

buildings, and that he regarded such benefit as worth 1s. 10d. per annum, although he did not think it necessary to secure it either by a trust or by a contract. The yearly tenant of a small farm might reasonably be apprehensive that in the event of the buildings being destroyed by fire his landlord might not think it worth his while to advance money in order to restore them, but might prefer to terminate the yearly lease and to add the ground to another of his farms. In such a case the existence or non-existence of a policy of insurance in favour of the landlord might determine his line of action in the matter of rebuilding. Accordingly it is impossible to infer as a matter of law that the tenant in the present case would have agreed to pay a rent of £50, 1s. 10d. for the subjects. On the contrary, the proper legal inference in my view is that the tenant agreed to pay the yearly sum of 1s. 10d., not as part of the consideration for the right to occupy and use the heritable subjects, but in return for something which was not in its nature heritable. Of course it might be the fact, and might be proved, that in the special circumstances of this particular case the insurance was not regarded by the tenant as of any value to him, and that if he had not been required to pay 1s. 10d. as the annual premium he would have been willing to pay that sum as an addition to his rent. But that fact, even if proved or admitted, would not lead to the conclusion that the sum of 1s. 10d. mentioned in the receipt was paid as part of the rent. The only result would be to demonstrate that the rent agreed upon between the parties was too low and did not represent the amount at which the subjects might reasonably be expected to let from year to year. In short, the obligation to pay the yearly premium would on investigation be a "consideration other than rent" within the meaning of the Valuation Acts. The Valuation Appeal Court so decided in the case of *Walker*, (1864) 24 D. 1453.

For these reasons I agree with the result arrived at by the Land Court. There are expressions in the opinions of the Judges in the case of *Hamilton's Trustees* to the effect that a payment by a tenant for insuring the buildings is "an addition to the rent" or "additional rent," but they are merely *obiter*. All that the Court had to decide was whether the tenant had or had not legal interest in the insurance money. Further, I have not overlooked the fact that the question to be decided turns primarily upon the meaning of the statutory definition of the word "rent" or of the expression "yearly rent" contained in section 13 of the Small Landholders (Scotland) Act 1911, which supersedes section 4 of the Crofters Holdings (Scotland) Act 1886. These definitions were, in my opinion, intended to include every form of rent, viz., money, kind, and services, but did not otherwise enlarge the ordinary and popular conception of the word.

The Court answered the first question of law in the negative.

Counsel for Appellant—Wilson, K.C.—Wilton. Agents—Davidson & Syme, W.S.

Counsel for Respondent—Chree, K.C.—Aitchison. Agents—Balfour & Manson, S.S.C.

Thursday, December 18.

## SECOND DIVISION.

[Lord Skerrington, Ordinary.

R. v. S.

### *Reparation—Slander—Personal Bar—Veritas—Letter of Apology and Admission of Falsity of Slanderous Statements.*

*Held (diss. Lord Dundas and rev. judgment of Lord Skerrington, Ordinary)* that the defender in an action of damages for slander was not barred from pleading *veritas* by a previous letter of apology admitting that statements to the same effect were false and undertaking not to repeat them.

Miss M. J. R., *pursuer*, brought an action against Mrs H. M. or S. and against J. F. S., her husband, as an individual and as curator and administrator-in-law of his wife, *defenders*, in which she claimed £400 damages for slander.

The pursuer averred, *inter alia*—" (Cond. 1) The pursuer resides with her father in a tenement house at 36 P. Terrace, Edinburgh. The pursuer's brother A. R. leases a house in the said tenement for his business . . . which he carries on in the vicinity. The defenders occupy another house in the same tenement. (Cond. 2) In November and December 1912 the defenders began to make statements reflecting on the pursuer's conduct with men to the pursuer's neighbours. In particular, the female defender, in December 1912, stated to Miss C., 35 P. Terrace, within her shop there, that the pursuer was in the habit of misconducting herself and having intercourse, meaning thereby carnal intercourse, with G. N. at the foot of the common stair at 36 P. Terrace, and that she was little better than a prostitute. She also made statements of like import and effect on other occasions within the months of November and December 1912 to Mrs D. . . . and also on a different occasion within the said period to Mrs H. . . . The male defender also, during the month of December 1912, stated to the pursuer's brother, the said A. R., in the common stair at 36 P. Terrace fore-said, that the pursuer was misconducting herself and having sexual connection with the said G. N. He also made statements of like import and effect to the employees of the said A. R. in the said common stair, and during the said month. Said statements to A. R. and the said employees were made in a loud voice with great publicity, and were heard by the inmates of the houses in said stair, as they were intended to be. The statements in answer are denied. Explained that in January 1913 the pursuer, having been informed of the charges made against her by the defenders, and in particular of those now set out by them in answer, consulted her law agent and in-

structed him to take proceedings with a view to vindicate her character therefrom. The defenders on 14th January wrote pursuer's agent the letters herewith produced and founded on, admitting the charges were false and apologising for making them. . . . (Cond. 4) The said slanders are wholly without foundation in fact, the pursuer not having misconducted herself in any way, and gave her profound pain and annoyance. On account of the persistence and malevolence of both defenders in making said slanderous statements, the pursuer consulted a law agent with the foresaid result. (Cond. 5) The pursuer, who wished to avoid publicity, hoped that the said letters of 14th January 1913 would effectually put a stop to said slanders. On 15th May 1913, however, the pursuer's father received a letter from the female defender, which is founded on. The letter is as follows:—"36 P. Terrace, Edinburgh—Mr T. R., 36 P. Terrace, Edinburgh—Dear Sir—You may not be aware that your two sons . . . have insulted me in the stair, . . . since the month of January. If they persist in continuing this conduct towards me, I may inform you that I have letters sent to me when I was on holiday last September explaining in detail the conduct of your daughter in this stair, which I will show to every person I know in this district. You will readily understand that I am not going to take insults from your sons and do nothing. If I don't hear from you that this conduct is going to cease, I shall go the round with these letters, and your son is welcome to take whatever action he likes against me. —Yours truly, Mrs S. P.S.—I may mention that these letters have not been shown to anyone up till now, for Mr S. had them locked up." Said letter was composed and written by the female defender with the knowledge, assistance, and authority of the other defender, and was despatched by them in concert for the purpose of further slandering and annoying the pursuer. Said letter is a repetition of the former slander in a particularly offensive way, and the defenders are both liable for its despatch. (Cond. 6) . . . The statements in the said letter are of and concerning the pursuer, and falsely represent, as they were intended to represent, that she had been guilty of immoral conduct and sexual intercourse, and they were so understood by her."

The letter of apology referred to in Cond. 2 from the defender Mrs S. was as follows:—"C. Strachan Petrie, Esq., Solicitor, 3 Albany Street, 36 P. Terrace, Edinburgh, 14th January 1913—Dear Sir—I hereby admit that I have on several occasions made false and slanderous statements reflecting on the moral character of your clients, the R family, who reside at this address, and particularly against Miss M. J. R. These statements, I admit, are entirely unfounded in fact, and I now unreservedly withdraw the same, and apologise for having made same. I further bind myself in future not to repeat any of these statements, nor to molest any of the family in any way. It is agreed that this apology shall not be shown to any

person or persons except those who have heard either directly or indirectly any of the statements made by me.—Yours truly, H. S."

The defender Mrs S. averred, *inter alia*:—" (Ans. 2) The letters written to pursuer's agent are referred to for their terms. The statements referred to therein, while reflecting on the pursuer's conduct with a man named G. N. at the foot of the said common stair, were not in the terms and with the meaning complained of. Reference is also made to answer 4. *Quoad ultra* denied. In any event, if this defender did make any statements regarding the pursuer in the terms and with the meaning alleged, said statements and said meaning were true. The pursuer prior to December 1912 frequently misconducted herself and had carnal intercourse with G. N. at the foot of the said common stair. In particular, she did so on or about 3rd August 1912, on or about 24th August 1912, on or about 31st August and 1st September 1912, and on or about 27th September 1912. . . . (Ans. 4) Denied. Explained that this defender regretted very much having made any statements about the pursuer. At the time said letter of apology was signed her husband was very ill and likely to be seriously affected by the worry of proceedings which were threatened by the pursuer. In the circumstances this defender signed one of the letters referred to in terms insisted upon by the pursuer's agent. The said letter was accepted by the pursuer as a full apology for all statements made by this defender concerning pursuer's conduct."

The pursuer pleaded—" (2) The defences are irrelevant. (3) The defenders are barred from stating said defences, and decree should be granted."

The defender Mrs S., *inter alia*, pleaded—" (5) The statements made by this defender regarding the conduct of the pursuer with the said George Napier being true, this defender is entitled to absolvitor."

At the adjustment of issues the defender Mrs S. proposed a counter issue of *veritas*, which, as subsequently amended in the Inner House, was in the following terms:—"Whether, on or about 3rd July 1912, 24th August 1912, 31st August 1912, 1st September 1912, and 27th September 1912 (or on or about one or more of said dates), the pursuer was guilty of sexual intercourse with a man named G. N. in the common stair at 36 P. Terrace, Edinburgh?"

On 4th November 1913 the Lord Ordinary (SKERRINGTON) approved of the pursuer's issue and refused the counter issue.

*Opinion.*—"As a result of the discussion the pursuer now proposes a single issue against both defenders, and the latter's counsel admitted that the pursuer was entitled to an issue asking whether the defenders, or either and which of them, despatched a letter to the pursuer's father on or about 15th May 1913 representing that the pursuer, being an unmarried person, had been guilty of sexual intercourse. The female defender proposes a counter issue asking whether during the months of August and September 1912, the pursuer

was guilty of sexual intercourse with a certain person. The pursuer maintains that the female defender is barred from stating this defence by her letter of 14th January 1913 addressed to the pursuer's solicitor, in which she admitted that she had on several occasions made false and slanderous statements reflecting on the pursuer's moral character, which statements she thereby admitted to be entirely unfounded in fact, and accordingly withdrew the same and apologised for having made them. It should be noted that the female defender does not aver in so many words that the innuendo said to be conveyed by the letter of 15th May 1913 is true in point of fact. What she does aver in answer 2 is that if prior to January 1913 she did make any verbal statements regarding the pursuer representing that the latter had been guilty of sexual intercourse, said statements were true. Accordingly she stands in this dilemma—either the record contains no averments of *veritas* applicable to the innuendo said to be conveyed by the letter of 15th May 1913, or, alternatively, the defender must be held to admit that this letter refers to the same incidents which are referred to in the letter of apology of 14th January 1913. In either view the counter issue must be disallowed. A person who represents as a matter of existing fact that he admits the falsehood of defamatory statements which he has previously made concerning another person is not entitled to withdraw the admission and to prove the truth of his charges after the person to whom the representation was made has altered his legal position on the faith of it. The female defender avers (answer 4) that she signed the letter of apology at a time when her 'husband was very ill and likely to be seriously affected by the worry of proceedings which were threatened by the pursuer. In the circumstances this defender signed one of the letters referred to in terms insisted upon by the pursuer's agent. The said letter was accepted by the pursuer as a full apology for all statements made by this defender concerning pursuer's conduct.' If, as this defender alleges, the pursuer accepted the defender's letter of 14th January 1913 as a full apology for all antecedent statements made by the defender concerning the pursuer's conduct, the pursuer thereby debarred herself from claiming damages in respect of these statements and so altered her legal position. It follows that the defender is for ever foreclosed from asserting the truth of these charges, which according to her own representation were admitted by her to be false. I accordingly refuse the counter issue."

The defender Mrs S. reclaimed, and argued—The defender was not barred by her letter of apology from proving the truth of her statements, and a plea of *veritas* was a complete defence to an action of damages for slander, because the essence of slander was the falsity of the statements. If they were true there was no slander—*Mackellar v. Sutherland*, January 14, 1859, 21 D. 222, per Lord Justice-Clerk (Inglis) at p. 227; *Campbell v. Ferguson*, January 23, 1832, 9 R. 467, 19 S.L.R. 404. Personal bar could only arise

if the pursuer could show that in consequence of the defender's letter she had been induced to alter her position to her prejudice—Bell's Prin., sec. 27A; *Adamson v. Collie*, 1878, 8 Ch. Div. 807. In the present case the pursuer's position had not been altered, and her right to sue on the original slanderous statements remained unimpaired on the defender's breach of her undertaking not to repeat them—*Mangena v. Wright*, [1909] 2 K.B. 958, per Phillimore, J., 975. In any event the pursuer was bound to know whether the statements were true or false, and she could not be heard to say that she acted on the faith of the defender's representation that they were false.

Argued for the pursuer—The letter of apology barred the defender from stating a plea of *veritas*. The defender could not at any subsequent stage contradict the letter unless she averred other circumstances equivalent to *res noviter* entitling her to reduce the letter—Everest and Strode on Estoppel (2nd ed.), p. 1, quoting Lord Coke, and also at p. 4. The letter of apology formed a contract between the parties, and the present action was just in essence an action for breach of contract. The pursuer's position had further been altered to her prejudice in respect that a material witness had left the country and could not now be found.

LORD DUNDAS—I think this case raises a peculiar and a very difficult question. Its difficulty is sufficiently illustrated by the fact that while I consider that the Lord Ordinary's conclusion is right, I am aware that both my brethren who heard the case differ from that view, and the interlocutor will therefore be altered.

The Lord Ordinary seems to have proceeded wholly upon the defender's admission, in her letter of apology of 14th January 1913, that the statements she had made were entirely unfounded in fact. He points to the assertion in answer 4 for Mrs S. that "the said letter was accepted by the pursuer as a full apology for all statements made by this defender concerning pursuer's conduct." This averment was, I suppose, made by Mrs S. in order to support her fourth plea-in-law that "the pursuer having accepted this defender's apology for all statements made by her concerning the pursuer's conduct, this defender is entitled to absolver." The plea thus put forward seems to me to be quite untenable, but the defender's averment remains, for whatever reason it may have been inserted in her record. The Lord Ordinary founds upon it his view that the pursuer by so accepting the letter of 14th January "debarred herself from claiming damages in respect of these statements and so altered her legal position. It follows that the defender is for ever foreclosed from asserting the truth of these charges, which according to her own representation were admitted by her to be false." It may well be that the pursuer by foregoing her action of damages has been prejudiced in her legal position; I think the presumption is in her favour, and that there is no need for specific averment of such alteration. It is, moreover, the case that the pursuer's counsel

stated at our bar that her position has in fact been prejudiced owing to the recent disappearance of a material witness. I am disposed, therefore, to agree with the grounds upon which the Lord Ordinary has disallowed the counter issue. But I think there is a stronger and, to my mind, very cogent reason for adopting this course. In her letter of 14th January 1913 Mrs S. expressly bound herself "in future not to repeat any of these statements, nor to molest any of the family in any way." By her subsequent letter (dated presumably on or about 14th May) she in effect repeats her former statements, and threatens to make public throughout the district letters which she says she had received in the preceding September; and she now desires to plead *veritas*, and to re-state, and if possible to substantiate in open court, the whole of the injurious statements she originally made and afterwards admitted to be false. The defender's obligation of silence, contained in her letter of 14th January, forms part of an onerous contract; the counter consideration for the letter was the pursuer's withdrawal of the threatened action of damages. The contract binds both parties. If the pursuer had in breach of it raised an action of damages for slander, I do not think we should have allowed it to go to trial. In the same way I do not think that standing such a contract the Court can permit, as by granting the counter issue it would in effect permit, the defender to break a material term of it in order to enable her to maintain a plea in defence to this action which she could not otherwise put forward. The point is difficult, but it seems to me that assuming that the defender's plea of *veritas* is in fact capable of substantiation, she has only herself to blame if by her own act in writing the letter of 14th January she has deprived herself of the right to maintain it. For my own part, therefore, I consider that the justice of the matter lies in the direction of refusing the counter issue, and that we ought to adhere to the interlocutor reclaimed against.

LORD SALVESEN—The point raised in this case is an interesting one and has not previously been the subject of direct decision. The material facts are that the defender on various occasions in the course of the year 1912 slandered the pursuer, that she was called to account for doing so, and that under threat of proceedings she on 14th January 1913 admitted that the statements complained of were entirely unfounded in fact, withdrew and apologised for having made them, and bound herself in future not to repeat any of them. It is common ground that the delivery of this letter was granted and accepted on the footing that no other proceedings could thereupon be taken in respect of the slanders to which it referred.

It now appears that the defender in a letter addressed to the pursuer's father has again published the same defamatory statements, and she does not allege that any other facts had come to her knowledge since the date when she penned her apology.

The pursuer has accordingly brought this action in order to obtain damages in respect of this new wrong, and has obtained an issue to which no objection is taken. The defender, however, proposed a counter issue in support of her plea of *veritas*. This issue the Lord Ordinary disallowed on the ground that the defender is "for ever foreclosed from asserting the truth of those charges which, according to her own representation, were admitted by her to be false."

If this action had been laid upon a breach of the defender's undertaking not to repeat any of the defamatory statements, I am disposed to think that it would not have been competent even in mitigation of damages to have averred or proved that the statements were in fact true. As between the parties to the agreement and for the purposes of same, it must be held to be an admitted fact that the charges were untrue; and as there was an express undertaking by the defender that they were not to be repeated—which undertaking she has violated—I do not see what defence, standing the agreement, she could relevantly have proposed. But that is not the nature of the action with which we are called upon to deal. The pursuer treats the letter of 15th May not as a breach of the agreement but as a new wrong, and her action is an ordinary one of damages for slander. Her statements would not be relevant to support the conclusions at all unless she averred that the defamatory statements were false; and the issue that the Lord Ordinary has allowed is in the usual form. In these circumstances I cannot agree with the Lord Ordinary in holding that the defender is barred from proving that the statements which she made were in fact true, and of course she would not be permitted to do this without a counter issue. The former letter of apology will be excellent material for cross-examination of the defender, the more so as she does not aver that anything occurred to change the view to which she therein gives expression. But I can well understand a person giving such a letter under stress of circumstances, or on the advice of a prudent solicitor, while all along retaining the conviction that she was thoroughly justified in publishing the slanders complained of. The pursuer urged that her sole object in bringing this action was to clear her character. If so, I do not see how she can achieve it by closing her adversary's mouth. One can easily figure the case of an apology being given at a time when the granter had not specific evidence to prove the truth of her slanders, and that afterwards she received information which led her to think that she had acted unwisely; but if a letter of apology is a bar in the present case where no new facts are said to have come to the defender's knowledge, I cannot see why it should not be a bar in every case. The admission that the slanders were unfounded could not be got rid of on the ground of error, for in the case figured there was none. It is true that in the present action the pursuer has founded only on the repetition of the slanders after the apology was delivered, and has apparently

done so on the footing that any claim in respect of the defender's slanders had been satisfied by the apology. In this, however, she was in error. The defender, who was admittedly in breach of her agreement, could not have founded upon it to the effect of barring a claim in respect of the prior slanders. A party who is in breach of a contract cannot plead the contract as foreclosing the claim which but for it would have been competent. An appeal was made to the doctrine of personal bar or personal exception as stated in Bell's Principles, section 27a. The learned editor of that work says—"Rei interventus, i.e., the occurrence of a real change of position, is in all cases the foundation of the plea." If so, it does not help the pursuer here, because she has not stated on record any respect in which she has been prejudiced by the repetition of the slanders apart from the wrong which the publication of the defamatory statements itself constitutes. I am accordingly of opinion that the Lord Ordinary has erred in refusing the counter issue, and that we should recall his interlocutor to that extent. As regards the form of the counter issue, I think it must be made as specific as the defender's averments in support of her plea of justification as contained in the last sentence of answer 2.

**LORD GUTHRIE**—The defenders take no objection to the pursuer's issue. But the pursuer objects to the counter issue proposed by the female defender. In my opinion that issue, if made specific in terms of answer 2, should be allowed.

The Lord Ordinary has not disallowed the counter issue merely on the terms of the defender's letter of 14th January 1912, accepted by the pursuer. He does not hold that, apart from alteration of the legal position of the person slandered, the writer of off such a letter, on subsequently repeating the slander, which it had been undertaken should not be repeated, might not, at least in certain circumstances, be entitled, on the raising of an action of damages for slander, to plead *veritas* and to obtain an issue of *veritas*. The Lord Ordinary holds that "the defender is forever foreclosed from asserting the truth" of the charges which she had admitted to be false, which she had withdrawn and apologised for, and which she had undertaken not to repeat in future. His Lordship comes to this conclusion because the pursuer by acceptance of the letter "thereby debarred herself from claiming damages in respect of these statements and so altered her legal position." But if these two things are to be taken as counterparts, it must be because the pursuer by acceptance of the letter for ever debarred herself from claiming damages in respect of the statements referred to in the letter. The summons, which does not found as ground for damages on the slanders referred to in the defender's letter of 14th January 1913, seems to proceed on this hypothesis. I think this view is unsound. If the defender breaks the undertaking in respect of which the pursuer agreed not to claim damages, I see no reason why the pursuer

should not thereafter found on the original statements in an action of damages for slander.

But the pursuer raised the wider question, whether in any circumstances the writer of such a letter as the one in question would be entitled to plead *veritas* in an action of damages raised for subsequently repeating the slanders. The question is new, and there are considerations both ways. But I see no sufficient reason for holding that in the circumstances supposed, an exception ought to be introduced to the recognised rule, no falsehood, no slander. Cases may be figured in which such an exception would work gross injustice. Innocent persons may to their ruin be compelled by threats of actions of damages to brand themselves as slanderers because they are unable from want of evidence to prove the truth of injurious accusations they have made. In such a case, on sufficient evidence subsequently appearing, the most obvious course open to them for clearing their character is to withdraw their admission and assert the truth of the very injurious statements which they had undertaken not to repeat. In such a case it would be most unjust if their mouths were shut. It is true that no such special circumstances are averred here, although it appears that the letter was written under threats of proceedings, and it is not said that the defender had any separate legal advice. But in any event, in this case, as in the one supposed, there is the same essential element, namely, that no one ought to be made liable in damages for injurious statements which are, if false, slanderous, without an opportunity of showing that they are true and therefore not slanderous.

At first sight it looks as if this view not only ignored the sacredness of a deliberate and onerous contract, but supplied a motive for a person in the position of the writer of the letter of 14th January 1913 to break her contract. But it must be observed that the defender, who has admittedly broken her contract, is in this case not taking advantage of her so acting to take proceedings, but is defending her position against attack, and in so doing is only asking to be allowed to put the Court in possession of the facts which, apart from the objection taken by the pursuer to their admission, are clearly relevant. In many cases a defender has rights and is entitled to privileges not open to a pursuer. But however this may be, the difficulty does not seem to me to arise in this action of damages for slander. If the pursuer had sued the defender for damages for breach of contract, the defence of *veritas* would probably be irrelevant and might not be allowed to be proved except if and in so far as the pursuer's general character might arise for consideration in a question of amount of damages.

The LORD JUSTICE-CLERK was absent.

The Court recalled the interlocutor of the Lord Ordinary and approved of the counter issue as amended.

Counsel for the Pursuer and Respondent

—G. Watt, K.C. — Ingram. Agent — C Strachan Petrie, Solicitor.

Counsel for the Defenders and Reclaimers  
—T. A. Menzies. Agent—J. George Reid, Solicitor.

Friday, December 19.

FIRST DIVISION.

LISTER'S JUDICIAL FACTOR *v.*  
SYME AND OTHERS.

*Succession—Foreign—Marriage Contract—“Next-of-Kin”—Construction—Lex domicilii—Lex loci actus—Wills Act 1861 (24 and 25 Vict. c. 114), sec. 3.*

By antenuptial contract of marriage between an Englishman, then resident in Scotland, and a domiciled Scots-woman, it was, *inter alia*, provided that the funds settled by the wife should, in the event, which happened, of there being no issue of the marriage, belong to her “next-of-kin, excluding her husband.” The contract, which was prepared by a firm of law-agents in Edinburgh, and which was executed both in England and Scotland, contained a clause by which the wife accepted the provisions made in her favour in full of terce of lands, half or third of moveables, *jus relictae*, and dower, and it also declared that the provisions in favour of the issue of the marriage were to be in full of all they could claim as legitim or bairns’ part, or otherwise by and through the death of their father, or as executors or next-of-kin, or otherwise by and through the death of their mother. There was also a clause of consent to registration in the Books of Council and Session for preservation and execution. The wife died domiciled in England.

*Held (diss. Lord Johnston)* that her next-of-kin by the law of Scotland, and not by the law of England, were entitled to her estate.

On 3rd December 1912, A. H. Lister, Queen’s Road, Aberdeen, judicial factor on the trust estate under the antenuptial contract of marriage between Joseph Lister (afterwards Lord Lister) F.R.C.S., 3 Rutland Street, Edinburgh, and Miss Agnes Syme (afterwards Lady Lister) eldest daughter of James Syme, Esquire, Professor of Clinical Surgery in the University of Edinburgh, and others, *first party*; Miss Lucy M. A. Syme, Brighton, Sussex, *second party*; Major-General J. M. Burn, Alderley, *third party*; and Captain J. W. Jeffreys, the Durham Light Infantry, Colchester, *fourth party*, presented a Special Case in which they craved the Court to determine whether the destination to Lady Lister’s next-of-kin contained in the said contract fell to be construed in the sense attached to that expression by the law of Scotland or in that attached to it by the law of England.

The Case stated—“1. By antenuptial contract of marriage entered into between

Joseph Lister (afterwards Sir Joseph Lister, Baronet, first Baron Lister), therein designed as of No 3 Rutland Street, Edinburgh, Esquire, Fellow of the Royal College of Surgeons, on the first part; Miss Agnes Syme (afterwards Lady Lister), eldest daughter of James Syme, Esquire, of Millbank House, Edinburgh, Professor of Clinical Surgery in the University of Edinburgh, on the second part; Joseph Jackson Lister, Esquire, of Upton House, Stratford, Essex, father of the said Joseph Lister (Lord Lister), on the third part; and the said Professor James Syme, on the fourth part, dated said contract of marriage 18th and 19th April 1856, the said parties, in contemplation of the marriage of the said Joseph Lister (Lord Lister) with the said Miss Agnes Syme (Lady Lister), and for the administration and management of the trusts and trust funds under said contract of marriage, nominated and appointed Arthur Lister, of Bradford, in Yorkshire, woolstapler; Rickman Godlee, Esquire, of No 3 New Square, Lincoln’s Inn, London, barrister-at-law; the said James Syme; and David Syme, Esquire, Advocate, Sheriff-Substitute of the County of Kinross, and the acceptors and acceptor and survivors and survivor of them, to be trustees and trustee under the said contract of marriage.

“2. By the said *contract of marriage* the said Professor James Syme, father of the said Miss Agnes Syme (Lady Lister), bound himself, his heirs, executors, and successors, to make payment to the said trustees of the sum of £2000 sterling at the first term of Whitsunday or Martinmas occurring six months after his death, with interest thereon at 5 per centum per annum from the date of the solemnising of the said marriage until payment. The trustees were directed to pay to his said daughter Agnes Syme (Lady Lister) all the interest, dividends, and profits of the said £2000 and investments thereof during her lifetime, and after her death to the said Joseph Lister (Lord Lister) during his lifetime, should he survive her. After the decease of the survivor of the spouses the trustees were directed to divide the said capital sum, or investments thereof, among the children of the marriage as set forth in the contract of marriage, but subject to the provision and declaration that if no child of the marriage should become absolutely entitled to the said funds in terms of the contract, then the said funds should belong absolutely to the said Agnes Syme (Lady Lister) and be subject to her appointment and disposal, ‘but that only by *mortis causa* deed or will to take effect after her decease, and in default of such appointment or disposal shall belong to her next-of-kin, excluding her husband.’ [The contract further provided—“And in consideration of the obligation hereby undertaken by the said James Syme, the fourth party hereto, the said Agnes Syme, with the advice and consent of the said Joseph Lister, her promised husband, hereby renounces and discharges the said James Syme and his executors of all claim competent to her