the trading history, even for four years, of each particular trader is not legitimate matter for inquiry, although, as I have already said, if the traders come and give evidence that their trade cannot bear the rates, very considerable latitude in cross-examination of them may be allowed to the companies, and possibly the companies may also be permitted to adduce rebutting evidence.

For these reasons I think that we should refuse the specification *in toto*.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court refused the appeal.

Counsel for the Appellants — Guthrie, K.C.—Cooper—Grierson. Agent—James Watson, S.S.C.

Counsel for the Respondents—Dundas, K.C.—Clyde—Strain. Agents—Drummond & Reid, S.S.C.

Friday, May 17.

SECOND DIVISION.

[Sheriff-Substitute at Aberdeen.

CRAN *v.* WATT.

Statute — Construction— Week — Advertisement in Newspaper "for Two Successive Weeks"—Police—Street—Paving—Assessment — Notice — Aberdeen Municipality Extension Act 1871 (34 *and* 35 *Vict. c. cxli.*) *sec.* 145.

The Aberdeen Municipality Extension Act 1871, which empowers the Town Council to pave certain streets with granite, and to recover the expense thereof from the frontagers in proportion to their frontage, by section 145 provides that the Town Council shall, three weeks before proceeding with the work, "cause a notice of their intention so to do to be inserted in at least one of the newspapers published in the city for two successive weeks, and such notice shall be and be deemed sufficient intimation to all the parties liable for the expense of such works."

Held that a notice, published in an Aberdeen daily newspaper on Friday in one week, and again on Wednesday in the following week, was sufficient notice in conformity with the requirements of the Act.

By the Aberdeen Municipality Extension Act 1871, the Town Council are empowered to cause the carriageway of any street to be paved with granite stones, and to recover the expense thereof from the frontagers in proportion to the frontage of their lands abutting on the street.

Section 145 provides—"The Town Council shall, three weeks before proceeding with the laying out, forming, paving, macadamising, or otherwise making good of any footways, channels, or gutters, or causeway or carriageway of any street at the expense of the owners of the lands before or opposite to which such works shall be executed, cause a notice of their intention so to do to be inserted in at least one of the newspapers published in the city for two successive weeks, and such notice shall be and be deemed sufficient intimation to all the parties liable for the expense of such works."

This was an action at the instance of Peter Macleod Cran, Chamberlain of the city of Aberdeen, against John Watt junior, as owner of heritable property in Berry Street, Aberdeen, to recover the sum of £35, 5s. 3d. as the proportion due by the defender of the expense incurred by the Town Council in paving the carriageway of the said street with granite stones in virtue of the powers contained in the foregoing Act.

The defender lodged defences, in which he maintained that the Town Council had not given due notice of their intention to execute the work in question in terms of the Act.

He averred — "(Ans. 7) The Town Council . . . inserted their notice twice only, and that within a period of five days, viz., in the daily *Aberdeen Journal* of Friday the 19th June 1896, and in the daily *Aberdeen Journal* of Wednesday the 24th June 1896. In point of fact the defender did not see the notice at all, and he was, from the failure of the Town Council to advertise in terms of the statute, not aware till after the work was executed that any resolution had been come to by them under which it was intended to fix liability upon him."

The defender further averred—"At the date of said resolution (*i.e.*, to execute the work in question) there were published in the city of Aberdeen two daily newspapers, viz., the *Aberdeen Journal* and the *Daily Free Press*, and at the date of the passing of the said Act the *Journal* was published weekly on Wednesdays and the *Free Press* bi-weekly on Tuesdays and Fridays. Explained and averred that on a sound construction of said section the Town Council was bound either to cause their notice to be inserted in one or other of the daily papers each day (Sundays excepted) for two successive periods of seven days, or to insert the notice in four successive bi-weekly issues of the *Free Press*, or in two successive weekly issues of the *Journal*, or in any event, in the case of only one weekly insertion, the Town Council was bound to insert the second notice not earlier than the seventh day—that is, a full week—after the first, so that notice for two full and completed successive weeks or periods of seven days each might precede the currency of the statutory period of three weeks which had to elapse subsequent to advertisement of the notice before the contemplated work could be proceeded with."

The pursuer admitted the defenders' averments with regard to the dates of the

publication of the Aberdeen newspapers, and the dates when the advertisement relatting to the work in question appeared.

The pursuer pleaded—"(1) The assessments specified in the condescendence having been duly imposed, and the defender being in respect thereof liable in payment of the amount sued for, and not having paid the same, the pursuer is entitled to decree against the defender as craved."

The defender pleaded—"(4) Intimation by notice in terms of section 145 of the Act of 1871 being an essential condition of liability, and the Town Council having failed, to the loss of the defender, to give such notice, no statutory liability has been imposed on the defender, and he ought to be assoilzied with expenses."

The Sheriff-Substitute (ROBERTSON), after hearing parties' procurators on the closed record, on 8th January 1901 pronounced an interlocutor, whereby (after sundry findings in fact based upon the averments and admissions of parties, which, so far as material, are set forth in the foregoing narrative) he found in law "(1) that on a sound construction of said section 145, the notices inserted were not a sufficient compliance with its terms; (2) that there being a want of the statutory notice, the proceedings following thereon were inept, to the effect of entitling the Town Council to do the work at the expense of the defender, and to assess him therefor," and assoilzied the defender.

Note.—. . . "The first contention is, that proper notice was not given in terms of the statute.

"Whether proper notice was given depends upon the construction to be put upon section 145 already quoted. Three weeks before proceeding with the work the Town Council had to cause a notice 'to be inserted in at least one of the newspapers published in the city for two successive weeks.'

"At the time when the statute was passed there was no daily paper published in the city—the *Free Press* was published twice a-week, and the *Journal* once a-week every Wednesday. In 1896, when the notice in question here was inserted, both these papers were daily papers. What the Town Council did was to insert a notice in the *Journal* on Friday 19th June, and a second notice on the following Wednesday.

"The pursuer's contention is, that he fulfilled the requirements of the statute by inserting an advertisement in any day of two successive weeks, *e.g.*, it would have been quite good to have inserted it on a Saturday and again on the following Monday, with only one day between.

"Defender's contention, on the other hand, is that the use of the word 'for' shows that it was intended that there should be either (*a*) where there was a daily paper, an insertion for each day of two weeks; or (*b*) where there was not a daily paper but a weekly one, there should be two insertions a week apart; or (*c*) in any event, if two insertions in a daily paper were sufficient, they must be a week apart.

"In my opinion defender's contention is right. It was argued for pursuer that the words 'for two successive weeks' referred to the newspaper and not to the insertion. I do not agree. In my opinion, the common-sense ordinary meaning must be given to the clause which 99 people out of 100 would give to it, and that is, that the notice must appear for two successive weeks in one of the papers published in the city. The statute does not say 'in' two successive weeks, but 'for,' and the natural meaning of that is that there shall be two periods of seven days each in which intimation is given before the commencement of the currency of the three weeks spoken of. If I am right in this, the intimation by notice was insufficient, and I fancy the whole proceedings following thereon must be regarded as inept.

"It was argued for pursuer that defender, while objecting to pay on the ground that he was being overcharged, had never raised this objection till the present action was raised, and further, that he had suffered no prejudice. No doubt the first part of this is true, and it is at least questionable if any serious prejudice can be averred or proved; but the Town Council's sole right to assess depends on the statute, and if the condition-precedent on their proceeding to execute the works under their statutory powers is not fulfilled, I apprehend the whole proceedings following thereon must be inept. I must therefore, in the view I take, assoilzie the defender. (Case referred to, *Ferguson* v. *Rodger*, June 12, 1895, 22 R. 643)."

The pursuer appealed to the Court of Session, and argued—The notice given sufficiently complied with the requirements of the Act. It was clear that the words "for two successive weeks" could not mean upon each day of two successive weeks, in view of the fact that when the Act was passed there was no daily newspaper published in Aberdeen. The ordinary meaning of the word "week" was calendar week, *i.e.*, the period beginning on Sunday and ending on Saturday. A notice inserted in a newspaper which was published on Friday was notice "for" that week. Similarly, a notice inserted in a newspaper published on the following Wednesday was notice "for" that week. The statute did not say that week meant any period of seven days, nor did it say that seven days must elapse between the dates of publication of the notice—*Burton*, July 17, 1850, 13 D. 40. The case of *Ferguson* v. *Rodger*, June 12, 1895, 22 R. 643, cited by the Sheriff-Substitute, was distinguishable. The notice in that case, which was held to be insufficient, was required as the foundation of diligence and heritable title. The pursuer further maintained, that even if the notice was insufficient the defect did not invalidate the assessment.

Argued for the defender and respondent—The notice was insufficient. The meaning of the Act was, that where there was a daily newspaper, publication must be made on each day of two successive weeks. The word "for" did not mean "in," but throughout the duration of two successive weeks. Alternatively, its meaning was

that a period of seven days must elapse between the first and second publication, and that the three weeks which must elapse before the work was commenced should not begin to run until the expiry of seven days after the second publication. If the appellant's argument were sound, it would be sufficient to give notice on Saturday of one week and on Monday of the following week. The case was ruled by *Ferguson* v. *Rodger*, *supra*, where the words of the Act requiring advertisement to be made were indistinguishable from those in the present case. The defender also cited *Nisbet* v. *Cairns*, March 12, 1864, 2 Macph. 863. The defender further maintained that, assuming the notice to be insufficient, the defect was fatal to the validity of the assessment.

In answer to a question from the bench, counsel for the pursuer and appellant stated that the contract for the paving of the street in question was signed on 20th August 1896, that is, more than five weeks after the insertion of the first advertisement on 19th June.

LORD YOUNG—Two questions have been argued—the first as regards the true interpretation of clause 145 of the Aberdeen Municipality Extension Act 1871, and the other as regards the consequences which would follow if it should be determined that the true construction has been given by the Sheriff-Substitute. It is sufficient to decide the first question if we are of opinion, as I am, that the Sheriff is wrong in his interpretation of the clause which I have mentioned. I think (although the remark has more bearing upon the second question) that the provision of the statute is only directory. The town authorities are by the statute permitted to make such improvements upon the streets as they judge to be necessary, but they are directed before proceeding with the work to give notification of what they intend to do by publishing a notice thereof, as the clause expresses it, "to be inserted in at least one of the newspapers published in the city for two successive weeks." The statute provides that the expense shall be laid on the proprietors whose property adjoins the street, and it is certainly reasonable that these proprietors should have notice of what the proposed alterations are. Now, here, the Magistrates having come to the conclusion that in this particular street certain repairs and alterations were required, inserted a notice in two newspapers in successive weeks, one being published on Friday of one week and the other on Wednesday of the following week. A good deal has been said on the question whether the true meaning of the clause is not that there should be publication on every day of two successive weeks. That contention was abandoned, not only on the good sense of the matter, but also on the ground that at the time when the Act was passed there was no such thing as a daily newspaper published in Aberdeen. But the respondent's contention latterly was that there must be two full periods of seven days each, and that the notice must be published once in one period and once in the other. The question really is, whether the town authorities proceeded on an admissible view of the clause in giving notice as they did, first on Friday of one week, and secondly on Wednesday of the succeeding week. The Sheriff-Substitute has decided that this was a mistake on their part, and that this is a good defence to any of the street proprietors who are required to contribute their proportion of the expense of doing what the notice specified. I am of opinion that the Sheriff is wrong, and that the statute is satisfied by a notice published in one week on Friday, and upon Wednesday of the following week. Suppose there were a similar provision in an Act relating to Edinburgh, where we are familiar with a daily newspaper whose chief advertising days are Wednesday and Saturday, and suppose the town authorities were to publish a similar notice in the Saturday's issue of one week and in Wednesday's issue of the following week—it would, I think, be a critical, even a malignant construction, to say that such notice did not sufficiently comply with the requirements of the statute. Here the street proprietors had every reasonable opportunity of seeing the notices which were published in successive weeks, and when no objection to the work was stated I think there is strong ground for the argument that they are bound to contribute their share of the cost. They, in fact, benefited from the work, but their argument is that they should bear no part of the expense, because the municipal authorities have made a mistake in regard to the notice. I think the authorities made no mistake, and I am therefore of opinion that the judgment of the Sheriff-Substitute should be reversed.

LORD TRAYNER—I abstain from expressing any opinion as to the effect which an insufficient statutory notice would have had on the validity of the assessment, because, in my opinion, that question does not here arise. In my opinion the notice given to the appellant was a sufficient fulfilment of the statutory requirement. The words of the Act are, that notice must be "inserted in at least one of the newspapers published in the city for two successive weeks." I take the word "week" in this clause (there being nothing in the context to indicate a different meaning) as signifying a calendar week—*i.e.*, the period beginning with Sunday and ending with Saturday. I do not think it means a period of seven days beginning on any one day and ending on the seventh day thereafter. In the present case the notice was inserted in a newspaper published on Friday in one week and in another newspaper published on Wednesday in the following week. These notices so published seem to me to be what the statute requires, namely, notice made in the city newspapers for two successive weeks, although there was not an interval of seven days between them.

I concur therefore in the view that this appeal should be sustained.

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 quæsitum 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 28th 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