possibly, in order to frustrate the testator's view, but I think it desirable that the protection contemplated by the testator should at least be started, and, for my part, I should think that the law would be efficacious, if appealed to, to prevent the testator's wish being frustrated. The shares are their property, but they are in the hands of the trustees, to be managed by them, and withheld from them for their protection. They are not limited to giving them the interest merely. They may deal with them in the course of their administration and management as trustees—capital and interest—as they may think best for their interest as the proprietors. Their interest as proprietors is, I think, committed to the charge of the trustees by these words, although we are determining no more at this moment except that it is according to the true meaning of the deed, and the duty of the trustees under it, to retain these shares, and not allow either to pass into the hands of the proprietors.

LORD RUTHERFURD CLARK and LORD LEE concurred.

The Court pronounced the following interlocutor:—

"Answer the questions therein stated as follows, viz.—1 (*a*) That the fee of the share of the testator's estate bequeathed to his daughter Mrs Mary Agnes Christie or Murray vested in her *a morte testatoris*, and that the capital thereof is now payable by the first parties, General Christie's trustees, to the second parties, her marriage-contract trustees; 2 (*a*) that the fee of the share bequeathed to the testator's daughter Mrs Hughina Margaret Christie or Rowland vested in her *a morte testatoris*, but that the first parties are not bound to pay the capital to her now; and (*b*) are bound to hold it; 3 (*a*) that the fee of the share bequeathed to Charles Robert Christie vested in him *a morte testatoris;* (*b*) that the first parties are not bound to pay the capital thereof now to the party of the sixth part as his *curator bonis*; but (*c*) are bound to retain it," &c.

Counsel for the First Parties—Low—C. K. Mackenzie. Agents—Melville & Lindesay, W.S.

Counsel for the Second Parties—Don Wauchope. Agents—Macandrew, Wright, & Murray, W.S.

Counsel for the Third Party—Sir C. Pearson—Dundas. Agents—Murray & Falconer, W.S.

Counsel for the Fourth Party—Don Wauchope. Agents—J. S. & J. W. Fraser Tytler, W.S.

Counsel for the Fifth Party—A. G. Pearson. Agents—Scott-Moncrieff & Trail, W.S.

Counsel for the Sixth Party—Wood. Agents—Gill & Pringle, W.S.

Wednesday, July 3.

SECOND DIVISION.

NELSON *v.* ASSETS COMPANY (LIMITED).

Sale—Offer and Acceptance—Qualified Acceptance.

A by letter offered to buy from B certain property which he described. B replied—"I hereby accept your offer as copied on the other side . . . for our interest in the property." It was the fact that B's right of property in the premises did not correspond exactly with the description in the offer. *Held* that this was a qualified acceptance, and that there was no completed contract of sale.

James Nelson, Greenock, as in right of William Logan, house factor, Glasgow, by virtue of an assignation dated 22nd May 1888, brought an action against the Assets Company (Limited), 4 York Place, Edinburgh, to have them decerned and ordained to implement and fulfil their part of a contract entered into between them and William Logan contained in a letter of offer by Logan to Mr W. D. Husband, the manager of the defenders' company, dated 6th December 1886, and an acceptance by Husband on the defenders' behalf addressed to Logan, and dated 9th December 1886, and to deliver to the pursuer a valid disposition to the subjects.

The letter referred to was in the following terms:—

"Dear Sir,—I hereby offer to purchase the following parts of the tenement at the south-west corner of the entrance from Argyle Street to St Enoch Square, known as 'His Lordship's Larder,' namely, the top storey, with all the garret storey, except (*a*) garret room, 10 feet square, in middle or nepos of storey; and (*b*) middle garret room with skylight; also four cellars north of Hunter's, except the eastmost back sunk cellar, with free ish and entry by the common close on the north to Argyle Street, and with a common right along with the other proprietors to the court behind, with entry from Adam's Court Lane. The price to be £3000 sterling, and to be paid at Whitsunday next, 1887, when I am to have entry, free of leases, with the exception of Costigane Brothers, as to which I am to have possession six months after the date of your acceptance hereof. You are to allow £2000 of the price to lie on bond at 4½ per cent. for five years from date of entry. Your acceptance will oblige.—Yours truly, "WILLIAM LOGAN."

And the answer was as follows:—

"Dear Sir,—As authorised by the directors, and on behalf of this company, I hereby accept your offer, as copied on the other side, dated 6th instant, of £3000 (three thousand pounds) for our interest in the property known as 'His Lordship's Larder,' St Enoch Square, and in accordance with your stipulation as to the close, 179 Argyle Street, leased to Messrs Costigane Brothers, I have given notice to the lessees that possession is required in terms of articles 1st and 3rd of the relative minute of agreement and lease.—I am, yours faithfully, "W. D. HUSBAND, "*Sub-Mgr.*"

The pursuer pleaded—"(1) The defenders having contracted to sell to the pursuer's cedent the subjects enumerated in the contract of sale, they are bound to grant in the pursuer's favour a valid disposition thereof."

The defenders pleaded—"(2) In terms of said acceptance, the defenders were only bound to convey the property as it stood in their persons, and having offered a conveyance in said terms, they should be assoilzied. (3) *Separatim*—There having been no *consensus in idem placitum et conventio*, the defenders are entitled to absolvitor."

The Lord Ordinary (KINNEAR) upon 14th December 1888 pronounced this interlocutor:—"Finds that the letters specified in the condescendence do not constitute a completed contract for the purchase and sale of the subjects described in the conclusions of the summons: Therefore assoilzies the defenders from the conclusions of the summons, and decerns: Finds the defenders entitled to expenses, &c.

"*Opinion.*—This action is brought to enforce performance of a contract for the purchase and sale of a portion of a house or tenement of houses in Glasgow, and the question is, whether letters passing between the parties constitute a concluded contract to that effect?

"The pursuer is not a party to the correspondence, but the assignee of William Logan, house factor in Glasgow, who writes to the defenders' manager a letter dated 6th December 1886 containing the offer which is said to have been accepted. The pursuer alleges that at that date the writer of the letter had not examined the title-deeds of the property in question, but, without reference to the titles, his letter contains a sufficiently clear and specific description of the subjects which he proposes to buy. 'I hereby offer to purchase the following parts of the tenement at the south-west corner of the entrance from Argyle Street to St Enoch Square, known as His Lordship's Larder, namely, the top storey, with all the garret storey, except (*a*) garret room, 10 feet square, in middle or nepos of storey; and (*b*) middle garret room with skylight; also four cellars north of Hunter's, except the eastmost back sunk cellar, with free ish and entry by the common close on the north to Argyle Street, and with a common right along with the other proprietors to the court behind, with entry from Adam's Court Lane. The price to be £3000 sterling, and to be paid at Whitsunday next, 1887, when I am to have entry, free of leases, with the exception of Costigane Brothers, as to which I am to have possession six months after the date of your acceptance hereof. You are to allow £2000 of the price to lie on bond at 4½ per cent. for five years from date of entry. Your acceptance will oblige.' On the 9th of December Mr Husband, the defenders' manager, answers in these terms:—'As authorised by the directors, and on behalf of this company, I hereby accept your offer, as copied on the other side, dated 6th instant, of £3000 for our interest in the property known as "His Lordship's Larder," St Enoch Square, and in accordance with your stipulation as to the close 179 Argyle Street, leased to Messrs Costigane Brothers, I have given notice to the lessees that possession is required in terms of articles 1st and 3rd of the relative minute of agreement and lease.'

"Now if the defenders' right of property in the tenement known as 'His Lordship's Larder' had corresponded exactly with the description in Mr Logan's offer, there would probably have been no question as to the meaning and effect of these missives. But it turns out, according to the pursuer's averment, that they have no title, and by their own admission that they have no clear and undisputed title to certain portions of the subjects, viz.—one of the cellars, the court behind the subjects, and the rights to ish and entry specially described. The defenders cannot convey to the pursuer rights which they do not themselves possess. But on the other hand, it is clear enough, first, that the pursuer cannot be required to accept a conveyance which will be ineffectual to carry any part of the subjects specifically described in the offer; and secondly, that if the defenders have in fact contracted to sell and convey the whole of these subjects, they will not be excused from the consequences of wilful non-performance by reason of any defect in their own right or title. But I am of opinion that they have made no such contract. The defenders' manager does not accept the offer in the exact terms in which it is made, but accepts it as an offer 'for our interest' in the property described, and that appears to me to introduce into the acceptance a qualification which was not in the offer. It is a qualification which it was very natural to make in the circumstances, because the state of possession was such as to render it not improbable that questions might arise as to the exact import and bearing of the title. It was very natural, therefore, that the defenders should introduce a term into their acceptance which would serve to exclude from the bargain, if the purchaser agreed to it, any part of the property which did not belong to them, or in which they had no interest. I think the words they have used are sufficient for that purpose, and it follows that their letter is not an absolute and unequivocal acceptance which would make the contract complete, but a counter proposal which the maker of the offer was not bound to accept, and which he has not in fact accepted. There is therefore no contract, because it is very clear in law that no contract can be constituted by missive letters, unless the letters contain an absolute and unqualified acceptance on the one part, and of the exact terms proposed on the other part.

"It is said that, inasmuch as it refers to the offer as 'copied on the other side,' the defenders' letter must be held to import an absolute agreement to sell the subjects specifically described, irrespective of any question as to their own right or title. I cannot assent to that construction, because it makes the words 'for our interest' unmeaning. The reference to the offer makes it clear enough that the parties were substantially at one as to the subject-matter of the proposed contract; but it does not, in my judgment, import a guarantee that every part of the description is exactly accurate, and the qualifying words which immediately follow are sufficient to shew that no such guarantee was intended. But assuming that the construction of the defenders' letter is not so clear as they suppose, it is at least ambiguous, and the pursuer's understanding of its terms is different from that of the defenders. But if that be so, there is no contract, because there is no *consensus in idem*.

"The cases of *Robertson* v. *Rutherford*, July 18, 1840, 2 D. 1494, and *Whyte* v. *Lee*, February 22, 1879, 6 R. 699, on which the pursuer relies, do not appear to me to support his argument. But they are not directly in point, because the only question in this case is whether the language employed by the defenders in their letter imports an unqualified acceptance of the terms proposed to them; and that is a mere question of construction, upon which there is no light to be derived from decisions as to the interpretation of other documents in different terms."

The pursuer reclaimed, and argued—There was here a completed contract. The offer was unambiguous. The acceptance corresponded with the offer. The words "our interest" made no material alteration on the offer; they meant the acceptors' interest as described in the offer, which the acceptors copied out that there might be no mistake—*Proprietors of the English and Foreign Credit Company (Limited)* v. *Arduin and Others*, March 13, 1871, L.R., 5 Eng. & Ir. App. 64. The Lord Ordinary's view that the acceptance was so qualified as to amount to a new offer was erroneous. There was no room for a new bargain, because the sale was completed. That the acceptors regarded it as such was shown by the fact that they stated they had taken steps to carry it into effect.

Argued for the defenders—There was no completed contract. The acceptance did not correspond with the offer. It contained a material qualification. If it was not a qualified acceptance, the words "for our interest" were meaningless and unnecessary. In the *English and Foreign Credit Company* there was no adjection of a new term as there was here.

At advising—

LORD JUSTICE-CLERK—The pursuer seeks to have the defenders ordained to deliver to him a valid disposition of the subjects described in the summons, and the demand is made in these circumstances:—Mr Logan, a house factor, in whose right the pursuer is, wrote a letter on 6th December 1886 to the Assets Company, in which he offered to purchase certain parts of the tenement at the south-west corner of the entrance from Argyle Street to St Enoch Square, Glasgow, these parts being described in detail. He named a price, and there were certain other stipulations in the offer which are of no importance in the consideration of this case. The answer to this offer was in these terms, and was written by the sub-manager of the company—"As authorised by the directors, and on behalf of this company, I hereby accept your offer, as copied on the other side, dated 6th instant, of £3000 for our interest in the property known as 'His Lordship's Larder,' St Enoch's Square."

Now, the pursuer asks that this acceptance should be read as if it had run thus—"We accept your offer for our interest as described by you," for unless the acceptance is exactly for the subjects the pursuer offered for there can be no valid acceptance. I am unable to adopt this reading. I read the letter of the company as it has been read by the Lord Ordinary. I think the acceptance was one simply for the defenders' interest in the property whatever that might be. I cannot read it as an acceptance by the Assets Company by which they accepted the pursuer's offer to purchase all the subjects described in the letter of 6th December.

There was no completed sale, the acceptance not corresponding with the offer. Further writing would have been necessary to complete a bargain.

I am therefore of opinion that the interlocutor of the Lord Ordinary is right.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

LORD LEE—I agree with the opinion of the Lord Ordinary, and upon the same grounds.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for the Pursuer—Sir Charles Pearson—Low. Agents—Dove & Lockhart, S.S.C.

Counsel for the Defenders—Graham Murray—Salvesen. Agent—J. Smith Clark, S.S.C.

Wednesday, July 3.

SECOND DIVISION.

MACINTYRE AND OTHERS (MRS MITCHELL'S TRUSTEES).

Succession—Ademption of Legacy—Shares—Mortgage.

By the Paisley Corporation Gas Act 1870 the shares of the Paisley Gas Company were extinguished, and the Corporation was required to substitute therefor to the shareholders annuities which were declared to represent shares of the company.

In 1886 the Corporation, under the powers of their Act, redeemed these annuities, and by arrangement granted to the annuitants mortgages over the gas undertaking for the amounts due to them.

A mortgagee, who was originally a shareholder of the Gas Company, died in 1888, leaving a settlement dated 1884, whereby she directed her trustees to assign and transfer to her niece "the shares standing in my name in the Paisley Gas Company."

Held (Lord Rutherfurd Clark *diss.*) that the legacy had not been adeemed, and that the legatee, in the absence of any indication of intention to the contrary, was entitled to claim the testator's interest in the mortgage.

By the Paisley Corporation Gas Act 1870 the gas supply was placed in the hands of the Corporation. Section 20 of the Act provided—"In lieu of the dividend which the Board of Commissioners are by the Act of 1845 required to pay to the Paisley Gaslight Company, the Corporation shall pay to the several holders of shares in the company at the commencement of this Act . . . annuities . . . upon the amount paid up on each share of the company held by such shareholders respectively, and all the shares of the company shall, from and after the commencement of this Act, be held to be extinguished." . . . Section 23 enacted that "the annuities shall in all respects be substituted for and represent shares in the capital of the company; . . . and the annuities