indeed no application was made to the defender regarding it until the April following. Mr Lamont purchased the estate as it stood, and he was entitled to get it all for his money, indeed he may especially have considered this fence in his purchase.

In conclusion, I can only add that it is my opinion that there was here an implied contract to allow the *status quo* to remain, and that this rules; and further, that it would be contrary to good faith were it not to do so.

Lord Ormidale—I am of the same opinion, and have only a few additional observations to make. It is, I think, important to keep in view that the question here is not one between landlord and tenant, and that accordingly the principle established by the decisions as to trade fixtures does not apply. Again, the case is not one of heir and executor, nor of liferenter and fiar, although questions as between persons so situated might involve the element in the present case. No example has been cited to us in which the present element has arisen, no question substantially as between the seller and the purchaser of the estate. It is, I am aware, said that Captain Graham was not truly the seller, and looking at the feudal title he was not so, but for the purposes of this case substantially Captain Graham occupied that position, being the liferenter, a limited proprietor of the estate of which his children were the fiars, and there can moreover be no doubt that he took an important part in the negotiations. I am disposed to deal with this case on the footing that Captain Graham was the seller substantially, and that Mr Lamont was the purchaser.

The real question is, What must be held to be the implied contract between the purchaser and seller? To enable an answer to be given to this it becomes necessary to know what was the nature and object of this fence. Now, it is quite true that this iron fence could be removed if required without injury, but it does not follow that although a thing is quite moveable in itself it must therefore be "a moveable" in a question like this. For instance, we have such things as gates, or doors and windows, which though in themselves quite moveable, could not be carried off by the seller in a transaction of this kind. Now, does not this amount substantially to the same thing? The purchaser Mr Lamont goes over the ground, sees a policy and enclosure, and very likely may have taken a great fancy to this policy, and to the grounds and situation so much praised in the correspondence by Captain Graham. If this fence were taken away there would no longer be properly speaking a policy at all. What then must have been the implied contract? It seems to me that there can be no reasonable doubt that Mr Lamont was entitled to rely on having those fences—enclosures in fact—round the policy grounds.

Lord Gifford—I am of the same opinion, and am quite content to rest the grounds of judgment on this—What is the fair and honest meaning of the contract of sale? This fence, looking at its position, might fairly be taken by the purchaser to be a regular part of the property. The fence took the place of the old "stob and rafter" put in by Dr Graham. If Mr Graham had not been a party to the sale at all he might have been in a much more favourable position. When he considered he was bound to warn intending purchasers through Mr Blair, he was also bound to tell to those who came to himself as Mr Lamont did. To the moveable character of the fence I do not attach much importance, for an iron fence of this kind may merely take the place of a stone wall, and we must look to the position in which it is placed and the purpose for which it is used. I do not draw any distinction between the 260 yards of fence and the 140 yards, but I regard this whole iron fence as an accessory of the estate, and I think that the purchaser was entitled to take it as such.

Lord Justice-Clerk—My Lords, I entirely agree, and I do not think it needful to enter into any detail. The fences on a landed estate are *prima facie* heritable accessories of the subject. It may, of course, be otherwise; for example, if we had here to deal with the tenant of a shooting from year to year who had put up his iron fence in place of no other fence. But even in that case if the tenant had gone away leaving the iron fence in its place until after the sale, and without any explanation of its character, the purchaser might have had a good deal to say. Now, we have here nothing at all of that kind, although the petition is entirely based upon the alleged tenancy, a position which the petitioner had now entirely abandoned. I think that to allow Captain Graham to remove this fence would be against the good faith of the contract of sale.

The Court sustained the appeal, recalled the judgment of the Sheriff, and assoilzied the defender with expenses in both Courts.

Counsel for Petitioner (Respondent)—M'Laren. Agents—Webster & Will, S.S.C.

Counsel for Respondent (Appellant)—Solicitor-General (Watson), Q.C., and W. F. Hunter. Agents—W. & J. Cook, W.S.

Tuesday, February 23.

SECOND DIVISION.

[Sheriff of Argyllshire.

SHEARER *v.* ALEXANDER.

Seduction—Cheque—Value—Condition—Proof.

A person who has seduced a woman is not entitled to attach a condition—that she will not reveal his name—to a cheque granted as an alimentary provision to the woman and as reparation for the loss of her situation.

This was an appeal from the Sheriff of Argyllshire. The appellant Alexander Shearer, who is a joiner at Innellan, is respondent in the action in which the appeal is taken, the pursuer being the present respondent—Mary Alexander, domestic servant in Glasgow. That action was raised to enforce payment of the contents of a cheque for £35, which was granted to the pursuer by the defender on 5th September 1873. The cheque was on the City of Glasgow Bank, and on her presenting it for payment it was dishonoured—the defender having withdrawn his money from the bank. He defended her action against him on the ground that, she having accused him of having seduced her, he gave her the cheque and £5 in money on condition that she should not make his name public. instead of which she immediately showed the cheque to different persons in his father's hotel at Innellan, where she was then in service, and told his mother that he was the father of a child with which she was then *enceinte*. In these circum-

stances, the Sheriff-Substitute (SPEIRS) allweod parties a proof of their averments, while the Sheriff (CLEGHORN), on appeal, recalled the order for the proof, and found that the cheque was sufficient evidence of debt, and that the defender was bound to pay the pursuer its amount. The defender appealed to the Court of Session, and, at the close of last session, amended his defences on payment of the expenses. On the case being called again thereafter, it was submitted for the appellant that as the action founded only on the cheque, it was irrelevant, a cheque not being in itself a document proving debt on the part of the drawer to the payee. Their Lordships, after hearing counsel, ultimately allowed the case to stand over to allow the respondent's (pursuer's) counsel to consider the advisability of putting on the record a statement as to the value for which the cheque had been granted. This statement was afterwards put in, and a proof allowed thereon. The proof was recently taken before Lord Gifford.

At advising—

LORD JUSTICE-CLERK—My Lords, with regard to the question whether or not this cheque would by itself have been a good ground of action, it is not necessary to say anything, since the proof has disclosed the consideration for which it was given.

It is quite clear that this girl had been seduced by the defender, and that she had asked for some money, partly perhaps as a solatium for the injury done her, and still more as provision for herself and child (whose birth might be expected in a short time), since she was at once to quit the situation she held in the defender's father's house. In these circumstances the defender granted the cheque, showing that he thought that something was due from him to the pursuer.

The real reason of the granting of the cheque was no secret, and as to it there can be no question; but, then, the defender attached a condition, that the girl was to leave her situation and not to mention his name in connection with the matter.

The girl did leave the house, but before doing so she admitted to her mistress, the defender's mother, on being asked, that the defender was the person who had brought her into the situation in which she then was. Regarding this admission as a breach of the condition he had imposed, the defender withdrew from the bank all his money, so that when the cheque was presented there were no effects to meet it.

I do not think the defender was entitled to attach such a condition as this to the payment of the cheque; and further, the fact that the admission was wrung from the girl does not entitle the defender to refuse payment of a cheque granted for so serious a consideration as has been shown to exist here.

LORD NEAVES—This is a somewhat peculiar case, and the defender is in rather a curious situation. It is quite clear that he had had connection with the pursuer; she was with child to him, and he wished to get her out of the house, where she was in the circumstances obviously unfit to remain. But then, if he did so, he was bound to provide for her; he makes no provision except granting the cheque, and giving her £5 in ready money, attaching the condition that she should not mention his name. The mother of the defender having been warned by one of the other servants as to the pursuer's condition, asks her who had "taken advantage of her," when the pursuer acknowledges that it was the defender. But then the pursuer did not go and voluntarily trumpet the matter about, but only admits it when closely questioned by her mistress.

It is not possible to take the view that this man had validly imposed upon this woman the obligation of placing herself in so very unfavourable a position as this condition would reduce her to.

But it is abundantly clear that there were quite sufficient grounds for the granting of this cheque.

LORD ORMIDALE—I am of the same opinion. If it were necessary for the pursuer to prove the consideration for which this cheque was given she has abundantly done so.

But then there was the condition attached, which the defender says she contravened, so as to justify him in preventing her getting the money. I think it is a very open question whether it is competent to prove by parole evidence the existence of a qualifying condition in the face of such a document as we have here.

LORD GIFFORD—I am of the same opinion. The action is for the contents of a cheque granted to a person by name, which goes some length in showing a transaction between the parties.

But on the various grounds stated it is clear that the pursuer was entitled to something. As to the question of secrecy, I think it was a condition incapable of being fulfilled, and indeed there might be circumstances in which it would be positively illegal for a person in the situation of the pursuer to conceal the name of the father of her child.

Decree in terms of the conclusion of the summons.

Counsel for the Appellant and Defender—The Dean of Faculty (Clark), Q.C. and Mackintosh, Agents—Lockhart & Espie, S.S.C.

Counsel for the Respondent and Pursuer—J. C. Smith and Rhind. Agent—Allan Macaskie, S.S.C.

Tuesday, February 23.

FIRST DIVISION.

PETITION—ADDISON AND OTHERS.

Conveyancing (Scotland) Act, 1874, § 39—*Petition.*

Form of petition to have it found that a trust-disposition and settlement was subscribed by the granter and by the witnesses by whom it bore to be attested.

Conveyancing (Scotland) Act, 1874, § 39—*Trust-Disposition and Settlement—Subscription—Testing Clause—Proof.*

When the granter of a trust-disposition and settlement, subscribed by him and attested by witnesses, died without the testing clause being filled up, proof allowed that the deed was so subscribed and attested in terms of the 39th section of the "Conveyancing (Scotland) Act, 1874."

This was a petition by Mrs Margaret Inglis or Addison and others, widow and children of the deceased James Addison, to have the trust-deed executed by him declared a valid deed.