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,

Limited, which shall be held as incorporated herewith. 4. The tenders for ordinary B shares shall be made and received subject to the right of pre-emption contained in article 4, and subject to the stipulation in article 5 of the articles of association of the said J. M. Smith, Limited, which are to the following effect, viz.—'(4) . . . (5) The directors may, without assigning any reason, refuse to register any transfer of ordinary B shares to any person not approved of by them, or who is not at the time being an existing member of the company.'"

Stevenson made a tender to purchase, which was accepted. Difficulties arose as to the transfer, and in an action at Wilson's instance it was found that Stevenson was bound to pay the price and accept a transfer in ordinary form. He accordingly paid the price. J. M. Smith, Limited, refused to register the shares in his name; Wilson, in whose name the shares remained, refused to receive or intromit with the dividends declared subsequent to 8th June 1903, the date of the transfer; and Stevenson raised the present action.

When the case was under discussion in the Outer House, Wilson offered to grant a mandate whereby he would authorise J. M. Smith, Limited, to pay to Stevenson all dividends, bonuses, or moneys due or becoming due in respect of the shares so long as he remained registered holder. In respect of this offer the Lord Ordinary (Low) pronounced on 26th September 1905 an interlocutor ordaining a draft of the mandate to be lodged in process.

Opinion.—"It seems to me to be plain that the pursuer has right to the dividends upon the shares of J. M. Smith, Limited, referred to in the summons. Indeed I do not understand his right to the dividends to be disputed, but unfortunately he is unable to obtain payment of them. The company will not pay the dividends to the pursuer because he is not on the register of shareholders, the directors having in the exercise of the powers conferred upon them refused to register the transfer in his favour. I do not think that the pursuer can complain of the action of the company, because I think they are justified in refusing to recognise him as having any right to the shares in a question with them.

"The defender Wilson, however, is in a different position. He sold the shares to the pursuer for a full price and granted a transfer in favour of the latter, but the directors having refused to register the transfer, Wilson still remained upon the register as the owner of the shares *qua* trustee upon the sequestrated estate of J. & D. T. Colquhoun. The result is that the beneficial interest in the shares is in the pursuer, while the formal title remains in Wilson.

"The pursuer has received payment from Wilson of the dividends falling due upon the shares between the date of the sale and the date (8th June 1903) when Wilson granted a transfer in his favour. Since the latter date, however, Wilson has refused to take payment of dividends from the company, or to do what was necessary to enable the pursuer to obtain payment. I gather that the position taken up by Wilson was that having granted a transfer to the pursuer he had no longer any interest in the shares and was not entitled to grant a discharge for the dividends.

"I do not think that that is a tenable position. I think that Wilson is bound to do what he can to make the right to the shares which he sold to the pursuer available to the latter. It is true that Wilson cannot enable the pursuer to obtain a full and complete title to the shares, but his formal title as registered shareholder gives him an absolute right in a question with the company to dividends accruing on the shares, and in my judgment he is bound to use that right for the benefit of the pursuer.

"Therefore if the summons had contained a conclusion to the effect that so long as matters remained in their present position Wilson was bound to uplift the dividends and pay them to the pursuer, I should have been disposed to grant decree. But the summons contains no such conclusion, but certain declaratory conclusions which do not seem to me to be appropriate to the circumstances, and a conclusion for accounting.

"The first conclusion is for declarator that the pursuer has the sole beneficial right to the shares and dividends. Wilson does not dispute that in a question with him that is the case, and therefore so far as he is concerned the conclusion was unnecessary. As regards the company, the position which they take up is that they have nothing to do with the pursuer, and are not bound to look beyond the register of shareholders. They therefore object to have any declarator as to the pursuer's interests in the shares pronounced against them. It seems to me that that objection is well founded.

"The second conclusion is for 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 the pursuer as from the 23rd day of January 1900.'

"It seems to me that that conclusion is very much too wide, and I am not prepared to grant decree in terms of it. In a certain limited sense I think that Wilson does stand towards the pursuer in a fiduciary position, because as I have already said I think that he is bound, so long as his name remains upon the register of shareholders, to give the pursuer the benefit of the right to the dividends which his formal title gives him. But I do not think that he is bound to do anything more, and accordingly I am unable to grant decree in terms of the conclusion which I have quoted.

"The remaining declaratory conclusion is for declarator that the company (J. M. Smith, Limited) are bound to pay the dividends either to Wilson 'or to any judicial factor to be appointed on the estate in the said shares.'

"Now, the company have never disputed their liability to pay the dividends to Wilson, and therefore the first branch of that conclusion is unnecessary. As regards the alternative branch of the conclusion, I think that it is out of the question to declare what would be the obligation of the company in the way of paying dividends to a judicial factor who has not been and may never be appointed.

"There remains the conclusion in which Wilson is called to account to the pursuer for the dividends which have accrued since 8th June 1903. These are the dividends, payment of which Wilson has declined to take from the company.

"It was argued that refusal to take payment of the dividends was not intromission with them, and that therefore an accounting was incompetent. It seems to me that if I am right in thinking that Wilson is bound to use his formal title for the purpose of making the dividends available to the pursuer, it is competent for the latter to call him to account for dividends which have accrued. The dividends are under the control and at the call of Wilson, and therefore I think that he is as much liable to account for them to the pursuer as if he had actually taken payment from the company. At the same time I do not think that an accounting is a very appropriate remedy in the circumstances. I think that the course proposed by Mr Ure, Wilson's counsel, would put the pursuer in a much better position than proceedings under the conclusion for accounting would do. Mr Ure admitted that Wilson, as seller of the shares, was bound to do all he could to make the pursuer's rights as purchaser available, and he undertook that Wilson should grant to the pursuer a mandate to uplift the dividends. Such a mandate would in my judgment give the pursuer all that he is entitled to demand, because I do not think that he is entitled to ask more of Wilson than that the latter should use his title so long as his name continues upon the register for the purpose of enabling the pursuer to uplift the dividends. If such a mandate were granted, it seems to me that it would be unnecessary to proceed with an accounting, and accordingly I shall appoint Wilson to lodge in process the mandate which he proposes to grant to the pursuer."

The mandate having been granted, J. M. Smith, Limited, refused to obtemper it, and the case was again discussed in the procedure roll.

On March 13, 1906, the Lord Ordinary (SALVESEN) pronounced this interlocutor —"(1) Finds, decerns, and declares against the defender John Wilson in terms of the first conclusion of the summons: (2) Finds, decerns, and declares in terms of the second conclusion of the summons against the said John Wilson that said shares are held by him 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, but so long only as the name of the said John Wilson shall remain on the register of shareholders of J. M. Smith, Limited, in respect of said shares and the pursuer continues to hold the beneficial interest therein: (3) Decerns and ordains the said John Wilson to exhibit and produce an account of his intromissions in terms of the third conclusion of the summons, and that within eight days from the date hereof; dismisses the said conclusions as against the defenders J. M. Smith, Limited, and decerns: As regards the fourth conclusion, finds that as the defenders J. M. Smith, Limited, have all along admitted and now admit that they are bound to pay to the defender John Wilson all dividends and bonuses which may be declared on the said shares so long as he remains the registered holder thereof, it is unnecessary to pronounce any decree thereanent; therefore dismisses the same and decerns: Finds the said John Wilson liable to the pursuer in expenses; allows an account thereof to be given in, and remits," &c.

Opinion.—"In this case Lord Low on 26th September 1905 pronounced an interlocutor appointing the defender John Wilson to lodge in process a draft of the mandate which counsel on his behalf offered to grant to the pursuer. While this was the only operative judgment pronounced, Lord Low indicated his opinion on the merits of the case, which relieves me from expressing my views at length on some of the points raised, as in the main I agree in his opinion. The expectation, however, which Lord Low entertained that the granting of a mandate by the defender Wilson in favour of the pursuer would make it unnecessary to deal with the conclusions of the summons has not been realised. . . . The result is that the procedure following on the interlocutor of 26th September 1905 has been nugatory, and that the case must now be disposed of on its merits.

"As regards the defender Wilson, I am of opinion that the pursuer is entitled to get a decree in terms of the first declaratory conclusion. Lord Low thought that as Wilson did not dispute the pursuer's demand for declarator that he has the sole beneficial right to the shares and dividends the conclusion was unnecessary. I am not prepared to agree to this, seeing that the action required to be raised owing to the attitude which the defender Wilson took up in refusing to take payment of the dividends due on the shares or to pay them over to the pursuer as he had previously done. The pursuer's demands in the present action seem to me to hinge upon his getting a decree in terms of this first conclusion, and I am accordingly prepared to affirm his right. I do not understand that the defender Wilson now seriously objects to decree passing against him in the terms concluded for.

"As regards the second conclusion, I agree with Lord Low that it is too wide, but I am prepared to grant decree in terms of it subject to the limitation suggested by Mr Wilson, and which limits the operation during the time that Mr Wilson's name

remains on the register of shareholders of J. M. Smith, Limited.

"As regards the third conclusion, I understand that Lord Low would have given decree in terms of it but for the proposal that Mr Wilson should grant a mandate in favour of the pursuer which he assumed would enable him to uplift the dividends as they fell due. As this has now been found to be impracticable, I think the pursuer is entitled to the remedy which he demands. There need be no accounting in the ordinary sense, as the parties are not at variance as to the amounts which Mr Wilson is bound to hand over to the pursuer from time to time. When once this defender's liability is finally ascertained I cannot imagine that he will interpose any obstacle to the pursuer getting payment of the dividends which in the first instance must still be paid to him as the registered holder.

"The three conclusions with which I have dealt relate to matters with which the other defenders J. M. Smith, Limited, contend, and I think rightly, that they have no concern. They are therefore entitled to have these conclusions dismissed as against them, so that it may not be assumed that the decrees of declarator are in any sense binding upon them, or that they are bound, contrary to their articles of association, to recognise the pursuer's beneficial interest in the shares in question.

"There remains the fourth conclusion, which is directed against J. M. Smith, Limited, only. Lord Low doubted whether he could give effect to that conclusion in its present form. All difficulty, however, now disappears, because the defenders state that they have never maintained and do not now maintain that they are not bound to pay the dividends to Wilson so long as his name remains on the register of shareholders, and it is not disputed that they did in fact pay the dividends so long as Mr Wilson was willing to receive them. I therefore propose to dismiss this conclusion as unnecessary, but I shall minute the ground upon which I so hold.

"As regards expenses, the whole trouble has been caused by the attitude which the defender Wilson took up, and I think he must bear the expense the pursuer has been put to. It may be that Mr Wilson has got himself into an unpleasant position by having in a sense to act as trustee for the pursuer with regard to the shares which he sold, but for this he has himself entirely to blame. Fortunately there is, so far as I know, no liability on the shares, and the duty of the trustee will be discharged if every time that he receives a cheque for a dividend he simply endorses it in favour of the pursuer. I may add for Mr Wilson's guidance in future that in my opinion the fiduciary relation in which he stands to the pursuer in consequence of the transaction between them has nothing to do with his position as trustee in bankruptcy, and accordingly that the dividends accruing since the date of sale do not require to be entered in the sequestration accounts.

"As between the pursuer and J. M. Smith, Limited, I propose to award no expenses. Although they have been technically successful, I cannot find any legitimate interest which they required to protect by appearing and defending the present action, to which they were not unnaturally called. Had they merely stated the defences which have now been sustained they would have had a strong claim to their expenses. They chose, however, to put forward defences and pleas to which I have not been able to give effect, and their whole conduct in the present case has been of a highly obstructive kind. Moreover, if at the discussion which preceded the interlocutor of 26th September they had plainly informed Lord Low that they would honour no mandate which the defender Wilson might grant in the pursuer's favour, all the procedure which has intervened, and which must have entailed considerable expense on the parties, would, I apprehend, have been avoided."

The defender Wilson reclaimed, and argued—The Lord Ordinary was wrong, and the reclaimer should be assoilzied. By granting the transfer and lodging the certificates he, as vendor, had fulfilled his contract, since there was no guarantee that the vendee would be registered as holder, and he was under no obligation to do more. No such guarantee was implied in the usual course of business—*Stray* v. *Russell*, [1859] 1 E. & E. 888, *approved ibidem*, 916; *London Founders' Association, Limited, and Palmer* v. *Clarke*, L.R., 20 Q.B.D. 576; Buckley on the Companies Acts, 8th ed. 41. But even if such a guarantee could have existed without stipulation, it was here expressly excluded by the special terms of the contract of sale. It would, moreover, be inequitable to make the vendor take the risk of the vendee not getting on the register. That was a risk the vendee, no doubt, had considered in considering his price. It was a risk which it was well settled a vendee took apart from all Stock Exchange custom —Lindley on Companies, 6th ed. i, 678. No doubt if the reclaimer received dividends, &c., he would be bound to account for them, and would be in the position of a trustee, but he was not bound to accept such a position, which might involve loss, and it was for the pursuer to relieve him of it—*Hardoon* v. *Belilios*, [1901] A.C. 118. The vendee might not be bound to have himself registered as holder, but he was bound, failing himself, to have someone else registered, so as to relieve the vendor from liability—as, for instance, future calls—*Maxted* v. *Paine* (1871), L.R., 6 Ex. 132, Blackburn, J., at p. 151. A trusteeship such as was proposed, which could not be brought to an end but was to go on to heirs and representatives, was unknown. If no other course were open a judicial factor must be appointed. The reclaimer here was all the more entitled to be relieved inasmuch as he had contracted as a trustee in bankruptcy and not as an individual. *Heritable Reversionary Company, Limited* v. *Millar*, August 9, 1892, 19 R. (H.L.) 43, 30 S.L.R. 13, was referred to.

Argued for the pursuer and respondent—The reclaimer Wilson had by contract sold

shares. While the transfer was incomplete a trust resulted in him for behoof of the purchaser, there being a severance between the legal title and the beneficial estate—M'Laren on Wills, 3rd ed., p. 828 and 1025, note; *Lauder* v. *Orr*, May 25, 1853, 15 D. 670, Lord President M'Neill at 677—and there was no reason the trust should not continue seeing there was no risk, there being no uncalled capital. The parties to the contract knew that it was the sale of an equitable interest with only a chance of a legal title when they contracted, and it was not in the mouth of the defender, who had got a decree for the price, to say that the contract should not be implemented. All the conditions necessary to establish the relation of trustee and *cestui que* trust were present here—*Hardoon* v. *Belilios, ut supra*, Lord Lindley at p. 123; Lindley on Companies, 6th ed. i, 694, 698. The relation of trustee and beneficial owner was therefore established, and the only way it could be dissolved was if the vendee could show that the contract wholly failed through some omission of the vendor —*London Founders' Association and Palmer* v. *Clarke, ut supra*, Lord Esher, (M.R.), at 580. He could not do so in the present case. The reclaimer therefore was bound to receive the dividends and account for them to the pursuer. The position of the reclaimer was to remain a partner in a business, to which his position as a registered shareholder was analogous, and not to fulfil the consequent duties. The subject sold was not the mere transfer but the shares themselves so far as could be, and that contract must to the utmost be fulfilled. The terms of the contract showed that both parties recognised a possible difficulty in the purchaser's being put on the register by the company. This specialty took the case out of the rule laid down for ordinary Stock Exchange transactions by Lord Blackburn in *Maxted* v. *Paine, ut supra*. It would be vain to appoint a judicial factor, as the company would not be obliged to pay dividends and bonuses to him but to the registered shareholder. The Lord Ordinary's interlocutor was right, and should be affirmed.

Counsel for the defenders J. M. Smith, Limited, did not address the Court.

At advising—

LORD PRESIDENT—The defender Wilson was trustee on the sequestrated estates of J. & D. T. Colquhoun, writers, Glasgow, and the individual partners thereof. As such trustee he advertised the sale of 700 Preference A shares and 687 Ordinary B shares of J. M. Smith, Limited, on certain printed conditions, as to which it is sufficient to say generally that they intimated distinctly to intending purchasers the peculiar conditions which were attached to these shares. Now, one of the conditions which was brought particularly to the notice of purchasers was, that J. M. Smith, Limited, were not bound to accept any transferee, but that, without reasons stated, they could object to any transfer being registered. There were certain other conditions as to offers by the company at certain prices which rather complicated the transaction, and which it is unnecessary that I should specify. The pursuer made an offer for these shares, which offer the defender accepted. There was a certain amount of dispute owing to a question of offering the shares to the company, which again I do not think is a matter of moment. But the next step, which is important, is this—that the pursuer not having paid the price, the defender in his capacity of trustee sued the pursuer for payment of the price of 687 Ordinary B shares. The pursuer lodged defences to the action, in which he stipulated for a peculiar form of transfer. That also need not be gone into, because the event of the action was that decree was pronounced against the present pursuer (the defender in that action) ordaining him to pay the price which had been tendered, for a transfer in ordinary form. Accordingly that transfer was executed. The present pursuer then went to J. M. Smith, Limited, but J. M. Smith, Limited, refuse to register his transfer—in other words, they availed themselves of the option which I have already brought before your Lordships' notice, and refused the present pursuer as transferee. Matters are still in that position. In the meantime dividends have been accruing upon these shares, and the present action is brought by the pursuer against Mr Wilson, the defender, who of course still stands in the books of J. M. Smith, Limited, as holder of the shares, he never having been removed by the substitution of any transferee; and it seeks for declarator that the shares belong to the pursuer, and seeks also that the defender should be ordained from time to time to make payment to the pursuer of all dividends as they accrue. Now, the defender resists that conclusion, because he says that he ought not to be subject to the trouble and annoyance of being made a sort of perpetual trustee for the benefit of the pursuer. I am bound to say that his action, which may or may not be justified, as we shall presently see, creates a complete deadlock. He admits that the pursuer is entitled to the beneficial rights of the shares. He admits also that if he got any dividends on the shares he would be bound to hand them over to the pursuer. But he says—"I am entitled to button my pockets and refuse to let dividends into them," and accordingly when he got a dividend from the company in the shape in which they generally come —a cheque—he said—"I don't want any dividends; the shares don't belong to me; please keep them." The company were equally unaccommodating to the pursuer, for they said—"We are not bound to pay to any but a shareholder; you are not a shareholder; and therefore we are not bound to pay to you." Therefore it is not surprising that the parties came into Court. The Lord Ordinary has varied the pursuer's demand from the conclusions as originally framed so as to limit the decree to such time as the particular state of affairs which I have detailed lasts.

I have come to the conclusion that the Lord Ordinary's judgment is right, and I think that result follows clearly enough when one considers what a bargain of this sort means. In an ordinary case there can be no doubt if A and B enter into a contract for the sale of shares that belong to A, A executes the transfer, and B I have no doubt is bound as part of the bargain not only to accept that transfer, but to get the transfer registered so as to take A off the register. In the case of an unlimited company the interest is too plain, but even in a limited company I have no doubt that A is perfectly entitled as part of the bargain to get his name off the register. But when there is a stipulation in the articles of the company which allows the directors of the company to refuse at their own hand any particular transferee, then A and B, who are contracting, do so with their eyes open, and knowing that it may be the case that B will not be accepted as a transferee. It still becomes the duty of B, if he cannot get the defenders to register him, to find a transferee whom the defenders will register in order to free A; and I think if he is entirely unable to do that A can bring the bargain to an end. But I think he could only do so in the ordinary way by annulling the bargain—that is, giving back the money he had got from B and bringing matters to their entirety. I think all this is really very clearly put in the judgment of Lord Blackburn, than whom of course there is no higher authority, in *Maxted* v. *Paine*, L.R., 6 Ex., and I specially refer to a passage on p. 151 of the report, where he says—"In many companies the articles of association reserve a right to the directors to refuse to register a transfer unless satisfied with the transferee, and as (according to the view I take of the matter) the buyer selects the name into which the shares are to be transferred, he is bound by his contract to select a person with whom the directors will be satisfied, as otherwise he does not fulfil his obligation to relieve the registered owner from all future liability." I think therefore the situation is this—there has been a contract between Mr Stevenson and Mr Wilson by which Mr Stevenson has got a transfer from Mr Wilson. I think Mr Stevenson was bound, and is bound, to get either that transfer registered, or to find somebody who by his registration will take Mr Wilson off the register. But if he cannot do so, the remedy, and the only remedy, of Mr Wilson is to annul the bargain. Now, that is just what Mr Wilson will not do; so far from annulling the bargain he raised an action in the Court of Session and got decree against Stevenson for the money, and he does not propose to give that money back. I am not saying now, and I do not think that in this action we could possibly determine what amount of time ought to be given Mr Stevenson to find a proper transferee. That question does not arise, because the attitude of Mr Wilson in this action is that he proposes to stick to the money, and at the same time not to have the trouble of acting as *quasi*-trustee in giving over the dividends. Now, I think that is an impossible position, and therefore so long as Mr Wilson chooses, as he does still choose, not to try to avoid the bargain but to keep the money in his pocket, so long he must be content to fulfil this obligation of *quasi*-trustee to which the judgment of the Lord Ordinary subjects him. I therefore move that your Lordships should adhere to the interlocutor of the Lord Ordinary.

LORD KINNEAR and LORD PEARSON concurred.

The Court adhered to the Lord Ordinary's interlocutor and refused the reclaiming note, finding Wilson liable both as a trustee and as an individual in the expenses since the said interlocutor.

Counsel for the Defender and Reclaimer Wilson—Scott Dickson, K.C.—Hon. W. Watson. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Pursuer and Respondent Stevenson — Clyde, K.C.—Hunter, K.C.—Macmillan. Agents — Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders J. M. Smith, Limited — Dean of Faculty (Campbell, K.C.)—Cullen, K.C.—Murray. Agents—J. W. & J. Mackenzie, W.S.

Saturday, January 26.

FIRST DIVISION.

[Sheriff Court at Stirling.

CAMERONS *v.* YOUNGS.

Reparation — Negligence — Landlord and Tenant — Known Danger — Insanitary House—Tenant Remaining in Occupation on Promise by Landlord to Remedy Defects — Relevancy — "Volenti non fit Injuria."

In an action by a tenant against his landlord for damages for loss and injury caused him through illness occasioned by the insanitary state of the house, subsequently proved by inspection, the pursuer averred that he had repeatedly complained of disagreeable smells and dampness in the house to the factors, who promised to have certain repairs executed, and also to have it inspected, but did nothing; that in particular the factors in September 1905 were told the smells complained of were believed to come from the drains, and that the tenant would remove unless immediate steps were taken; and that he thereafter looked for another house, but failed to find one before he was taken ill on November 2nd. The defenders pleaded that the action was irrelevant, the pursuer having stayed on in knowledge of the danger. *Held* that there must be inquiry and an issue ordered. *Shields* v. *Dalziel*, May 14, 1897, 24 R. 849, 34 S.L.R. 635, and *Smith* v. *Mary-*