Wednesday, January 31.

SECOND DIVISION.

[Sheriff of Aberdeen.

SEATON BRICK AND TILE COMPANY, LIMITED *v.* MITCHELL.

Contract — Construction — Building Contract—Schedule Rates or Lump Sum—Essential Error—Error calculi.

A schedule having been issued to certain contractors specifying various items of work to be done, one of the contractors to whom it had been issued offered by letter to do the carpenter work for the lump sum of £859. The schedule was not returned with the offer. The offer was accepted by letter, and with this acceptance there was sent a second copy of the schedule "to be filled up and signed at earliest." Before making the offer the contractor had calculated the lump sum mentioned in his offer by pricing out the items in the schedule, but in doing so he had inadvertently omitted to price out one item, and in the summation had inadvertently omitted to add in the amount of certain other items, the total sum represented by these omissions being £326. This mistake was discovered and intimated to the acceptors of the offer within a few days after the acceptance, and before the schedule was filled up and signed by the offerer. The offerer refused to go on with the contract. In an action of damages against him for breach, *held* that there was a completed contract upon the offer and acceptance, the agreement concluded being for a lump sum, and not for schedule rates, and (2) that the mistakes in the original private calculations of the offerer did not entitle him to resile.

Contract—Breach of Contract—Damages.

A contractor made an offer, which was accepted, to do certain work for the lump sum of £859. In the private calculations by which he arrived at this sum he inadvertently omitted to take certain items representing a sum of £326 into account. Upon discovering this mistake within a few days after the acceptance, he at once intimated it to the acceptors and refused to go on with the contract. The acceptors declined to let him off his bargain. They then accepted the next lowest offer, which was £220 higher, and claimed the difference as damages from the original offerer. The Court *assessed* the damages for the offerer's breach of contract at the sum of £40.

This was an action brought in the Sheriff Court at Aberdeen by the Seaton Brick and Tile Company, Limited, Aberdeen, against Robert Mitchell, builder there, in which the pursuers craved decree for the sum of £226 as damages for breach of contract.

The pursuers being about to erect extensive works, issued a lithographed form entitled "Measurements of Carpenter Work of Millhouse, Kilns, &c., at Blackdog" to a number of tradesmen as an invitation to tender. This form specified in ninety-one items the quantities and description of the materials required, with a blank money column to be filled in by the contractors opposite each item as a schedule of prices. Along with this invitation to tender there were issued certain "General conditions applicable to all departments of the work required." These general conditions contained, *inter alia*, the following provisions — "*Third*, Power is expressly reserved to alter, increase, diminish, or omit such portions of the work as may be considered expedient without nullifying or setting aside the original agreement. The value of any such alterations is to be ascertained and charged for according to the rates for similar work in the priced schedule of measurements, to be signed and lodged with the architect by the offerers who are accepted, or if no schedules are issued, according to current rates charged for similar work in the locality, such value to be added to or deducted from the original sum according as the alterations may be additional or otherwise, but no claim for charges for any extra or additional work is to be made by the contractor but upon his producing the order of the architect signed when the instructions for such extra works were given. . . . *Seventh*, Should the contractors fail, within fourteen days after intimation being made, to homologate their respective offers by signing the plans and specifications, and lodging their schedules of measurements, or by entering into a regularly stamped contract embodying this specification and having reference to the plans (if desired by the proprietor, he bearing the expense of doing so), then it is hereby provided that the agreement with such contractors shall fall to the ground, and the proprietor will be at liberty to accept any other offers."

On 12th October 1898 the defender's son William Mitchell, a carpenter in the employment of his father, and acting with his authority, wrote to the pursuer's architect, —"Dear Sir—I hereby make offer to execute the carpenter work of Mill House & Kills, &c., at Blackdog Farm according to plans, specifications, & general conditions prepared by you, for the sum of Eight hundred and fifty-nine pounds stg. —say £859 0 0.—Yours truly, ROBERT MITCHELL. W.M." The schedule of prices originally sent out was not returned along with the offer.

On 14th October 1898 the pursuers' architect wrote to the defender,—"Dear Sir—I am instructed to accept your offer of 12th inst. to execute the carpenter work of millhouse, kiln, etc., at Blackdog Farm, for the sum of Eight hundred and fifty-nine pounds sterling — say £859, 0/. I enclose blank schedule, to be returned filled up & signed at earliest—Yours truly, ROBERT G. WILSON." The blank schedule referred to was a second copy of the schedule originally sent.

Before William Mitchell sent in his letter of offer above quoted, and with a view of making that offer he proceeded to fill up in

pencil the price of each item in the money column of the copy of the schedule originally sent to his father. In doing so he inadvertently omitted to enter 1154 yards of corrugated iron, which the defender estimated at £110, 11s. 10d., and also in the summation omitted to take into account the three items which were on the fourth page of the schedule, amounting to £215, 13s. 6d., in all £326, 5s. 4d. The defender discovered this error within a few days after the date of the pursuers' letter of acceptance, and thereupon he wrote to the architect withdrawing his offer, but without referring to the mistakes. The second copy of the schedule was never filled up and signed by the defender. The pursuers refused to accept the defender's withdrawal, and he ultimately refused to go on with the contract. The pursuers thereupon accepted the next lowest offer, the difference being £220, and thereafter raised the present action, in which they claimed damages from the defender for failing to execute the contract. The nature of the mistake made by the defender's son had been explained to the pursuers' law-agent on 21st October before this action was raised. But at the interview when this explanation was given the defender and his law-agent took up the position maintained by them throughout this litigation that he was not bound by his offer.

In defence the defender pleaded—"(2) The offer founded on by pursuers having been merely an estimate on the basis of the schedule of quantities, and there having been innocently and erroneously omitted from said estimate the items condescended on, and the said error being essential, the defender was not bound by his offer. (3) The intended contract between the parties having been essentially and substantially on the basis of the priced schedule, and the prices to the amount condescended on not being included in the defender's estimate, the pursuers are not entitled to maintain the present action."

By the "Conditions of tendering, &c., relative to contracts for carpenter and joiner works to be adopted in Aberdeen on and after 1st May 1892," it is provided, *inter alia*—"8. That the schedule priced out and signed by the contractor shall be delivered to the architect within three days from date of acceptance of estimate, and in exceptional cases, if so required, it may be delivered before acceptance of tender."

The practice followed in Aberdeen with reference to such contracts as the present is detailed in the note to the Sheriff's interlocutor, *infra*.

After sundry procedure a proof was allowed and led.

Thereafter the Sheriff-Substitute (ROBERTSON) on 10th May 1899 issued an interlocutor whereby he assoilzied the defender from the conclusions of the action with expenses.

The pursuers appealed to the Sheriff (CRAWFORD), who on 16th August 1899 issued an interlocutor whereby, after sundry findings in fact to the effect above set forth, he found in fact (referring to the mistake made by defender's son)—"(7) That the said error was avoidable and was solely caused by the carelessness of William Mitchell, and was not induced by the pursuers, and was not known and taken advantage of by them; (8) that the said error was not a clerical error or *error calculi* in a document forming the basis of the contract, or referred to by either party in the offer and acceptance;" and found in law "(1) that the offer and acceptance constituted a valid and binding contract for the execution of the work for a lump sum, according to the plans, the specifications in the blank schedule, and the general conditions, all prepared by the pursuers, and had no reference to the schedule of prices to be prepared by the defender; (2) that the error committed by the defender's son does not entitle him to be relieved from the obligations of the said contract." He therefore sustained the appeal, decerned in terms of the conclusions of the summons, and found the pursuers entitled to expenses."

Note.— . . . "A contract for the execution of works may proceed upon an offer to do the work at schedule prices or to do it for a lump sum. These contracts are materially different. In the former case the schedule of prices is necessarily before the proprietor or his architect, and that is what he agrees to. The total may be summed up, and he may take it into account in his own mind. But he is bound by the prices of the items, and if there be an *error calculi*, that error is patent to him if he takes the trouble to examine the schedule, which is the basis of the contract. Such an error therefore affects him, and will be corrected, leaving him still bound to pay the schedule prices. That was the case of *Jamieson* v. *M'Innes*, 15 R. 17.

"On the other hand, the contract may be to execute work described by detailed specification for a lump sum. This is the usual form of the contract for carpenter and joiner work in Aberdeen when competitive tenders are invited by a party intending to build. The procedure which is invariably followed is spoken to by witnesses on both sides. The proprietor or his architect sends out a schedule—in this case lithographed—to a number of tradesmen, who are thus invited to tender. The schedule contains a detailed specification of quantities and measurements, and partly description of materials, and there is a blank money column for the prices to be filled in opposite each item, and at the end there is a form of offer to execute the carpenter work according to plans, specifications, general conditions, and measurements prepared by you for the sum of ——, and a note in these terms:—'The work to be commenced with on acceptance of offer, and finished on or before 1st February 1899.' The competing contractors (in this case there were twelve) do not when they make their tender sign and return the schedule. They write a letter offering to do the work for a certain sum, and expressed in the same terms as the offer at the end of the lithographed schedule. In the present case the defender and one or two others of the competitors

left out the words "and measurements," but that is quite immaterial. The proprietor sends a simple letter of acceptance to the successful competitor, with an intimation that he is sending him a second copy of the schedule. It is then the duty of the successful competitor to return the schedule to the proprietor with the prices filled up and the appended offer signed. According to the conditions of tendering, &c., agreed on between the Architects and Carpenters' Association of Aberdeen, section 8, that must be done within three days of the acceptance; and according to section 7 of the general conditions prepared by the pursuers, and incorporated in the present contract, if the contractor fails to do so, or to do the equivalent of it, 'the agreement falls to the ground, and the proprietor will be at liberty to accept any other offers.' According to Mr Wilson's evidence, however, the proprietor does not always require the strict observance of these conditions. The schedule may not be returned for weeks, or not at all, yet the contract is carried out. The procedure as described above was followed in the present case.

"The question is whether the priced schedule is, as the Sheriff-Substitute held, 'part of the contract' as made by the offer and acceptance. The defence on record, and which was maintained at the bar, is that the offer was a mere estimate, and the contract was based entirely on the schedule prices, consequently that *Jamieson's* case is directly in point. The Sheriff-Substitute has not sustained that defence. He negatives the proposition that this was, as he expresses it, a schedule job, and he holds that *Jamieson's* case does not apply, though he thinks there is a close resemblance between the two cases, which I fail to recognise. Still he holds that the priced schedule was part of the contract.

"As to the first view, as stated on record and persisted in in argument, that this was simply a contract according to schedule prices on all fours with *Jamieson's* case, I may say shortly that it seems to me clearly unsound, though I have great difficulty in seeing how there can be any middle view between that and the contention of the pursuers that this is an independent contract for a lump sum. In *Jamieson's* case, which the judges expressly contrasted with a contract for a lump sum (as this contract undeniably is), the proprietor was found liable to pay the whole corrected amount of the scheduled prices, though that exceeded the summation furnished by the contractor, and exceeded another offer which the proprietor might have accepted. It would follow that the pursuers would be bound by the corrected schedule here—the highest offer out of twelve, instead of the lowest—£100 higher than the offer which they fell back upon, and £326 higher than the sum which they believed they had contracted for. That, in my opinion, is an unstateable position.

"The Sheriff-Substitute, however, holds that the priced schedule is part of the contract to some different effect. I may point out that whether it be so or not, its existence is fully accounted for, and every other part of the procedure has its meaning. The schedule of prices is necessary to provide for changes in quantities made by the proprietor, such as in an extensive building contract are likely to occur. The power to require its delivery by the contractor is equally necessary, and the form of offer appended to it is also necessary. Though it is in the same terms as the original offer, the second offer binds the offerer, in view of possible variations in quantities, to the prices in the schedule which the proprietor had not hitherto seen. . . .

"I have mentioned that in practice, as in the present case, a second copy of the schedule is sent to the successful competitor. Whether that is done or not can make no difference on the law of the case. But the practice throws a useful light on the true function of the blank schedule of prices. The proprietor never sees it again. It is at that stage only a useful mechanical aid to the competitors (I am referring solely to the blank column of prices) for making this calculation. It is intended and used for a jotting. It may be fully filled up, or partially filled up, or not filled up at all, if the job is so simple or the contractor's experience such that he does not require it. He may burn it. At most it is a mere draft when the offer is made and accepted, which may be quite legitimately altered to any extent in the second copy returned to the proprietor. What concern can the proprietor have in this absolutely private draft or jotting? He has no right or interest in it. Then the contractor makes his offer, and the proprietor sends him the second copy of the schedule, and that is the initial step in the supplementary contract relating solely to variations, which was no doubt provided for by the general conditions. But these variations are made without nullifying or setting aside the original agreement.

"I am of opinion that the priced schedule is not part of the original agreement, and that the jottings made by the defender's son on the first copy of the schedule were private to himself and the defender. If the schedule were part of the original contract, I should agree with the Sheriff-Substitute that such an error as was committed would amount to a clerical error or *error calculi*, sufficient to void it, or possibly, as he puts it, otherwise that the defender did not really offer for the whole of the contract. The plea of error on that ground is not applicable to mistakes made by an offerer in his private calculations. If an estate is advertised for sale with full particulars stating that it contains six farms, and a distinct offer of a price for the estate is made and accepted, it will not relieve the offerer from his obligations that he offers to prove that in his own closet he omitted to take into account the burdens, or counted the rent of a farm twice over. Where the document in which the error is said to have been made is not a mutual one, and not part of the contract, the error can be pleaded only if it was induced by the other party, or was known to and taken advan-

tage of by him—(*Stewart* v. *Kennedy*, 17 R. (H.L.) 25, Lord Watson's opinion; *Stewart's Trustees* v. *Hart*, 3 R. 192). It was not so in this case. . . .

"I venture to think that the Sheriff-Substitute's decision has been evidently, I might almost say avowedly, influenced by his impression that to hold the defender to the contract would be 'grossly inequitable.' My opinion on the law of the case being what I have stated, I am glad to say that I do not share that impression; on the contrary, when a man, through a gross and unexcusable blunder in business, enters into a disadvantageous contract, it would appear to me inequitable for a Court of law to step in to relieve him of all consequences and bid the other party go and find another customer; and indeed that if contractors were entitled to relief on such a ground, proprietors and architects would be placed in an unfair position, and would never know whether they had made a contract binding on the contractor, though they would know it was binding on themselves.

"The measure of damage may be high, because it so happens that the pursuers have secured another contract on what may be taken to be fair terms. But it is the magnitude of the defender's blunder, the extent of his carelessness, which has made the measure high, and it is also entirely his own fault that the full measure of damage is claimed. The pursuer's agent states in evidence that he was willing to entertain an offer, and intended to let that be understood. When I suggested £50 as being a sum that would meet the equity of the case if the pursuer's view of the law were right, I was informed from the bar that less would have been accepted. But the defender, on whom it lay to make an offer, made none, but stood on his supposed right to get rid of the contract. Therefore the action was necessary."

The defender appealed, and argued—(1) There was here no final contract to do work for a lump sum. There was only an inchoate agreement to do work at schedule rates. The letters of offer and acceptance did not by themselves constitute a final and binding contract. The acceptance directed that the schedule should be returned filled up and signed. Until that had been done the bargain was not complete. It never was done, and therefore there was never here any binding contract between the parties. The defender was entitled to resile at any time before he had sent in the schedule filled up and signed. If he had sent in the schedule as orignally made out by his son, the *error calculi* would have been obvious, and the pursuers would not have been entitled to take advantage of it, and to hold him to his lump-sum offer—See *Jamieson* v. *M'Innes*, October 29, 1887, 15 R. 17. The defender would not be in any worse position because he had discovered the error before he filled up and signed the schedule. The contemplation of parties was that the lump-sum offer, which was merely an estimate, should be superseded by the schedule rates. But even if the defender in consequence of his lump-sum offer could not have compelled the pursuers to accept a schedule which brought out a total higher than the lump sum in the offer; yet if the discrepancy was the result of an *error calculi* in the calculation upon which the offer was based, then the defender was not finally bound to complete the contract for the lump sum. (2) There was here an excusable error on the part of the defender, and this error went to the root of the contract. There was therefore no *consensus in idem placitum*, and consequently no binding contract between the parties—*Duke of Hamilton* v. *Andrew Buchanan*, January 25, 1877, 4 R. 328, and June 8, 1877, 4 R. 854. It was unconscionable that the pursuers should take advantage of such a mistake as this, and the defender ought not under such circumstances to be held bound by his offer—Bell's Pr., section 11; *Webster* v. *Cecil* (1861), 30 Beavan 62; *Neil* v. *Midland Railway Company* (1869), 17 W.R. 871. The last-mentioned decision did not proceed upon the ground of schedule rates but upon the view that it would be unconscionable to take advantage of such a mistake as occurred here. No doubt mere error on the part of one of the parties, not induced by or known to and taken advantage of by the other, or otherwise excusable, was not sufficient—*Stewart* v. *Kennedy*, March 10, 1890, 17 R. (H.L.), 25. But here the error was excusable. In *Tamplin* v. *James* (1879), 15 Ch. D. 215, the error was in the purchaser's own mind only, which was not enough; but here the error was in the written calculation which was, and which in the contemplation of both parties was intended to be, the basis of the contract. (3) In any view the pursuers had suffered no damage, but had merely been deprived of the opportunity of making an illegitimate and unconscionable gain.

Argued for the pursuers—(1) There was here a final and concluded contract upon the offer and acceptance. It was not merely an inchoate contract. In all inchoate contracts something remained upon which parties had still to come to an agreement. There was nothing of that kind here. The pursuers did not require to demand a schedule, and if they did not the contract was complete without it. If they did, the defender was bound to supply a schedule in which the total, was the same as the lump sum in the offer. If it did not bring out the same total he was in breach of his contract; but if it did the pursuers could not take any objection to the way in which the schedule was filled up, that being a matter absolutely in the discretion of the defender. The schedule prices only affected the sum to be paid for extras and omissions. The provision made for extras and omissions did not make this a contract for schedule rates, because the sum ultimately due under such a contract as this was the original lump sum in the offer less the sum due in respect of the omissions, and plus the sum due in respect of the extras. It was not the amount due calculated upon the

schedule rates irrespective of the lump sum. This contract was therefore not a contract for schedule rates but for a lump sum; consequently *Jamieson* v. *M'Innes*, *cit.* did not apply. (2) It was said that the offer proceeded upon a mistake. The mistake alleged was a very extraordinary one. It would be opening a door to fraud to admit such a defence as this. The kind of mistakes which would afford a good defence, and of which it would be unconscionable to take advantage, were indicated in *Tamplin* v. *James*, *cit.*, where the Court refused to sustain the defence of mistake.

At advising—

LORD JUSTICE-CLERK—The defender in this case contracted with the other party to do certain specified work for a fixed sum. He failed to fulfil his contract, and the question is whether he is liable in damages. He pleads that he is entitled to be free because he made the offer under error. The error consists, when examined, in blunders made by his son in making up calculations for him, and thus bringing out the wrong sum, and causing the offer to be made to do the work for a much smaller sum than would have been put down in the offer had these blunders not been made. I am unable to hold that he can legally exempt himself from liability for failure to fulfil his engagements by proving such errors. They were not errors induced by any action of the opposite party. He was supplied with the usual and proper means for estimating for the work, and if he blundered, and by mistakes made in his own office offered to do the work for a sum which would not pay him, *sibi imputet.* It was argued that all was not complete by the offer and acceptance, because the defender had to fill up schedules with the detail prices of particular classes of work if required to do so by the other party. But this is not in my opinion a sound argument. It was in the pursuer's option to call for such priced schedules after the contract was entered into. They were in no way an essential element of the contract. The contract was made by the offer and acceptance. The purpose of filling up and delivering priced schedules was not to make the contract but to meet the case provided for in it, that the pursuers might desire to "alter, increase, or omit such portions of the work as may be considered expedient without nullifying or setting aside the original agreement." The priced schedule to be given in supplied the materials by which the allowances for alterations on the quantities of the work, caused by additions ordered by the architect, or alterations by which parts of the work were left out, might be ascertained. Extras would of course be paid for according to the schedule prices over and above the lump sum in the contract, or if on the work being measured there were differences these would be allowed for. But in making up these priced schedules the contractor was in no position to alter in any way the amount of the price for which he had agreed to do the work specified. If the work actually done was just the work contained in the specifications and no more, he could have no right to any more than the sum stipulated, and he could not, on his discovering that his own calculations had been blundered, escape from his bargain on the ground of error. The offer was his, and the opposite party had nothing to do with the mode in which it was arrived at.

I am therefore of opinion that the Sheriff was right in holding that damages are due. As regards the amount, I think the pursuers are most reasonable as regards these in the statements made during the debate. I would propose that £40 should be assessed as compensation, the successful party being found entitled to expenses in both Courts.

LORD YOUNG concurred.

LORD TRAYNER—In this case I agree with the Sheriff in thinking that the offer and acceptance dated 12th and 14th October 1898 respectively constituted a contract between the parties by which both were bound. The request with which the acceptance concludes, that the defender should fill up and sign the blank schedule then sent to him, did not, in my opinion, operate as a suspension of the contract, leaving either party free to resile until that had been done. The filling up of that schedule was a thing which the pursuers under their general conditions had a right to ask if they pleased, but only if they pleased. It was not an essential of the contract at all. If, as I think, there was a binding contract entered into, then there is no doubt that the defender is in breach thereof—he refused to fulfil it. I am not able, however, to concur with the Sheriff in giving decree for the full sum concluded for. I think it pretty clear that the defender in making his offer committed a mistake; and had he at once frankly acknowledged that he had done so, it is probable that he would have heard no more about it. The pursuers appear to have dealt very reasonably with another contractor in similar circumstances. But as the defender stood upon his rights (as he conceived them), and denied that he was bound by contract to the pursuers at all, the pursuers not unnaturally retaliated by insisting on their rights.

There having been a breach of contract on the defender's part, damages are due. What the amount to be awarded in name of damages should be is a jury question, dependent to a large extent on the loss or damage occasioned by the defender's breach. I think that is not much. There is room for doubt whether the pursuers could have got the work for which the defender offered executed at a lower figure than that for which it was executed by the next highest offerer for it after the defender's offer. But the defender's persistence in litigating about his liability, in which he has been found to be wrong, has certainly occasioned the pursuers some loss. It appears that before the Sheriff the pursuers were willing to have accepted less than £50 in full of their claim, but this the defender would not give—he stood, as the

Sheriff says, "on his supposed right to get out of the contract." I think to award the pursuers £40 would meet the justice of the case, that sum being probably no more than sufficient to cover the pursuers' extrajudicial expenses.

LORD MONCREIFF—I am of opinion that the Sheriff is right in point of law. The defender objects to the judgment in two respects—first, he maintains that there was no concluded contract, and, secondly, that if there was a concluded contract he is entitled to get quit of it in respect that his offer was made under excusable error.

In regard to the first point, I am of opinion that a contract was concluded by the pursuer's acceptance of the defender's offer, the offer and acceptance being dated 12th and 14th October respectively. It is pleaded that the matter remained open until a priced schedule should be signed by the defender and returned to the pursuers, and that until this was done it was open to either party to resile. This is not, in my opinion, a correct view of the matter. Specifications in skeleton were issued by the pursuers to intending offerers. These specifications admitted of being used in one of two ways. First, if the offerer chose to fill up the blanks with rates and prices set against the different items he might append his signed offer to the specification, offering to do the whole work for the lump sum which represented the summation of the prices in the schedule. If this had been done in the present case the defender might have maintained that the error being an *error calculi*, and being patent on the face of the specification, he was not bound by the incorrect calculation or summation of the prices.

But in the present case that course was not adopted. The blank schedule issued to the offerer before the offer was made and accepted was used simply for the purpose of enabling the defender to ascertain for his own satisfaction and with reference to the work to be done for what lump sum he should offer to execute the work. Accordingly, when the defender's offer came before the pursuers' architect for acceptance he had nothing before him but an offer to do the whole work for a lump sum (£859), and that offer was accepted.

I confess that I cannot see how the offer thus accepted could be affected by any priced schedule which the contractor might thereafter be called upon by the proprietor to fill up and return. It was in the proprietor's option to call for a priced schedule, but whether he called for it or not it could not affect the contract. If the offer to do the work for a lump sum was a firm offer, and not objectionable on any other ground, the blank schedule in whatever way it was filled up could not affect the total amount for which the contract was to be executed. While on the other hand the contractor would be entitled, provided the summation did not exceed the lump sum named in the offer, to spread it over the various items in any way he thought fit. If under the conditions the proprietor called upon the contractor to lodge a priced schedule, and he failed to do so within fourteen days of his offer being accepted, it was within the proprietor's power if he chose to declare the contract at an end and accept any other offer, but that was a matter in the proprietor's option, and if he did accept another offer he was entitled to claim damages from the contractor who had failed to lodge a priced schedule.

I therefore think that there was here a concluded contract, which must stand unless it can be assailed on some other ground. I have already said that when the defender's offer was made and accepted the proprietor's architect had nothing before him to indicate that any mistake had been made on the part of the offerer. Now, I understand the law to be that a party who enters into a contract under a mistake must be held to it unless the mistake was induced by the other party, or was brought under the other party's notice before acceptance. That was not the case here, and therefore I think that the defender has no good ground for repudiating the contract.

The only other matter is as to the amount of damages which the Sheriff has awarded. I observe from the Sheriff's note that the pursuers very properly did not desire to profit unduly by the defender's mistake. The Sheriff says that he suggested £50, and that he was informed from the bar that less would have been accepted but that the defender declined to make any offer. The pursuers have now left the amount of damages in the hands of the Court. In my opinion it will be sufficient if we award the pursuers £40 and full expenses.

The Court pronounced this interlocutor:—

"Recal the interlocutors of the Sheriff-Substitute of Aberdeen dated 9th June 1899, and of the Sheriff dated 16th August 1899: Find in fact (1) that by the letter of offer by the defender to the pursuers dated 12th October 1898, and acceptance thereof by letter from the pursuers to the defender dated 14th October 1898, a contract was concluded between the parties, and (2) that the defender committed a breach of said contract by refusing to fulfil his part thereof: Find in law that the defender is liable to the pursuers in damages on account of said breach of contract: Assess the same at £40 sterling, for which sum decern against the defender: Find the defender liable in expenses in this and in the Inferior Court," &c.

Counsel for the Pursuers—Salvesen, Q.C.—Clyde. Agents—Auld & Macdonald, W.S.

Counsel for the Defender—Johnston, Q.C.—J. J. Cook. Agents—Hope, Todd, & Kirk, W.S.