

LORD MONCREIFF—Two questions have been argued in this appeal—(First) Whether the notice given by the Town Council was sufficient; and (second) assuming that it was not sufficient, whether the result of that is to nullify the whole subsequent proceedings.

Upon the second question we did not hear a full argument, and I have formed no opinion with regard to it. With respect to the first question, I think the judgment of the Sheriff-Substitute is wrong. From his note it would appear that the ground on which he proceeds is not exactly the same as that chiefly urged by the defender. The defender in his defences maintained three alternative constructions of section 145—first, that the notice must be inserted daily for two successive periods of seven days; or second, in four successive bi-weekly issues of the *Free Press*, or in two successive issues of the *Journal*; or in any event (and this I take to be the defence relied on), in the case of only one weekly insertion, that the second notice must be not earlier than the seventh day after the first.

The Sheriff's ground of judgment as stated is that there must be two periods of seven days each; and therefore (I gather) that before proceeding to repair the road the Town Council were bound to allow two intervals—one of three weeks preceded by another of fourteen days—five weeks in all—during the latter of which there should be advertisement once a-week in a newspaper published in Aberdeen. That question does not arise if, as we were told, fully five weeks elapsed before the work was begun, and therefore the real question is, whether the notice was bad owing to there being an interval of only five days between the advertisements. I think the statute means only that advertisement must be made once in each of two successive weeks, and that the Act is sufficiently complied with if the advertisement appear, say in one week on Friday, and in the following week on Wednesday. When this Act was passed there was no daily newspaper published in Aberdeen. There were two newspapers, one published weekly on Wednesday, and the other bi-weekly on Tuesday and Friday. In these circumstances it would surely have been a sufficient compliance with the Act if advertisement had been made in one newspaper on a Friday, and in the other on the following Wednesday. On the whole matter I am of opinion that the judgment of the Sheriff-Substitute is wrong, and that the notice which was given was perfectly good.

The LORD JUSTICE-CLERK concurred.

The Court recalled the interlocutor appealed against, repelled the fourth plea-in-law for the defender, and remitted the cause to the Sheriff-Substitute.

Counsel for the Pursuer and Appellant—Dundas, K.C.—Clyde. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Defender and Respondent—Salvesen, K.C.—A. M. Anderson. Agents—Macpherson & Mackay, S.S.C.

Tuesday, May 21.

SECOND DIVISION.

[Sheriff of Perthshire.]

LAMONT v. BURNETT.

Contract—Jus quaesitum tertio—Promise.

A sent an offer to B's agent to purchase an hotel belonging to B at the price of £7000. Enclosed with the offer was a letter from A to B's agent, in which he wrote, *inter alia*—"I will be pleased to give to Mrs B a sum of not less than £100 as some compensation for the annoyance and worry of the past few days, and for her kindness and attention to me on my several visits to" the town in which the hotel was situated. B's agent wrote accepting the offer "as supplemented by your letter."

A paid £7000 to B, and entered into possession of the hotel, but declined to pay £100 to Mrs B, who brought an action against A for that sum.

Held that the pursuer was entitled to decree for the sum sued for.

On 19th March 1900 John Burnett, hotel-keeper, sent to James S. Butchart, Advocate, Aberdeen, agent for Donald Lamont, proprietor of the Royal Hotel, Crieff, an offer to purchase that hotel. The offer bore, *inter alia*—"The purchase price shall be Seven thousand (£7000) pounds sterling, payable on the 15th May 1900, which will be the date of my entry, but possession will only be given me on the 23th day of May 1900."

The offer was enclosed in a letter dated 19th March 1900, in the following terms:—"Dear Sir,—I herewith inclose you my offer for the Royal Hotel, Crieff. I make it conditional, that should another place in Ayrshire fall to me on Friday the 23, to withdraw this offer on that date, and, should you not hear from me on Friday the 23 March, the offer to be binding. Further, I will be pleased to give to Mrs Lamont a sum not less than One hundred pounds as some compensation for the annoyance and worry of the past few days, and for her kindness and attention to me on my several visits to Crieff.—I am, yours truly, J. BURNETT."

On 24th March 1900 Mr Butchart sent this letter of acceptance:—"Dear Sir,—I am now instructed to accept your holograph offer dated March 1900 as supplemented by your letter of 19th inst., for the Royal Hotel, &c., Crieff, and the bargain is therefore closed.—Yours faithfully."

Burnett having entered into possession of the hotel, paid £7000 to Lamont as the price, but declined to pay the £100 mentioned in the letter of 19th March.

Mrs Lamont then, with consent and concurrence of her husband, brought an action against Burnett in the Sheriff Court at Perth for payment of £100.

The pursuer founded on the foregoing correspondence, and averred (Cond. 4) that the contract thereby constituted "was

implemented by the seller relying on the faith of the defender fulfilling his said engagement to pay the pursuer the said sum of £100. The defender has paid £7000 as stipulated for the said hotel, but has not paid the pursuer the said sum of £100, and although payment has been applied for, he refuses or unreasonably delays to make payment."

The pursuer pleaded, *inter alia*—“(1) The defender having agreed, as part of the said contract of sale, to pay the pursuer the sum of £100, and the conditions of sale having been fulfilled to him, decree should be pronounced as craved. (2) *Separatim*—The defender having promised by his said letter to pay the sum of £100 to the pursuer, decree should be pronounced as craved.”

The defender pleaded, *inter alia*—“(1) No title to sue. (2) The action is irrelevant and incompetent. (4) The defender should be assolvizied in respect (1st) that he made no promise; (2nd) that he made no promise to pursuer; (3rd) that the letter containing the alleged promise was never delivered to her; (4th) that the language of said letter imposes on the defender no obligation known to the law; (5th) that the alleged promise was no part of the said contract of sale.”

On 10th December 1900 the Sheriff-Substitute (SYM) pronounced this interlocutor:—“Finds that it is admitted that the defender is now proprietor of the Royal Hotel, Crieff, formerly the property of the pursuer's husband; that in sending on 19th March 1900 to J. S. Butchart, advocate, Aberdeen, agent for the pursuer's husband, the formal offer made by him to purchase said hotel, he sent the accompanying letter wherein he wrote—‘Further, I shall be pleased to give to Mrs Lamont (the pursuer) a sum not less than One hundred pounds as some compensation for the annoyance and worry of the past few days, and for her kindness and attention to me on my several visits to Crieff’; that the said J. S. Butchart replied on 24th March 1900 by the following stamped letter, viz.—‘I am now instructed to accept your holograph offer, dated March 19th, as supplemented by your letter of 19th inst., for the Royal Hotel, Crieff, and the bargain is therefore closed’: Finds in law that, on a sound construction of these writings, there was an offer made to and accepted by the said J. S. Butchart, containing a stipulation in favour of the pursuer, upon which she is entitled to sue and to have decree upon the principle of *jus quæsitum tertio*: Therefore repels the defences, and ordains the defender to pay to the pursuer the sum of £100, with interest thereon from the date of citation till payment: Finds the pursuer entitled to expenses,” &c.

The Sheriff-Substitute appended the following note:—“A proof is unnecessary, and was not moved for. The question depends upon the construction of certain letters which passed between the defender and Mr Butchart. It is not admitted that Mr Butchart was agent for the pursuer. Were that admitted, it appears to the Sheriff-Substitute that there would be a definite offer to Mrs Lamont through

her agent, which had been determined by acceptance.

“But let it be as the defender says, that Mrs Lamont, the pursuer, is a third party not represented in the correspondence. An express stipulation is made in her favour by agreement of the defender and Mr Butchart, her husband's agent. She may and does adopt that agreement, and now sues on it, and she is entitled so to do.

“The Sheriff-Substitute thinks that authority is to be found in *Morton's Trustees v. Aged Christian Friends Society*, 2 Fraser, page 82, and that this case is a clearer one of *jus quæsitum tertio*, in that the society, which was there the *tertius*, had not yet been called into being when the stipulation in its favour was made.” . . .

The defender reclaimed, and argued—The clause of the letter of 19th March 1900 mentioning the £100 was not part of the contract for the sale of the hotel, and did not become so in consequence of the letter of acceptance of 24th March. The pursuer's first plea-in-law therefore was bad. Her second plea also was bad. A bare promise to make a present could not be enforced in law. If the person to whom such a promise was made did something on the faith of the promise, then he might have an action for enforcement of the promise on the plea of *rei interventus*. But there was not here a relevant averment of *rei interventus*. All that was averred was that the seller had fulfilled his contract by giving the defender possession of the hotel. But if payment of the £100 was not part of the contract, fulfilment of the contract could not be *rei interventus*.

Authorities referred to by the defender—*Cambuslang West Church Committee v. Bryce*, December 15, 1897, 25 R. 322; *Morton's Trustees v. Aged Christian Friends Society*, November 9, 1899, 2 F. 82.

Counsel for the pursuer were not called upon.

LORD JUSTICE-CLERK—The defender here made an offer to purchase the Royal Hotel, Crieff, from the pursuer's husband at the price of £7000. The offer was enclosed in a letter to the husband's law-agent, in which the defender says that he would “be pleased to give Mrs Lamont a sum of not less than £100 as some compensation for the annoyance and worry of the past few days, and for her kindness and attention” to the defender. Now, whatever might have been said as to the meaning and effect of the passage I have just quoted from the defender's letter had it stood alone, I think all doubt is removed by the letter of acceptance of 24th March, which completed the bargain for the sale of the hotel. The acceptance is in these terms—[*His Lordship quoted the acceptance of March 24th*]. I think that that is an acceptance not only of the offer but of the letter in which the offer was enclosed. Now, the defender when he gets the acceptance does not repudiate the construction which Mr Butchart put on the offer and its accompanying letter in his reply. On the contrary, he entered into possession of the hotel without saying any

thing, and only now says that he will not pay the £100 to the pursuer. I think that on receiving the acceptance of 24th March he became bound to pay £100 to the pursuer if thereafter he took advantage of the rest of the agreement by taking the hotel. I think therefore that the judgment of the Sheriff-Substitute is right and should be affirmed.

LORD YOUNG—I am of the same opinion. I do not think that the defence here is unarguable. I think that it is quite an arguable point. A little difference in the expression of the letter of 19th March 1900 would have led—at least would have led me—to another conclusion. A letter which merely said that the writer would have the pleasure of sending the recipient's wife a present—a new dress or whatever it might be—would not, I think, give rise to a right of action for fulfilment of the promise in the letter. But in the present case I think that the £100 mentioned in the defender's letter is really part of the price of the hotel. It is really part of a business transaction. Now, the offer with the letter which accompanied it was accepted by the pursuer's husband, and this acceptance created, in my opinion, a *jus quaesitum tertio* in the wife for this £100 entitling her to sue for it. The husband, I think, might have sued for it also, but I have no doubt that when the husband's law-agent writes to the defender accepting the defender's offer "supplemented by your letter of 19th instant," he means supplemented as part of a business transaction, and that the wife has a title to sue for payment of the £100 mentioned in the letter, just as her husband might have sued for the £7000 specified in the offer as the price of the hotel.

LORD TRAYNER—I can easily conceive it possible to express a letter in such terms as would amount to the expression merely of an intention or a promise to give which would not amount to an obligation for the fulfilment of which an action would lie. I do not think that we have a case of that sort here. I have no difficulty in construing the letter of 19th March 1900 and the offer which it encloses. I think that it comes to this—"I offer to pay £7100 for the hotel, £7000 to be paid to you and £100 to your wife." I think that that is quite plainly the meaning of the offer and the letter enclosing it, and it certainly was the meaning understood by the seller of the hotel, for his acceptance is in these terms—[*His Lordship quoted the acceptance of March 24th*]. That shows what the understanding of the person receiving the offer was, and if it was not the defender's intention that the payment of £100 to the wife should form part of the bargain, it plainly was his duty to intimate that to the seller immediately on getting the letter of acceptance. Instead of that he retains the letter of acceptance, completes the transaction, enters into possession of the subjects, and says nothing. In these circumstances I think the defender is bound to pay £100 to the pursuer in addition to £7000 to her husband. In a word, I think the defender

offered £7000 plus £100 as the purchase price; that that offer was accepted; that it has been acted upon; and that the defender cannot now go back on the transaction so completed.

LORD MONCREIFF—I am of the same opinion. I do not see how the defender can get past the acceptance of 24th March 1900. I think that the defender by his letter of 19th March and the offer accompanying it intended to offer for the hotel on the footing of paying £7000 to the husband and £100 to the wife. But whether the defender intended that or not, there is no doubt that it was the understanding of the seller, this pursuer's husband, for the acceptance on his behalf is in these terms—[*His Lordship quoted the acceptance of 24th March 1900*]. I read that as meaning—"I accept your offer of £7000 for the hotel, provided you add £100 to be paid to my wife, as you proposed." I think that that is plainly the meaning of the acceptance, and if the defender intended to dispute that construction of his offer he ought to have done so at once. Instead of which he acquiesced in the acceptance, and acted upon it by entering into possession of the hotel. I think it is now too late for him to go back.

The Court adhered.

Counsel for the Pursuer—Salvesen, K.C.—T. B. Morison. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender—Kennedy—A. M. Anderson. Agent—W. R. Mackersy, W.S.

Friday, May 31.

WHOLE COURT.

MURRAY'S TRUSTEES v. MURRAY.

Husband and Wife—Jus Relicti—Marriage-Contract—Married Women's Property Act 1881 (44 and 45 Vict. c. 21), secs. 6 and 8.

By antenuptial contract of marriage dated in 1871, a wife conveyed to trustees a sum of £450 for payment of the interest to herself during her life and thereafter to her husband during his life should he survive her, and on the death of the longest liver for payment of the principal sum to the children of the marriage and their descendants equally *per stirpes*, and if there should be no issue or descendants of issue, for payment of the balance of the estate to the heirs, executors, and successors whomsoever of the wife. It was declared that the revenue and interest appointed to be paid to the wife and husband should be wholly alimentary, and should not be subject to the *jus mariti* or other right whatever of the husband, and should not be subject to his debts or deeds, or liable to the diligence of his creditors for debts contracted or to be contracted by him.