at so much per cent, not upon the nominal value of the stock, but upon the prices actually received for the stock sold. No further sales were made until the end of 1871, when the judicial factor communicated with the liferentrix and beneficiaries as to realising the remainder of these shares, as the market price had risen, and was higher than it had been since his appointment. He was authorised by them to sell at a price not under £40 per share. Accordingly, the judicial factor proceeded to sell the whole remaining shares at prices ranging from £40 to £62, 10s. per share. These shares were all sold in the ordinary manner on the Stock Exchange between December 1871 and March 1872, at the current market prices, the purchasers getting right to all dividends subsequently payable. The shares sold in December 1871 realised in all £4021, 5s. 9d., and represented £5000 of nominal value. The remaining shares were sold during the month of March 1872, the last sale being on 28th March. These shares represented £6833, 6s. 8d. of nominal value, and the price realised was £7256, 5s. 10d. Prior to these sales, a dividend had been declared on 13th September, and paid on 3d October 1871, at the rate of three per cent per annum for the year ending 30th June 1871. On 21st February 1872 a dividend was declared at the rate of six per cent per annum for the half year ending 31st December 1871, and on 11th September 1872 a dividend was declared at the rate of thirty per cent per annum for the half year ending 30th June 1872. A dividend higher than had been declared for the preceding period was expected in December 1871 to be declared for the half year ending with that month, but one at so high a rate as six per cent. per annum was not anticipated. Subsequent to December 1871, in consequence of the rise in iron, expectations of an increased dividend had come to be entertained. The increase was estimated at from ten to fifteen per cent. per annum, but a dividend of thirty per cent per annum, which was the dividend subsequently declared for the half-year from December 1871 to June 1872, was not anticipated in the market during the period within which the shares in question were sold.

The parties craved the opinion and judgment of the Court on the following question of law:—"Is the liferentrix's proportion of the price of the shares in question to be calculated on the basis of the dividend expected or thought probable when the sale of such shares took place, or on the basis of that which turned out to be the dividend subsequently declared and paid for the period during which the respective sales were effected?"

It was maintained for the liferentix, the second party to the case, that she was entitled to have her share of the prices obtained calculated on the basis of the next dividend declared subsequent to the sale in each instance, as the dividend for the period current at the date of the sales; and that she should be found to have a right to such part of it as corresponded to the proportion of the then current dividend period which had elapsed at the date of the settlements of the respective sales, and also to bank interest on the price for the rest of the half year.

Authorities—*Donaldson*, 14 D. 165; *Apportionment Act* 1870, (33 and 34 Vict. c. 35) §§ 2, 3, 5.

For the third parties (the fiars under the destination, who were to take on the termination of the liferent), it was argued that the proportion effeiring to the liferentrix of the prices obtained for the shares sold should be calculated, not on the basis of the dividend subsequently declared, but on the basis of the dividend expected or thought probable when the shares were sold. It was admitted that no higher dividend than from 3 to 6 per cent was anticipated on the shares sold in December 1871; and no higher than from 10 to 15 per cent on those sold in March 1872. The view which would make the dividend of 30 per cent—so high and unexpected—a basis for calculation of the liferentrix's interest would be inequitable.

After hearing parties, the Court found in terms of the *first* alternative proposed in the question submitted to them, and, of consent, fixed the amount at 6 per cent in 1872, and 15 per cent in 1872, and allowed the expenses of the discussion to be paid out of the estate.

Counsel for First and Third Parties—Millar Q.C and G. Watson. Agent—H. F. M'Lean, W.S.

Counsel for Second Party—Pearson. Agents—Gifford & Simpson, W.S.

Friday, October 17.

SECOND DIVISION.

SPECIAL CASE—CRAWFORD & CRAWFORD'S MARRIAGE-CONTRACT TRUSTEES.

Marriage Contract—Provisions—Fee and Liferent—Vesting.

Circumstances in which *held* that trustees under a marriage contract were bound to denude in favour of beneficiaries.

Robert Crawford, S.S.C., and his son, James Stuart Crawford, *of the first part*, and the trustees under the marriage-contract between Robert Crawford and his late wife, *of the second part*, submitted a Special Case to the Court under the following circumstances:—Under his marriage-contract, Robert Crawford bound himself, and his heirs, executors, and successors, to pay to his wife a liferent annuity of £100 in the event of her surviving him; and, in the same event, disponed to her in liferent his household furniture and plenishing, and undertook to pay her £25 for mournings. In order that this liferent provision might be more fully secured, he further bound himself to invest, out of his own estate, such a sum as might be necessary for that end, when required by trustees then named by him—the money to be invested on good heritable or personal securities, in name of the trustees, or of himself and Marion King, in conjunct fee and liferent, for her liferent use allenarly, in the case she should survive him, and to the children of the marriage, whom failing, to certain others named And in security *pro tanto* of the implement of these provisions, he assigned to the trustees a policy on his life for £700. By the contract, on the other part, Marion King conveyed her whole means and estate, heritable and moveable, which she had or to which she might succeed, to the same trustees, for her own behoof in liferent, and after her decease, for the liferent use of Robert Crawford, in the event of his surviving her, but to be forfeited in the event of his again marrying, and for the children of their marriage in fee, whom failing, to her nearest heirs and assignees. The marriage was solemnised, and was dissolved by Mrs Craw-

ford's death in July 1853. The issue of the marriage was only one child, James Stuart Crawford. To meet these provisions to his wife and children no investment was ever made by Mr Crawford, and Mrs Crawford's whole means and estate were managed entirely by him up to the year 1870, when, at his request, the trustees accepted and assumed the management of the trust. They thereupon intimated the assignation of the policy on Mr Crawford's life to the insurance company, and obtained payment from him of £1765, 7s., as the funds in his hands which belonged to his wife. The first parties to the Special Case being desirous of having the trust closed, called upon the trustees to assign the policy to James Stuart Crawford, along with the obligation on his father in the marriage-contract to pay the annual premium thereon, and to transfer the other trust funds in their hands, after deduction of the trust expenses, to Robert Crawford in liferent and to James Stuart Crawford in fee. On that being done, the first parties to the case were prepared to grant a full discharge to the trustees. To this demand the trustees declined to accede, and in consequence a Special Case was submitted for the opinion and judgment of the Court on the two following questions:—(1) Whether the first parties were entitled to call on the trustees (the second parties) to denude of the trust-estate, and transfer the same, as requested and specified, on the first parties granting the trustees the discharge specified; and (2) whether the trustees are bound and in safety so to denude and transfer the trust estates on receiving such discharge and obligation.

After hearing argument for the second parties, the Court unanimously answered both questions in the affirmative.

Counsel for the First Parties—Henderson. Agent—James Somerville, S.S.C.

Counsel for the Second Parties—Buntine. Agents—Leburn, Henderson, & Wilson, S.S.C.

Tuesday, October 21.

SECOND DIVISION.

WYLIE & LOCHEAD *v.* M'ELROY & SONS.

Contract—Offer—Acceptance—Mora—Condition.

A having made an offer to B for a certain contract when the price of material was rapidly rising, *held* that A was not bound by the mere acceptance of his offer a month subsequently, because (1) there was undue delay on B's part, and (2) a most important condition had been annexed to the acceptance, which would have required A's express assent in order to bind him.

This case came up on appeal from the Glasgow Sheriff-Court. The pursuers and respondents, Messrs Wylie & Lochead, are cabinetmakers and carriage hirers in Glasgow, and the defenders and appellants, Messrs M'Elroy & Sons, are engineers there.

The summons concluded as follows:—"Therefore the defenders ought to be decerned to pay to the pursuers the sum of £1000 sterling, being damages sustained by the pursuers in consequence of the defenders having contracted with the pursuers, by offer and acceptance dated 23d and 24th April and 27th May 1872, to supply the pursuers with the iron work for certain stables which they were then about to erect in Kent Road, Glasgow, all, as therein specified, and at the prices and on the terms therein specified; and having thereafter, when called upon to implement the said contract, refused to do so, whereby the pursuers sustained loss and damage to the extent foresaid," &c.

The circumstances out of which the action arose may be shortly stated thus:—On 16th April 1872 Wylie & Lochead invited tenders for a contract to supply iron work for certain stables they were about to erect. In reply, on April 23d, Messrs M'Elroy wrote as follows:—

"We hereby offer to execute the iron founder work of the carriage show rooms and stables, &c., you propose to erect in Berkeley and Elderslie Streets and Kent Road, agreeably to plans thereof by Mr A. J. Smith, architect, and to the extent and as described in the annexed schedule, for the sum of one thousand two hundred and fifty-three pounds, thirteen shillings and fourpence sterling."

On the following day, the 24th, they wrote further:—"We beg to intimate that our offer to you of this date is not open for acceptance after to-morrow."

Again, on the same day, Messrs M'Elroy wrote to Messrs Wylie & Lochead amending their offer, in consequence, as was shown, of a more careful scrutiny, induced by their having learned that a lower offer had been made. The letter was as follows:—"Referring to our offer to you of yesterday's date, we are very sorry to observe it contains two clerical errors—namely, in the second item, £1, 7s. 0d. too much in the extension; and the last item, being cast iron, should have been priced at 14s., whereas it has been cast out at the rate of the precediug item, which is wrought iron. This makes the sum of £4, 4s. 0d. too much, together £5, 11s. 0d., which, being deducted from the amount of our offer, will make the correct amount, £1248, 2s. 4d., and we hope it is not too late to make this correction."

A day or two after this, one of the defenders called at Messrs Wylie & Lochead's to inquire if the offer had been accepted, and, being told that another party was still lower in price, concluded that he was not to get the contract. On May 27, or nearly a month subsequently, the pursuers wrote thus:—"Your offer of 23d April, with amendment of same as per your letter of 24th April, is hereby accepted, and we request you will have the work proceeded with at once. The calculated weights for each item to be ascertained and wrought out in accordance with the schedule, as no allowance can be made for any deviation from the prescribed weights. You are to finish the whole in a reasonable time, and, failing this, we shall have the option of employing other contractors, and completing the work at your expense. Should the building be stopped from any cause whatever, you shall be paid for the amount of work then done, but will have no claim on us beyond what is hereby agreed to be admitted."

This letter the M'Elroy's received, but did not in any way take notice of, because they averred they had concluded the offer to have fallen by non-acceptance within due time. In September 1872 Wylie & Lochead ordered some iron lintels, and the defenders replied, saying they were ready to make them at the lowest price current at date. The pursuers replied