is no claim of damages to be enforced either by compensation or retention. It is of course possible that the obligation to maintain may not be completely performed, but as much may be said of any current obligation by a solvent debtor, and it was to protect itself against this risk that the Corporation stipulated for the retention of 20 per cent. of the price to cover the maintenance of the roadway for five years. As to the second period for five years, the Corporation incurs no risk, because for the repairs to be done in the second quinquennial period the contractor is to be paid. At the time of the insolvency, and down to the present time, the Corporation has no claim, liquid or illiquid, against their contractors, but only the possibility of a claim against which they are fully secured by the conventional right of retention of 20 per cent. of the price. As regards the claim of the Corporation to retain the sum due to Mr Sharp on behalf of the company against their claim of damages under the first contract, I need only point out that, when the first contract was broken by the insolvency of the Asphaltic Company, Mr Sharp's claim under the second contract did not exist, because the claim is for work done since he took over the contract. I think it is perfectly clear that the rights of the Corporation as fixed at the date of the insolvency cannot be extended to the effect of allowing them to withhold payment of a claim arising after the company went into liquidation, and for which value has been given in labour and material.

(4) The fourth and only remaining point is that 'the Corporation suggest that the original Asphaltic Company had not the power to delegate the execution of the contract for maintaining the roads to the new Asphaltic Company which took over the business. It is not said that the new company has disaffirmed the contract, or that it was unable to execute it. I agree with the Lord Ordinary that there is no *delectus personæ* in such a contract, the execution of which consists chiefly in manual labour. The judgment of Lord Chief-Justice Cockburn referred to by the Lord Ordinary is I think conclusive on this point. That was a case of contract for the repair of waggons, and the Lord Chief-Justice, delivering the judgment of the Court, says—"We cannot suppose that in stipulating for the repair of these waggons by the company—a rough description of work which ordinary workmen conversant with the business would be perfectly able to execute—the defendants attached any importance to whether the repairs were done by the company or by anyone with whom the company might enter into a subsidiary contract to do the work." (*British Waggon Co.*, 5 Q.B.D. 149). His Lordship then points out that it is quite customary for a manufacturing concern to perform part of its undertaking by handing it over to other traders. As in my opinion all the points maintained as against the Lord Ordinary's judgment have failed, it follows that his Lordship has rightly dismissed the action at the instance of the Corporation of Glasgow except to the extent of the sum of £96, 2s., for which he has given decree, and has rightly decerned in terms of the conclusions of the summons in the other action, and that both interlocutors should be affirmed.

LORD KINNEAR—I agree with your Lordship.

LORD PEARSON—I am of the same opinion.

The LORD PESIDENT was absent.

The Court adhered.

Counsel for the Reclaimers — Cooper, K.C.—Morison, K.C.—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Counsel for the Respondent—Scott Dickson, K.C.—C. H. Brown. Agent—F. J. Martin, W.S.

Saturday, February 2.

SECOND DIVISION.

[Lord Salvesen, Ordinary.

M'MILLAN *v.* THE ACCIDENT INSURANCE COMPANY, LIMITED.

Insurance—Policy — Form of Proposal — Agent and Principal — Answers Signed by Insured but Filled in by Agent of Insurers not in Accordance with Information Supplied—Liability.

A person who signs a proposal for insurance, particularly a proposal by which he warrants that the statements contained in it are true, and that the proposal itself shall be taken as the basis of the contract, cannot be excused by either hurry or carelessness from reading over the paper which he signs, and if he chooses to take the risk of trusting that another has drawn up the document as he desired it, he must take the consequences if there be statements above his signature which are false.

A party signed a proposal form which contained an untrue answer to a question, but averred that he had communicated the truth to an agent of the company, who filled up the answers, and that he had not read them over before signing, as he relied upon the integrity of the agent. The proposal form bore on its face a statement that the company would not be responsible in respect of knowledge of, or notice to, their agent not communicated to the company in writing.

Held that the mis-statement in the proposal absolved the company from liability under the policy.

William M'Millan, builder and contractor, 73 Smith Street, Govanhill, Glasgow, brought an action against the Accident Insurance Company, Limited, for the sum of £218, 3s. 7½d.

The following narrative is taken from the opinion of the Lord Ordinary (SALVESEN):

—"The pursuer in this case sues on a policy of insurance effected by him with the defenders, under which they became liable to indemnify him as an employer of labour for any compensation becoming payable to workmen who received injuries while in his employment. The policy proceeds on the narrative that the insured has caused to be delivered 'at the office of the defenders a proposal in writing, which he has agreed shall be the basis of the contract and be considered as incorporated therein.' It contains conditions that if the policy has been obtained through any misrepresentation or concealment by or on behalf of the insured, the policy shall become absolutely void, and 'the company shall not be held liable in respect of any knowledge of, or notice to, an agent which shall not have been communicated to and have been acknowledged in writing by the company at its registered office.'

"The proposal form which was signed by the pursuer contains a number of printed questions, the answers to which are in manuscript. One of the questions, No. 8, is in these terms—'Has any proposal for insurance of the risk, either under the Workmen's Compensation Act or the Employers' Liability Act, been previously declined or withdrawn? If so, state the name of the company.' The pursuer's answer to this is 'No,' and he admits that that was not a true answer, because a proposal for insurance to the Royal Exchange Insurance Company had on 10th November 1904 been declined. If therefore the proposal had been filled up by the pursuer himself, I think there can be no doubt that the policy would have been void, and indeed the contrary was not seriously argued.

"The pursuer, however, seeks to elide this result by the averments which he makes in cond. 3 and 4. Briefly stated these are to the effect that the defenders' agent J. W. Millen, who solicited the insurance on their behalf, knew of the previous proposal having been declined; that Robert Donald, an inspector in their employment, who actually filled up the proposal, was also informed before doing so of this fact, and that the pursuer supplied full and accurate information, which he relied on Donald acting upon in filling up the proposal form. He says that he himself did not read over the proposal form before he signed it, because he was led to believe that it was in accordance with the information which he had supplied. A general averment has now been added that Donald acted within the scope of his employment in what he did as narrated by the pursuer. There is no averment, however, that the directors of the company, or any of their superior officials, were ever informed of the mistake which had been made."

On 22nd February 1906 the Lord Ordinary assoilzied the defenders from the conclusions of the summons.

Opinion.—[*After the narrative given above*] — "The pursuer contended that the misrepresentation must be treated as immaterial in view of the fact that the true state of matters was disclosed to the defenders' servant and to their agent. He maintained that in writing out the proposal form Donald acted on behalf of the defenders, and that they cannot take advantage of Donald's breach of duty towards them to his prejudice. His contention was based upon two cases—one decided in Scotland and the other in England. In the case of *Cruikshanks*, 23 R. 147, where the insured in a similar proposal form had described a lameness from which he suffered as slight, while as matter of fact he was extremely lame, Lord Low held 'that as the defenders' agent knew the extent of his lameness the defenders were not entitled to take advantage of any misdescription of the lameness in the proposal form, as the knowledge of their agent was their knowledge.' The decision was affirmed on appeal, but I do not find that the opinion of the Lord Ordinary on this point was supported in the Inner House. The view there taken was that the statement could not be described as false. The Lord Justice-Clerk says—'It is a question of interpretation. One man could truthfully use the word "slight" where another would use the word "great." Taking the word by itself I see in it no ground for holding that it was a false 'statement.' On that assumption the judgment was plainly right, and I cannot see that it mattered whether the agent had seen the assured walk, and had observed the extent of his lameness, although that fact is also referred to in the Lord Justice-Clerk's opinion. Lord Young, in reaching the same result, expressly stated that if the conditions of the policy were not complied with the defence must prevail, notwithstanding the good faith of the deceased. In concluding his examination of the facts bearing on the question whether there was an untrue answer or not he says—'Taking this as a written contract, the terms of which must be complied with, I think that so far the plea stated in defence to this action that the conditions of the contract were not complied with must fail.' The decision of the Inner House was therefore to the effect that there had been no untrue statement in the proposal of such a kind as to void the policy.

"The other case relied on—*Bawden* v. *The London, Edinburgh, and Glasgow Assurance Company*, 1892, 2 Q.B. 534—creates more difficulty. In that case a man who was blind of one eye had signed a proposal form which was filled up by the agent of the Insurance Company, in which it was stated for him that he had no physical infirmity. The statement was admittedly untrue, and was also material to the risk; but the agent (Quin), through whom the policy was effected, knew that the plaintiff had only one eye; and it was held that the knowledge of the defendant's agent must be imputed to them; and that the company were liable for an accident sustained to the plaintiff's other eye in consequence of which he became totally blind. The case was tried before a jury, but at the trial the company gave no evidence as to the extent of Quin's authority:

and the Court seem to have drawn inferences which at first sight it is difficult to justify. Lord Esher says—'For what purpose was he (Quin) agent? To negotiate the terms of a proposal for an insurance, and to induce the person who wished to insure to make the proposal. The agent could not make the contract of insurance; he was the agent of the company to obtain a proposal which the company would accept. He was not merely their agent to take the piece of paper containing the proposal to the company. The company could not alter the proposal: they must accept it or decline it. Quin then having authority to negotiate and settle the terms of the proposal, what happened? He went to a man who had only one eye, and pressed him to make a proposal to the company, which the company might then either accept or reject. He negotiated and settled the terms of the proposal. He saw that the man had only one eye. The proposal must be construed as having been negotiated and settled by the agent with a one-eyed man. In that sense the knowledge of the agent was the knowledge of the company.' If the Court were right in their inference that Quin had authority to negotiate and settle the terms of the proposal, the judgment may be supported. Even in that view it humbly appears to me that the opinions overlook the fact that the contract sued on was a contract in writing. Apart from this, the policy in *Bawden's* case did not contain a clause such as we have here, 'that the company shall not be held liable in respect of any knowledge of, or notice to, an agent, which shall not have been communicated to, and have been acknowledged in writing by, the company at its registered office.' This clause seems to me to make the decision in *Bawden's* case inapplicable to the present case.

"The case of *Bawden* has not been overruled in England; but it does not seem to have been followed in either of the two recent cases which have raised the same question—*Biggar*, 1902, 1 K.B. 516, and *Levy* 17 T.L.R. 229. The former case is on all fours with the present. The proposal form was filled up by the agent, and the false answers it contained were inserted without the knowledge of the insured, who signed the proposal form without reading it. In these circumstances Mr Justice Wright, in a carefully considered judgment, held (*firstly*) that it was the duty of the applicant to read the answers in the proposal before signing it, and he must be taken to have read and adopted them; and (*secondly*) that in filling in the false answers in the proposal the agent was acting not as the agent of the Insurance Company but as the agent of the applicant; and that therefore the policy was void.' As I agree entirely in his judgment and the grounds of it, I shall content myself by referring to it. The only distinction suggested between that case and the present was that here the person who filled up the proposal was not merely an agent but a paid servant of the company, who it is said acted within the scope of his authority. In my opinion the distinction is immaterial. It is not averred in terms that it was within Donald's authority to commit a fraud on the company for the benefit of the insured; and I would require more than a mere general averment in order to enable me to accept such a statement. Nor do I think that the insured is entitled to take benefit by this fraud when it could not have been committed but for his own negligence. The man who is the servant of another may nevertheless be an agent *pro hac vice* for somebody else; and I think the true view is that Donald was merely the hand whom the pursuer employed to save him the trouble of filling in the required answers.

"Further, the most recent decision in Scotland, *The Life and Health Assurance Association, Limited* v. *Yule*, 6 F. 437, follows the case of *Biggar* rather than that of *Bawden*. The action was one of reduction of a policy at the instance of the Assurance Company; but the decision would obviously have been the same if the company had been resisting liability for a claim made under the policy. The material facts were almost identical with those in the present case, except that it was an agent and not a servant who filled up the proposal form. The decision of the Lord Ordinary, which contained a finding that the policy was reducible, was confirmed by the unanimous judgment of the Second Division. The Lord Justice-Clerk said—'I hold that in filling up the paper for the defender at his request he (the agent) was acting for him. Further, I think that if the defender did not choose to see that there were no misrepresentations in the policy before he signed it he must be held responsible for it as being his.' Lord Trayner in stating his opinion proceeded on the same lines, and expressly stated his concurrence in the views expressed by Mr Justice Wright in the case of *Biggar*.

"I shall accordingly follow the two latest decisions and hold that the mis-statement in the proposal absolves the company from liability under the policy. I think it cannot be too strongly impressed on the minds of intending assurers that they must see to it that the proposal form is correctly filled up, and that no verbal statements made to the agents or servants of the company, who may have an interest of their own to serve by having the proposal accepted, are of any avail as correcting material mis-statements in the proposal itself, the truth of which is the basis of the whole contract. The result may be a hardship to the pursuer, whose good faith may be unquestionable, but for this his own carelessness is entirely to blame.

The pursuer reclaimed, and argued—He was entitled to a proof of his averments, which if substantiated established the company's liability. Donald was the company's agent; his knowledge was therefore their knowledge—*Cruickshank* v. *Northern Accident Insurance Company, Limited*, November 21, 1895, 23 R. 147, esp. Lord Low, 150. He had full information, and

the pursuer was entitled to believe that he had used that information in the manner best suited to advance the company's interests. The Lord Ordinary's judgment had the curious result that the company were to take advantage of their own agent's fraud or mistake, to the loss of the pursuer. *Bawden* v. *London, Edinburgh, and Glasgow Assurance Company*, [1892] 2 Q.B. 534. The case of *Biggar* v. *Rock Life Assurance Company*, [1902] 1 K.B. 516, was distinguishable, as there, *inter alia*, the candidate gave the agent no information, and in *Life and Health Assurance Association, Limited* v. *Yule*, February 20, 1904, 6 F. 437, 41 S.L.R. 316, it was more or less assumed that the party who filled up the form was acting as the candidate's agent.

Argued for the defenders—The pursuer's averments were irrelevant, and the defenders were entitled to be assoilzied *de plano*. It was an express condition of the policy that the company were not to be liable in respect of any knowledge of their agent not communicated to them and acknowledged in writing. It was not averred that the agent had communicated his knowledge to the company in writing or even verbally, so that upon this ground alone the pursuer's case failed. But further, Donald in filling in the form was acting not as their agent but as the agent of the pursuer, and there was no getting over the elementary and fundamental rule both of common sense and law, that a man must be held responsible for the accuracy of statements to which he appends his signature. The case was ruled by the following—*Life and Health Assurance Association, Limited* v. *Yule*; *Biggar* v. *Rock Life Assurance*, *cit. supra*, and *New York Life Insurance Company* v. *Fletcher*, (1886) 117 U.S. Rep. 519, was exactly parallel. See also *Levy* v. *Scottish Employers' Insurance Company*, (1901) 17 T.L.R. 229; *Reid & Company, Limited* v. *Employers' Accident, &c., Insurance Company, Limited*, June 28, 1899, 1 F. 1031. The case of *Bawden*, on which the pursuer founded, had not been followed in England (see *Biggar*), and could not be an authority in Scotland as against *Yule*—a later case. Moreover, in any event the facts in it were entirely different. The decision in *Cruickshank* in the Inner House proceeded on the view that the statement made was not in fact false.

LORD JUSTICE-CLERK—It is not disputed that the proposal, on which the insurance policy on which this case is based, contained statements which were contrary to fact, and that in a matter of such materiality that it would void the policy unless there were some special circumstances in the case which would avoid such a result. The facts are that the proposer had endeavoured to obtain a policy from the Royal Exchange Insurance Company and had failed, and that, notwithstanding this being the case, the proposal to the defenders' company in response to the query in the proposal form, "Has any proposal for the insurance of the risk, either under the Workmen's Compensation Act or the Employers' Liability Act, been previously declined or withdrawn," contained the word "No." The pursuer endeavours to get over this by proving that the answer was not written in by him but by the agent of the insurance company, who negotiated the proposal, that this agent knew of the previous proposal which was declined, and that an insurance inspector who filled up the proposal also knew the fact. He further states that he did not read over the proposal before he signed it, believing it to be in terms of the information given by him.

There is no ground for holding that the directors of the defenders' company had any other facts than those stated in the proposal communicated to them. Indeed it is impossible that it should have been in their knowledge that the statement in question was false, or the policy would never have been issued. It was granted as to a man who had not been declined elsewhere. Even if there had been any knowledge on the part of the directors, that could not bind the company, unless it was conveyed to them in writing, as it is one of the conditions of the transaction that "the company shall not be liable in respect of any knowledge of or notice to an agent, which shall not have been communicated to, and have been acknowledged in writing by the company at its registered office."

Upon the question whether, in the circumstances of the case, it can be held that the company is bound by the knowledge of their agent of facts contrary to what is stated in the proposal, I am clearly of opinion that it cannot. It seems to me that such a suggestion is quite untenable in view of the above proviso. It expressly excludes any such thing.

The only remaining question is whether there are any circumstances in the case which would entitle a Court to hold that the ordinary result should not follow from the proposal containing a false statement upon a material matter. The pursuer contends that the defenders' agent inserted the false statement in the proposal, acting as agent of the company. I cannot accept that suggestion. The proposal is the pursuer's proposal. It is his duty to see that his proposal is true in all substantial particulars. If he chooses to allow another person to fill it up, then such a person in doing so is acting not in the course of his duty to any third party. He is acting as the agent for the proposer and for nobody else. And if a party gets another to fill up a proposal for him, and signs and causes it to be delivered to the company, it contains what the company are entitled to hold as his declaration, and to hold him bound by it. On these grounds I would be prepared to adhere to the Lord Ordinary's interlocutor. The only remaining question, assuming that the grounds already stated for the judgment are erroneous, is whether the pursuer being *prima facie* responsible for statements in a document signed by himself as making the declarations, can escape the consequences by saying that he did not read the document to see what had been written into it before he signed it. I

can give no assent to any such contention. Every presumption in law is in favour of holding that a man knows what he is putting his subscription to, and if his only defence is that he did not see to what he was signing, to be sure that he was binding himself to that to which he intended to bind himself, *sibi imputet*. Any other rule would be most dangerous to the certainty of transactions based on signed documents. If he chooses to take the risk of trusting that another has drawn up the document as he desired it, he must take the consequences if there be statements above his signature which are false, and therefore in defraud of the other party to whom the document is delivered.

All this, both as regards the capacity in which the agent filled up the proposal, and as regards the duty on a party making a proposal to make sure that what he signs is in accordance with fact, is fully dealt with in the judgment in the recent case of *Yule*, 6 F. 437.

As regards the cases founded on by the pursuer, I do not think that they aid his contention. The case of *Cruickshanks* did not turn on a statement as to anything that had occurred or not occurred. It turned only on whether a particular physical defect could be honestly described as "slight," the reference being to a lameness. The judgment proceeded solely on the question whether the statement made in the proposal must be held to be "false."

The case of *Bawden*, (1892) 2 Q.B. 534, presents more difficulty. This Court is, of course, not bound by it. I may be permitted to say that I do not follow the reasoning contained in the judgment. But it is unnecessary, as I think, to say more than that it is quite inconsistent with the decision of this Court in *Yule*—a much later decision. I agree with the Lord Ordinary in thinking that the Court in *Bawden's* case failed to sufficiently consider that they were dealing with a written proposal as the basis of a contract. Lord Esher says that "the proposal must be construed as having been negotiated and settled by the agent with a one-eyed man. In that sense the knowledge of the agent was the knowledge of the company." This seems to me to be erroneous. The knowledge of the company was the knowledge of the directors, who were the only persons who could "settle" the contracts, and they had nothing before them but the proposal, the answers in which they dealt with as being true. There was therefore no knowledge by the company that the insured had only one eye. It would, I think, be a most unjust thing to hold that because an agent knew a fact which was contrary to the proposal signed by the party seeking the insurance, the policy would be valid, although it is certain that it never would have been granted if the insured had seen to it that the questions put to him were answered truthfully for the information of those who alone could grant a valid policy.

The case of *Bawden* has certainly not been followed in England, as the judgment in the case of *Biggar*, [1902] 1 K.B. 516, very clearly shows. But even if the decision in *Bawden* were of more weight than it appears to me to be, the declaration in the present contract—probably adopted to overcome the difficulty created by the case of *Bawden*—that "the company shall not be held liable in respect of the knowledge of or notice to an agent which shall not have been communicated to and have been acknowledged in writing by the company at its registered office," seems to bar any such inference as was made in *Bawden's* case.

I am confirmed in the view I take of the case by the lucid and closely-reasoned judgment in the case quoted to us from the Supreme Court of the United States —*New York Life Insurance* v. *Fletcher*, 1885, 117 U.S. Rep. 519.

LORD STORMONTH DARLING—I own I was at first a good deal impressed with Mr Dickson's argument for the pursuer, at all events to the extent of inclining me to think him entitled to the proof which he asked. The pursuer's case is that, although he gave full and accurate information to Millen and Donald, the representatives of the defenders, regarding the Royal Exchange Insurance Company's previous refusal to accept the risk, and although he relied on Donald filling up the proposal in accordance with that information, he was not aware until the defenders' repudiation of liability under the policy that Donald had wilfully failed to do so, and that accordingly the proposal contained at least one untrue answer, viz., the answer "No" to the question, "Has any proposal for insurance of the risk, either under the Workmen's Compensation Act or the Employers' Liability Act, been previously declined or withdrawn? If so, state the name of the company." The pursuer admits the materiality as well as the untruth of the answer, and also that he signed the proposal without reading the answers. But Mr Dickson argued that his client was entitled to rely on Donald doing his duty to the defenders, whose representative he was, and that in filling up the answer falsely Donald must be held to have been acting as agent for the defenders and not for the pursuer. Certainly on these averments, if they were made out, the case would wear a different aspect, morally at least, from a case where either the information contained in the answers had been supplied by the person signing the proposal, or where no information at all having been supplied by him, he must have known that the person filling up the paper had invented the answers, and that accordingly he, the proposer, had no excuse at all for signing them as they stood. It is there or thereabouts that the present case differs from some of those which were cited against the pursuer.

But I have come to think that this distinction is not an essential one, and that, even if the pursuer proved his averments up to the hilt, it would make no difference in law. The only safe and salutary

rule, in my opinion, is that a man who signs a proposal for insurance, particularly a proposal by which he warrants that the statements contained in it are true, and that the proposal itself shall be taken as the basis of the contract, cannot be excused by either hurry or carelessness from reading over the paper which he signs, and that if he chooses so to act he must be held to have adopted it. I agree with Mr Justice Wright in the case of *Biggar* cited by the Lord Ordinary, that business could not be conducted if that were not the law. I further agree with the reasoning of the American Supreme Courts in the case of *New York Life Insurance Company* v. *Fletcher*, 117 U.S. 519, which Mr Justice Wright characterised as "good sense, good law," that when an application of this kind is signed without being read the company is not bound by the policy, "for the power of the agent would not be extended to an act done by him in fraud of the company and for the benefit of the insured, especially where it was in the power of the assured by reasonable diligence to defeat the fraudulent intent; that the signing of the application without reading it or hearing it read was inexcusable negligence, and that a party is bound to know what he signs." This is in entire accordance with the judgment of this Division in *Yule's* case, 6 F. 437, a case only differing from the present in one particular, which, as I have said, although it may make the conduct of the pursuer rather more excusable in a moral sense, cannot make any difference in the law.

LORD LOW—I am of the same opinion, and do not think it necessary to add anything to what has been said by your Lordships.

As regards the case of *Bawden* [1892], 2 Q.B. 534, referred to by your Lordship in the chair, I might, however, point out that, even if that were an unimpeachable judgment, it has no bearing on the present case, the circumstances being entirely different.

The Court adhered.

Counsel for Pursuer and Reclaimer—Dickson, K.C.—Mitchell. Agents—Gill & Pringle, W.S.

Counsel for Defenders and Respondents—Hunter, K.C.—Chree. Agents—Connell & Campbell, S.S.C.

Tuesday, January 22.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

STEVENSON *v.* WILSON AND OTHERS.

Company—Transfer of Shares—Company with Reserved Right to Directors to Refuse to Register a Transfer—Position respectively of Vendor and Vendee where Directors Refuse to Register Transfer.

The directors of a company acting within its articles of association refused to register a transfer of shares. The vendor, a trustee on a bankrupt estate, did not propose to annul the contract and refund the purchase price, but though his name remained on the register, refused to receive and remit the dividends. *Held* that if the vendee was unable to offer a transferee acceptable to the company, the vendor was bound to receive from time to time the dividends and bonuses declared on the shares, and to account for them to the vendee.

Opinion per the Lord President that the duty of the vendee was to provide a transferee acceptable to the company, which failing the vendor might rescind the contract of sale on repayment of the price of the shares.

On February 13, 1905, Daniel Macaulay Stevenson, merchant, 12 Waterloo Street, Glasgow, brought an action against (*a*) John Wilson, C.A., Glasgow, trustee on the sequestrated estates of J. & D. T. Colquhoun, writers, Glasgow, and of James Colquhoun and D. T. Colquhoun, the individual partners thereof; (*b*) the said John Wilson as an individual; and (*c*) J. M. Smith, Limited, Glasgow, in which he sought (1) declarator that he had the sole beneficial interest in certain ordinary B shares in J. M. Smith, Limited, registered in Wilson's name, and to all dividends, &c., declared on these shares since 8th June 1903, so long as the beneficial right pertained to him; (2) declarator "that the said shares are held by the said John Wilson and his heirs, representatives, and successors whomsoever (and that whether he has been or may be discharged of his said trusteeship or not), in trust for behoof of the pursuer as from the 23rd day of January 1900;" (3) an accounting by Wilson of his intromissions in connection with the said shares, and the dividends declared thereon, since 8th June 1903; and (4) declarator that J. M. Smith, Limited, were bound to pay to Wilson as trustee or as an individual, his heirs, successors, and representatives, "or to any judicial factor to be appointed by our said Lords on the estate in the said shares," all dividends, &c., declared on the shares, and proceeds of liquidation thereof, in the future, so long as the beneficial interest pertained to the pursuer.

Part of the sequestrated estate of the Messrs Colquhoun, on which Wilson had been appointed trustee, consisted of the 687 ordinary B shares in J. M. Smith, Limited, now in question. Wilson as trustee advertised the shares, together with certain preference shares, for sale on certain printed conditions of tender, which, *inter alia*, provided—"3. The said shares are for sale, and the tenders therefor will be received under the whole objections and exceptions to which the said shares or any of them are or may be subject, and under the whole obligations which attach or may attach thereto, and also under the whole conditions, and subject to the whole provisions and regulations contained in the memorandum and articles of association of the said company of J. M. Smith,