

sets out certain conditions, and concludes his letter by saying—"I shall learn with pleasure that the directors have seen their way to accept my offer, and will be happy to forward a cheque for the first year's pensions after I learn that the fifty pensioners have been elected." Now, that is a distinct offer of personal responsibility, and an offer that invites acceptance or rejection as an offer on conditions, and again the parties are agreed that it was duly accepted and that the conditions were properly carried out.

The remaining letters are not all in terms that in themselves would seem to be as strong as those of the letter which I have just read, but without going through them in detail, my opinion is that the fair construction of all of them is that they likewise are letters expressing and intended to express obligations, and in reading subsequent letters which are intended in most cases to add something to the offer originally made, it is, I think, quite legitimate to refer to the first letter, which contains the original offer, as giving the key for the construction of the whole series. There is certainly nothing whatever in the later letters to suggest that the offers there made were made otherwise than on the same terms of obligation as those which had been so clearly set out in the first letter. On the whole matter, therefore, I am of opinion that, on a fair construction of this series of letters also, the deceased gentleman meant to bind himself, and did in fact bind himself and his personal representatives, to pay the pensions specifically described in the various letters, provided the scheme was established according to his design, which is clearly expressed, and provided that the offer was accepted by the managers of the scheme—that is, the directors of the Society. It appears to me that the directors of this Society were thus constituted Mr Morton's agents, and were instructed and authorised to give to certain pensioners his promise that the amounts definitely fixed as the pensions proposed by him, should be paid to them during their lives under the conditions contained in his letters. It is not suggested that the directors exceeded the mandate given to them; on the contrary, it is the admitted fact that they duly carried out what they were authorised to do; and I am therefore of opinion that they became bound, and bound the mandant, to the persons to whom they have given pensions to continue paying them according to the conditions stated in the offer. I do not at all suppose that by making these offers Mr Morton bound himself and his representatives to continue pensions to all persons who might in future be elected, for an indefinite number of years, and I do not think that is contended by the Society, but what I do think established is that he intended to bind himself, and has effectually bound himself, to continue the pensions to pensioners already elected in terms of his offer, and therefore that these pensions must be continued by his representatives. I have the less difficulty I must say in coming to

these conclusions that I think we must infer from the terms of the special case put before us that the representatives of this charitable person are perfectly ready and willing to continue payment of these benevolent subscriptions provided it is clear that they are bound in law to do so, although they have most properly declined to do so until they are satisfied that it is in accordance with their legal obligation and therefore their legal right, because otherwise it is quite clear they would not be entitled to apply the trust funds in their hands for benevolent purposes of their own. I am therefore of opinion, if your Lordships agree with me, that we should answer the question put first in the affirmative, but the only doubt that I have is whether the specific questions put in regard to the pensions have made it quite clear that the pensions which it is maintained are still payable are those in favour of pensioners already elected. If there be any doubt as to the meaning of the question it could be amended, no doubt, but I did not understand from the argument that anything more was maintained on behalf of the second parties than what I think they are really entitled to.

LORD ADAM and LORD M'LAREN concurred.

The LORD PRESIDENT was absent at the advising.

Counsel for the second parties stated that all the pensioners on whose behalf payments were claimed were elected prior to Mr Morton's death.

The Court answered the questions in the affirmative.

Counsel for the First Parties—Sym—Mitchell. Agent—Douglas Wilson, Solicitor.

Counsel for the Second Parties—Balfour, Q.C.—Clyde. Agents—Rusk & Miller, W.S.

Thursday, November 16.

#### FIRST DIVISION.

[Lord Pearson, Ordinary.]

HAWKS v. DONALDSON.

*Process—Reclaiming-Note—Signature by Counsel.*

A reclaiming-note at the instance of a party who was conducting his own cause was duly printed and boxed, but was signed by the party himself and not by counsel. The Court held that it was necessary for the reclaiming-note to be signed by counsel, and gave the party an opportunity of having it thus signed.

Agent for the Reclaimer—Party.