Tuesday, March 17.

FIRST DIVISION.

[Sheriff of Inverness, Elgin, and Nairn.

MACGILLIVRAY *v.* MACKINTOSH AND ANOTHER.

Reparation—Breach of Promise to Marry—Mora—Presumed Abandonment of Contract from Delay.

In an action of damages raised in 1890 by a man against a woman for breach of a written promise to marry given in 1884, it appeared that after 1885 no letters had passed between the parties; in March 1886 the defender called upon the pursuer once at his mother's house; in May 1888 the parties met in a crowded street, when the pursuer passed with rudeness; in March 1889 he passed the defender in the street without speaking; and although in June 1889 he knew of her engagement to marry another in August, he never suggested that he regarded this as a breach of the defender's engagement to himself.

The Court *assoilzied* the defender, holding that she was reasonably entitled to conclude that the contract between her and the pursuer had been abandoned.

Hugh Macgillivray, sheep and cattle dealer, Inverness, raised an action of damages for breach of promise of marriage in the Sheriff Court at Nairn against Mrs Margaret Grant or Mackintosh, wife of and residing with William Mackintosh, farmer, Barevan, Nairn.

The following facts were established at the proof allowed by the Sheriff-Substitute (RAMPINI):—In 1883 the pursuer, who was a shepherd, entered the employment of the late Peter Grant, farmer, Cawdor, the father of the defender. The pursuer began to court the defender with a view to marriage, and in March 1884 the defender gave the pursuer a holograph writing in these terms—"Hugh Macgillivray.—I promise to marry you at any time.—MAGGIE GRANT. Carnoch, March 28, 1884." The pursuer left Carnoch about the beginning of November 1884, and thereafter during 1885 a few letters passed between the parties. The pursuer deponed that in September or October he pressed the defender to marry him, but that she declined to do so, and that about this time Mackintosh, the defender's present husband, was coming frequently to Carnoch and staying there. The pursuer also deponed that in consequence of the defender's behaviour he became unwell, and that his subsequent illness was caused by her treatment of him. After the pursuer left Carnoch he went to reside in Inverness, and between 1886 and 1889 the parties met upon four different occasions. In March 1886 the defender called upon the pursuer at his mother's house. In the same year they met casually at a railway station and interchanged a few words. In 1888 they met at the feeing market at Inverness, when, the defender deponed, the pursuer passed her rudely; and the last time at Nairn in 1889, when, being on opposite sides of the street, she depones that he crossed but did not speak to her. It was proved that the pursuer knew of the engagement of the defender to Mackintosh two months before the marriage took place in August 1889, but that he did not remonstrate with her or take any steps to prevent it taking place.

On 2d July 1890 the Sheriff-Substitute found that the pursuer was entitled to damages to the amount of £10.

On appeal the Sheriff (IVORY) on 9th October 1890 found "that the pursuer has failed to justify his delay in insisting on the defender fulfilling her promise; and that the defender has proved that when she married William Mackintosh the contract which had been entered into between her and the pursuer had been abandoned," &c.

"*Note.*—The promise to marry was given by the defender at Carnoch in March 1884. The pursuer left Carnoch in November 1884, and with the exception of certain correspondence that passed between the parties in the beginning of 1885 the pursuer had no further communication with the defender. The last letter he got from her, according to his own statement, was 'four years before the raising of the action.' The Sheriff is of opinion that if the pursuer intended to insist on the defender fulfilling her promise, he was bound to do so within a reasonable time. He not only did not do so, but he took no steps whatever in the matter until after five and a-half years, when the defender had married another, and was therefore unable to implement her promise. In the whole circumstances the Sheriff is of opinion that an abandonment of the contract on both sides may be fairly presumed, that the defender was free to marry Mackintosh in August 1889, and that she is not liable in damages for breach of promise—Fraser on Husband and Wife, 489; *Davis* v. *Bomford*, 6 H. & N. 245.

"If the above view is sound, the defender is entitled to absolvitor."

The pursuer appealed to the Court of Session, and argued—That the object of the present proceedings was not pecuniary damages, but for vindication of character. The holograph promise given to the pursuer by the defender made the contract a continuing one. The words were "at any time," and looking to the rank of life of the parties, four or five years was not such an unreasonable delay as to imply abandonment. If the defender desired to terminate the engagement she should have written to the pursuer and told him so. On the question as to what in such circumstances would constitute reasonable delay — *Colvin* v. *Johnstone*, November 14, 1890, 18 R. 115; *Davis* v. *Bomford*, 6 H. & N. 245.

Argued for respondent—The action was one for *solatium* only. If the feelings of the pursuer were injured, he alone was to blame for it; for though he had the written promise of the defender, he never sought to make it good. There was such delay on his part that the defender was

justified in believing that the engagement was terminated, and that she was free to marry someone else.

At advising—

LORD ADAM—This is an action of damages for breach of promise of marriage by Hugh Macgillivray, cattle-dealer, Inverness, against Mrs Margaret Grant or Mackintosh, wife of William Mackintosh, farmer, Nairn.

It is not often that an action of this kind is brought by a man against a woman. Most commonly they are brought by the woman against the deceiving man. Of course in cases of breach of contract there is no respect of parties; the party who alleges injury can claim damages, and there is no difference between the right of a man and the right of a woman to bring such an action. The Sheriff has found that the pursuer has failed to justify his delay in insisting that the defender should fulfil her promise, and that the defender has proved that when she married Mackintosh the contract which she had entered into between her and the pursuer had been abandoned, and that the acts of the pursuer after the engagement justified the defender in refusing to consider the contract binding. About the promise there can be no question. It was in writing, and is in these terms—"Hugh Macgillivray.—I promise to marry you at any time.—MAGGIE GRANT." A similar promise was given by the pursuer to the defender. It has been said that the defender was coerced by the pursuer to give this promise of marriage, but I do not understand that by the word "coercion" anything more is meant than what the defender herself says in cross-examination — that Macgillivray pestered her time after time to give him such a document until she did it. But after he left the farm at Martinmas 1884 she quite clearly showed by her letters that she had a certain amount of affection for him, and that the coercion of giving that promise could not have been great. The determination of the present question depends, in my opinion, upon the view which we take of the conduct of the parties during the period between Martinmas 1884 and the date of the defender's marriage in 1889.

It appears that after the pursuer left the farm there was some correspondence between the parties, but there is no proof of any letter having passed between them after 1st April 1885.

The pursuer went to Inverness and took up his residence there with his mother, and went into business, in which it is stated that he has been prosperous.

The first time that the parties met again was in March 1886, when the defender visited him at his mother's house. The next time that they met was casually at the railway station, when there was an interchange of a few passing words. The next time was at the feeing market at Inverness two years after, when, according to her account, he behaved very rudely to her and refused to speak to her; and the only other time that they met was in March 1889 at Nairn, when she alleged, that being on the opposite side of the road he crossed to the side she was on but passed without speaking to her.

So far, then, these are the only traces which we have of any intercourse between the parties during these five years.

It is clearly proved that the pursuer knew of the defender's engagement to Mackintosh two months before the marriage took place, yet he made no remonstrance and did not object to the marriage but allowed it to take place.

He says himself that he did so in order that he might have an opportunity of showing up the conduct of the defender.

These are the facts which according to my view are material to this case, and looking to these facts I think that the defender was reasonably entitled to conclude that the pursuer had given up and abandoned his intention to marry her. I do not understand that a man is entitled, having a promise from a woman, to treat her as this man has treated this woman, and say, "You are bound to me, and you will just wait my convenience and pleasure." I think that when parties enter into such a contract, the party who wishes it to be fulfilled is bound within a reasonable time to offer to fulfil it. I am therefore for refusing this appeal, and I place my judgment upon the first of the grounds stated by the Sheriff, and do not think it necessary upon that account to deal with the second.

LORD M'LAREN—There is no reason theoretically why an action of this kind should not proceed at the instance of the man against the woman.

In the case of *Colvin* v. *Johnston*, 18 R. 115, I commented on the effect of delay in such cases, and the rest of their Lordships concurred in what I then said. That also appears to me to be an important consideration in the present case.

In the case of a man claiming damages from a woman who has married another, it is incumbent on him to show that he has made his claim, and has intimated to the lady that he means to treat it as one giving him pecuniary rights. There is room for distinction between the case when a man and a woman respectively are pursuers, because we are bound to recognise in these matters the social conventions which have been established with good reason, and one of these is, that it is always open to the man to press for the completion of the engagement by marriage, and that if he does not do this, very little beyond the mere neglect so to do may justify the woman in thinking that he wishes to be free from his engagement. At all events, it is not incumbent, according to our notions, upon a lady to press for the fulfilment of the engagement, and if she comes to the conclusion that her betrothed is no longer desirous of going on with the engagement, and in this belief accepts another, the party to whom she was first engaged must make it very clear to her

that he means to treat this as a breach of the engagement. There is not a particle of evidence here to show that the pursuer ever remonstrated with the defender or indicated to her that he would treat her marriage as a breach of her contract with him, for which he intended to claim damages.

I therefore think with your Lordship that the Sheriff has taken a right view of the evidence in this case, and that the appeal ought to be refused.

LORD KYLLACHY concurred.

The LORD PRESIDENT and LORD KINNEAR were absent.

The Court refused the appeal,

Counsel for the Pursuer—Rhind—Hay. Agent—William Officer, S.S.C.

Counsel for the Defender—H. Johnston—Baillie. Agents—Watt & Anderson, S.S.C.

Wednesday, March 18.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

CAMERON *v.* HENDERSON AND OTHERS.

Marriage-Contract—Annuity to Widow—Whether Trustees discharged thereof—Unstamped Receipt — Presumption — Proof.

By an antenuptial marriage-contract the husband agreed to give an annuity to his widow of £100 during his mother's lifetime, and after her death of £250. The husband died leaving a trust-disposition and settlement executed before his marriage, and his trustees in terms thereof paid the whole income of the trust-estate, about £600, to his mother. The annuity provided by the marriage-contract was not paid to his widow, who continued to live in family with her mother-in-law till the death of the latter in November 1882. On 4th December 1882 the widow was present at a meeting of her husband's trustees. The minute bore that the law-agent explained the provisions in her favour as including, "(3) An annuity of £100 a-year so long as the late Mrs Panton was in life, commencing the first payment at the first term of Whitsunday or Martinmas after Mr Panton's death. This annuity Mrs Panton stated had not been paid directly to her, but as she just lived in family with the late Mrs Panton, out of whose funds and the rents of Mr Panton's property the house expenses were defrayed, she was willing to let the annuity be set off against her maintenance prior to the term of Martinmas last." This minute was not signed by the widow.

In 1885 the trustees drew up a statement of annuities due to the widow, showing each half-year's annuity less income-tax from November 11th 1880 to May 15th 1884. The widow signed this statement under these words, "I acknowledge that my annuity as above detailed has been duly accounted for to me by the trustees," &c. This statement was not holograph or tested, and it was not stamped.

In an action by the widow against her husband's trustees for the arrears of the annuity which she averred they had not paid to her during her mother-in-law's life, the trustees founded on this minute and statement as showing that their obligations had been implemented and their actings homologated.

Held that the minute being a mere narrative of what the trustees understood to be in the pursuer's mind at the time, and the statement of annuity being a receipt and unstamped, there was no legal evidence that the pursuer had received payment of her annuity or had discharged the defenders.

Malcolm M'Bryd Panton and Margaret Lawrie Latta were married upon 22nd July 1876. Upon 21st February 1876 they executed an antenuptial contract of marriage by which Mr Panton bound and obliged himself to "pay to the said Margaret Lawrie Latta in the event of her surviving him during all the days of her life while his mother is alive a free liferent annuity of £100 sterling, and after the death of his mother a free liferent annuity of £250 sterling, payable the said annuity of £100, and after the event foresaid the said annuity of £250, at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payments of the said annuity of £100, and after the event foresaid of the said annuity of £250, at the term of Martinmas or Whitsunday that shall happen next after the death of the said Malcolm M'Bryd Panton for the half-year succeeding, and the next term's payment thereof at the first term of Martinmas or Whitsunday thereafter for the half-year succeeding, and so forth half-yearly and termly during the lifetime of the said Margaret Lawrie Latta, with a fifth part more of each of the said termly payments of liquidate penalty in case of failure, and the interest of each of the said termly payments at the rate foresaid from and after the term of payment thereof during the not-payment. But declaring always that if the said Margaret Lawrie Latta shall enter into a second marriage then and in that event the said annuity of £100 shall be and is hereby restricted to a free liferent annuity of £50, with corresponding interest and penalty payable as aforesaid, and the said annuity of £250 shall be and is hereby restricted to a free liferent annuity of £125 sterling. After marriage they continued to live in the same house with Mrs Panton senior. One child was born of the marriage. Mr Panton died on 23rd June 1880. He left a trust-disposition and settlement dated 14th June 1866, in which, *inter alia*, he directed his trustees "to hold and apply the whole