appears not to be the same in the two countries. "In England," Professor Bell says (Principles, par. 1356), "it is on the ground of property alone; in Scotland, on the ground chiefly of just and expedient interference for the protection of reputation." Lord Chancellor Eldon, it may be observed, in deciding the case of *Gee v. Pritchard*, 2 Swans. 402, while recognising the fact that such is the ground upon which the English doctrine was founded, did not speak of that ground as one which to his mind was satisfactory; but as the interests of those concerned had been, and might continue to be, protected upon that basis, he was not disposed to part with it, seeing difficulties might arise in adopting a new foundation for rules requiring to be maintained. What is more important is, that he looked upon cases in which an injunction against the publication of private letters was sought as cases of circumstances. In other words, there is in England no hard or fast line to which decisions in this department must be squared, and the results in *Percival v. Phipps*, in which the injunction was refused, and in the earlier case of *Gee v. Pritchard*, in which it was granted, may be cited in illustration. The views of our law upon this question, as well as the reasons on which it rests, as expressed by Professor Bell in his Commentaries, i., 111, 112, 7th ed., are entitled to great consideration. Mr Bell says with regard to the publication of private letters—"In Scotland the Court of Session is held to have jurisdiction by interdict to protect not property merely, but reputation and even private feelings, from outrage and invasion. In one respect the publication of private letters may outrage both; and the question has been, whether where private letters have been written and sent to a correspondent, the author by sending them to his friend authorises him to disseminate them or publish them for gain? Now the purpose of the communication is quite different. It rather implies a veto on publication. Compositions for the public and for the eye of a friend are in a different spirit. It is one of the great charms of epistolary correspondence that one writes not under the awe of a misjudging world, but throws out unscrupulously his genuine and undisguised sentiments, utters his most secret thoughts and with as little reserve as in the secrecy of his own chamber, expresses his feelings of affection, or his murmurs of disapprobation and of censure, in full reliance that they are confided to a friendly ear. By the publication of such effusions—confidential, careless, unthinking of consequences—a man may be wounded in his tenderest part, his literary reputation hurt, his character traduced. It is accordingly the understood or implied condition of the communication—the implied limitation of the right conferred—that such communications are not to be published. With these natural feelings on the breach of epistolary confidence the determinations of the Court of Session have accorded."

Where, however, none of these results can reasonably be contemplated from publication, and where, besides, there is a legitimate interest in the receiver to publish, the Court ought not and will not interfere to prevent publication. All questions of literary property are of course outside the present controversy. These when

they arise will be dealt with on their merits, and must probably be decided upon other considerations.

These being my views of the law, which, I may add, are not in any way inconsistent with the cases reported in Morrison's Appendix, 1 and 4, *voce* "Literary Property," to which the Sheriff has referred, I concur in thinking that the interdict prayed for ought not to be granted, and that having been granted by the Sheriff, it ought now to be recalled. The respondents will not be injured, and the appellants may be, and think they will be, benefited by the publication. I regret that the appellants insist upon their right. Much better would it be for them and for all who are concerned in the family *embroglio* to forbear, but, as I think, there is no ground in law on which they can be prevented.

LORD JUSTICE-CLERK—I concur entirely, and the result is in accordance with what was my impression from the first. A question of interdict, especially against doing a thing of the kind sought to be interdicted here, is always a question for the discretion of this Court. It depends on the injury done and on the clearness of the evidence with which the probability of future injury is shown. This is not a question of property but of entirely equitable right, and the holder is in the first instance master of the letter. If he use it to the prejudice of the writer he may be responsible.

Lord Eldon in one of the cases cited laid it down to be a question of circumstances whether such publication as is here intended can be restrained; and I think with your Lordships that the circumstances here are not such as to render it necessary that publication be restrained. The appellant, however, will have to consider that if he does by the publication cause injury to others the fact that interdict is now refused will not shield him from the consequences.

The Court recalled the interlocutor appealed against and dismissed the petition.

Counsel for Appellants—Party. Agent—C. S. Taylor, S.S.C.

Counsel for Respondents—Gillespie. Agents—J. & J. Ross, W.S.

Tuesday, July 5.

## SECOND DIVISION.

[Lord Rutherford Clark,  
Ordinary.

### INGLIS V. SHOTTS IRON COMPANY.

*Nuisance—Smoke—Calcining Bings of Ironstone—Interdict.*

Held that a proprietor who had proved that the operations of a mining company in calcining the ironstone obtained by them under a lease from an adjoining proprietor were injurious to plantations upon his estate, was entitled to interdict against a continuance of these operations within a reasonable distance of his lands, and interdict granted accordingly to apply within a