of description? I do not say if it had run in other terms—if it had said "the whole residue in the event of my being predeceased"—there might have been some strong argument raised. But that is not what it says. He states as a matter of fact—"The whole residue of said estate, heritable and movable, to which I shall succeed in the event of my being predeceased" by Janet. He does not make it a condition—in that event—and I am of opinion that the residue of that estate was vested in him and should go to his trustee, and the claim of his widow, the sole surviving trustee, be sustained.

LORD M'LAREN and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Claimant James Young—Sol.-Gen. Dickson, K.C.—Clyde. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Claimant David Guthrie—A. S. D. Thomson—Hunter. Agent—Henry Robertson, S.S.C.

Counsel for the Claimant Mrs Wyper—J. Wilson, K.C.—W. Harvey. Agent—W. Kinniburgh Morton, S.S.C.

Thursday, March 7.

FIRST DIVISION.

DUNLOP PNEUMATIC TYRE COMPANY, LIMITED *v.* ROSE.

Process—Petition and Complaint—Breach of Interdict — Amendment — Clerical Error.

In a petition and complaint for breach of interdict against infringing a patent, it was stated that the sale complained of as constituting the breach had taken place on 1st December 1899, a date prior to the granting of the interdict. The petitioners presented a note in which they stated that the sale complained of had been *per incuriam* described as having taken place on 1st December 1899 instead of 1st December 1900, the date on which it actually took place, and craved leave to amend the petition by substituting "1900" for "1899." The Court, in respect that the error was so patent as to amount practically to a clerical error, and that no prejudice was alleged by the respondent, *allowed* the amendment on condition of the petitioner paying any expenses caused to the respondent by the error.

On 13th February 1901 the Dunlop Pneumatic Tyre Company presented a petition and complaint for breach of interdict against M. G. Rose, cycle agent, West Nicolson Street, Edinburgh, praying the Court to find that the respondent had been guilty of contempt of Court and breach of interdict.

The petitioners stated that on 31st October 1900 Lord Kyllachy had granted decree interdicting the respondent from infringing their patent for the invention of improvements in rubber tyres and metal rims or felloes of wheels for cycles and other light vehicles; that on 27th October 1900 the respondent was sequestrated, and Mr R. A. Craig was appointed trustee; that since the date of her sequestration the respondent had, notwithstanding the interdict, illegally and in breach of the interdict, infringed the petitioners' patent, and that in particular "respondent sold, or knowingly allowed to be sold, within her premises at 37 West Nicolson Street foresaid on 1st December 1899, to one Edward Thomas Cheer, tyre dealer, of 160 Clerkenwell Road, London, E.C., one pair of outer covers 'reconstructed,' said pair of outer covers, either singly or in combination, not having been supplied by petitioners to respondent, nor sold under any consent, licence, or agreement from them to respondent, and being an infringement of said letters-patent, against the infringing of which by respondent the petitioners had obtained the said decree."

Answers were lodged by the respondent, in which she denied that she had at any time infringed the interdict granted against her. She further averred as follows—"In particular, the respondent denies that she sold or knowingly allowed to be sold, at 37 West Nicolson Street aforesaid, on 1st December 1899, to the party named in the complaint or to any other person, a pair of outer covers such as are described in the complaint. Such records of her business as were kept by the respondent were taken possession of by the trustee and are not now available, but she is certain that no such transaction took place at or about the date libelled, or at any other time subsequent to the interdict proceedings and prior to the realisation of the business."

A note was presented to the President of the Court by the petitioners, in which they stated that the particular sale complained of, "which of course was subsequent to the date on which interdict had been granted, was *per incuriam* described as having taken place on 1st December 1899 instead of 1st December 1900, the date when it actually took place," and therefore respectfully craved his Lordship "to move the Court to allow petitioners to delete the figures '1899' occurring in line three at the top of page 5 of the said petition and complaint, and to substitute therefore the figures '1900.'"

The respondent objected to the prayer of the note being granted, on the ground that her answers had been framed on the footing that the sale complained of took place on the date stated in the petition and complaint.

LORD PRESIDENT—There is no doubt that this proceeding is of a quasi-criminal nature, and if the mistake could have misled the respondent in any way, there would have been a difficulty in not applying the

same rule which obtains in proper criminal cases.

But the error is so patent as to amount practically to a clerical error, and no prejudice being alleged, I think that we should allow the amendment, subject to the payment of any expenses which may have been incurred by the respondent in consequence of the error.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"The Lords having considered the note for the petitioners, and heard counsel for the parties, allow the petitioners to amend the petition in the terms and to the effect set forth in said note; also allow the respondent to amend her answers, if so advised, by Monday the 11th March current: Find the petitioners liable to the respondent in the expenses occasioned by the amendments, and remit," &c.

Counsel for the Petitioners—Guy. Agents—Duncan Smith & M'Laren, S.S.C.

Counsel for the Respondent — Christie. Agent—A. Elliot Keay, Solicitor.

Thursday, March 7.

FIRST DIVISION.

[Sheriff Court of Ayrshire.

MAXWELL *v.* YOUNG.

Expenses — Parties Liable — Husband — Action by Wife with Consent and Concurrence of her Husband—Husband and Wife.

In an action of damages for personal injuries raised by a married woman, with the consent and concurrence of her husband, the defender was successful. The Court *found* the husband liable for expenses jointly and severally with his wife, on the ground that he, having been present when his wife sustained the injuries complained of, ought, in the view taken by the jury, to have known that his wife's claim was unfounded, and ought consequently not to have given his consent to the action, and that in addition to giving his consent he had taken an active part in the litigation.

Opinion reserved as to whether a husband renders himself liable for the expenses of an action at the instance of his wife by merely giving a formal consent thereto as his wife's curator.

An action was raised by Mrs Mary Gilfillan or Maxwell, wife of and residing with William Maxwell, plumber, 4 Houston Square, Johnstone, with the "consent and concurrence of the said William Maxwell as her curator and administrator-in-law," against Alexander Young, butcher, 23 New Street, Stevenston, concluding for payment of £500 as damages in respect of personal injuries.

The pursuer averred that her husband had taken from the defender on lease for a year from Whitsunday 1900 a house situated at the back of the defender's premises at 23 New Street; and that on 28th May 1900 she and her husband were engaged in removing their furniture to said house. She also averred as follows:—"(Cond. 4) The house taken by pursuer is entered by a stone stair leading to the second storey of the back building, and said stair is about 7 feet 4 inches in height. On the day in question, while pursuer was standing on the landing of said stair waiting for her husband to ascend said stair and to pass her with a part of the household furniture, pursuer in stepping back on said landing came in contact with the right hand railing of said stone stair, which immediately gave way and precipitated pursuer to the ground, whereby she sustained the injuries after mentioned."

The pursuer further averred that the railing in question was in a weak and rotten condition; that the defender ought to have known this, and repaired the railing or warned the pursuer, and that as a result of its dangerous condition the pursuer had met with the injuries complained of.

The defender averred as follows:—(Ans. 4) "The pursuer's husband was carrying up the stairs a large burden wrapped in packing, and containing a wool bed, two pairs of blankets, two bedcovers, six bolsters, and other articles. This bundle, which more than occupied the full width of the stair, was carried by Mr Maxwell on his back. As he ascended the stair the pursuer had commenced to come down, and was on the seventh step. Instead of stepping back into the house, and so allowing her husband to get up without obstacle, she remained on the stair, and leaned back over the handrail on the right side of the stair. When her husband reached the seventh step the end of his bundle rested on her chest, and the hand-rail, unable to bear the double weight of the pursuer—who is a big heavy-made woman—and of her husband's bundle, gave way, and the pursuer fell backwards to the ground, a depth of about 5 feet, and sustained injuries."

He maintained accordingly that the accident was due to the pursuer's own fault and negligence, and that he was not responsible.

The action was tried before Lord M'Laren and a jury on the following issue:—"Whether, on or about 28th May 1900, the pursuer, while using the stair leading to a house situated behind the premises occupied by the defender at 23 New Street, Stevenston, was injured in her person through the fault of the defender, to the loss, injury, and damage of the pursuer?"

The jury found for the defender by a majority of seven to five.

The pursuer's husband gave evidence at the trial in support of her claim.

The defender, on a motion to apply the verdict, moved the Court to find the pursuer and her husband jointly and severally liable in expenses.