life. That is the meaning which such words may bear, and most commonly do bear, it being manifest upon the face of the deed that that is the intention. But they may also mean, and frequently do mean, survivorship *inter se*, and if that shall appear to be according to the intention of the testator, that meaning must be attached to the words. Now, if we put that latter meaning upon the words here the result will be that the £15,000 which Jane liferented till her death will go to the three surviving nieces. Admittedly that would have been the case if Jane had died before himself. I think it quite clear that this accords with the intention of the testator, for he only intends these four nieces, and their children or nominees, to participate in this trust fund, as to which they are the only beneficiaries named.

The next deceaser was liferentrix of £20,000. She left children, and I think, according to the language of the deed, the fee of that £20,000 which she liferented on her death must go to her children.

If, in the future, one of the surviving daughters die without children or nominees, the survivor will liferent £40,000, and the fee of whatever she liferents will go to her children or nominees. But if the last should leave no children or nominees, then there will be a fund liberated, and no recipients according to the trust. That will be a case of resulting trust, and there will be a question whether the trustees then hold for the residuary legatee or for the next-of-kin.

In the meantime my opinion is with your Lordship that Jane's death after the testator, without children or nominees, put matters in exactly the same position as if she had predeceased the testator, and that the surviving three thus took the whole fund.

Lord Rutherfurd Clark concurred.

Lord Lee—My only doubt has been whether the terms of the deed are not such as to confer the fee of an equal share upon the nieces who survived the testator. On the whole, however, after considering the case with the benefit of your Lordship's views, I am satisfied that there are no grounds for that view, and I therefore concur.

The Court pronounced the following interlocutor:—

"Answer the first of the questions therein stated to the effect that the parties of the second part are entitled to a conveyance of one-third of the special fund of £60,000: Find it unnecessary to answer the second question: Answer the third, fourth, and fifth questions in the negative."

Counsel for the First and Second Parties—Graham Murray—W. C. Smith. Agents—Auld & Macdonald, W.S.

Counsel for the Third and Sixth Parties—Gloag—Lyell. Agents—Horne & Lyell, W.S.

Counsel for the Fourth Parties — Low—M'Lennan. Agents—Auld & Macdonald, W.S.

Counsel for the Fifth Party—Dickson—G. W. Burnet. Agent—James F. Mackay, W.S.

Tuesday, June 4.

SECOND DIVISION.

[Lord Trayner, Ordinary.

TAIT & CRICHTON *v.* MITCHELL.

Contract—Implement—Sale of Shares—Principal and Agent.

An offer to sell a specified number of shares of a company was accepted, the acceptor adding, "You will require to execute two transfers."

In an action for implement, *held* that this was not a condition of the contract added by the acceptor, which required the offerer's consent, and decree of implement *granted*.

This was an action by Messrs Tait & Crichton, W.S., Edinburgh, against Miss Mary Sawers Mitchell, residing in Edinburgh, for implement of a contract of sale by delivery to the pursuers of sixty-eight shares of the Caledonian Fire and Life Insurance Company.

The following correspondence had passed:—Upon 15th July 1888 the pursuers wrote to the defender that they wanted fifty shares of this company for a client, and asked what price she expected. Upon 21st July the defender wrote—"I have a balance of sixty-eight shares of the Caledonian Insurance Company to dispose of, and I understand that the price is regulated by the market value. I had made up my mind to sell them as a whole at 29¼, so I hope your client may find it convenient to take them all at this figure." Upon 23rd July the pursuers wrote—"We have received your letter of the 21st offering to sell us sixty-eight shares of the Caledonian Insurance Company at 29¼ per share. We accept your offer. As our client only wishes fifty shares, you will require to execute two transfers." Upon 25th July Miss Sawers wrote—"I have received your letter of the 23rd inst. I fear that you have not apprehended the meaning of my former letter, which was simply that if your client would take the sixty-eight shares in a lot, the price was to be 29¼. With this your letter does not comply, and I am not inclined to agree to your proposal."

The pursuers pleaded that a valid contract of sale had been constituted by the missives, and the defender had refused to fulfil her part of the agreement.

The defender pleaded—"(2) No title to sue. (5) There having been no valid contract constituted between the pursuers and the defender, the defender should be assoilzied."

Upon 21st December 1888 the Lord Ordinary (Trayner) pronounced this interlocutor:—"Ordains the defender to implement and fulfil the contract of sale set forth in the conclusions of the summons, and that by forthwith executing and delivering to the pursuers a formal and valid transfer in their favour of sixty-eight shares of the Caledonian Fire and Life Insurance Company, the pursuers always, on delivery being made as aforesaid, making payment to the defender of the sum of £1989 sterling.

"*Opinion.*—I think there was a concluded contract between the parties, which both are bound to fulfil, and which either may enforce.

"The defender's letter of 21st July was a distinct enough offer to sell sixty-eight shares of the Caledonian Insurance Company at £29, 5s. per share. The pursuer's letter of 23rd July was a distinct acceptance of that offer.

"To the pursuers' acceptance there was added, 'you will require to execute two transfers.'

"The defender says that this was a condition added by the pursuers, to which she did not consent; that the acceptance did not therefore exactly meet the offer; and that no contract was thus concluded. I think this quite a mistaken view of the pursuers' letter. The reference to two transfers was not a condition of the contract. It was a mere detail—a proposal—as to the manner in which the contract was to be carried out or executed, not in any way affecting the terms of the contract itself."

The defender reclaimed, and argued—There was no title to sue. If the pursuers were acting for a client they ought to have disclosed him, so that the defender, in the event of loss, might have the option of proceeding against either the client or the agent. Here the pursuers did not disclose the principal, and it appeared that they were buying the stock partly for themselves, as was shown by their desire to have two transfers granted. The action should have been at the instance of the principal—*Armstrong* v. *Stokes and Others*, July 6, 1872, L.R., 7 Q.B.D. 598; *Maspono y' Hermano* v. *Mildred Goyeneche & Company*, July 7, 1882, L.R., 9 Q.B.D. 530; *Bowes, &c.* v. *Shand and Others*, June 8, 1877, L.R., 2 App. Cas. 455. There was no contract. The bargain was for the sale of sixty-eight shares. The pursuers added a condition which the defender did not accept.

Counsel for the respondent was not called upon.

Without delivering opinions the Court adhered to the judgment of the Lord Ordinary.

Counsel for the Reclaimer—D.-F. Balfour, Q.C. —C. S. Dickson. Agents—T. & R. B. Ranken, W.S.

Counsel for the Respondents—Sir C. Pearson —Macfarlane. Agents—Waddell & M'Intosh, W.S.

Thursday, June 6.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

REID *v.* SOMERVILLE & COMPANY AND OTHERS.

Bankruptcy—Cessio—*Citation*—*Wilful Absence*—*Bankruptcy and Cessio (Scotland) Act* 1881 (44 *and* 45 *Vict. cap.* 22), *sec.* 9.

The Bankruptcy and Cessio (Scotland) Act 1881, sec. 9, provides—"If the debtor fail to appear in obedience to the citation under a process of *cessio bonorum* at any meeting to which he has been cited, and if the Sheriff shall be satisfied that such failure is wilful, he may in the debtor's absence pronounce decree of *cessio bonorum*."

In a petition for *cessio* a diet was fixed, but before the date thereof it was agreed in view of certain concessions of the debtor that the diet should be continued *sine die*. In disregard of this agreement the agents for the petitioning creditor moved the Sheriff-Substitute to fix an adjourned diet, which was not intimated to the debtor, and to which he was not cited. At the adjourned diet decree of *cessio* was granted "in respect of no appearance by or for the defender." *Held* that the defender had not wilfully absented himself from the diet, and the decree *reduced*.

Opinion that an interlocutor granting *cessio* under section 9 of the Bankruptcy and Cessio (Scotland) Act 1881 should contain a finding that the debtor had wilfully absented himself from the diet.

On 8th February Messrs Somerville & Company, wine merchants, Leith, presented a petition for *cessio* in respect of a promissory-note for £50, 13s. 6d., granted by John Reid, publican, Barachnie, Lanarkshire, on which there was an expired charge without payment. The proceedings were instituted by the directions of Robert M'Caig, debt collector, who acted for J. Somerville & Company, and the local solicitors were Messrs Rose & Shearer, solicitors, Airdrie. When the petition for *cessio* was presented Reid was a notour bankrupt within the meaning of the Bankruptcy and Cessio Acts, not being able to pay his way at that time. But he was possessed of means which, when ultimately realised in March 1888, should have been sufficient to discharge all his outstanding liabilities, and to leave a considerable surplus.

A diet of Court was fixed for 28th February, to which the debtor was duly cited.

Reid consulted Mr D. Munro, accountant, Glasgow, in whose favour he granted certain trust conveyances, and in view of these it was agreed on 13th February, between Munro and M'Caig, that the diet fixed should be adjourned *sine die*.

In disregard of this arrangement, on the 28th February the agent for the petitioning creditors obtained a continuation of the diet till the 16th March. No intimation of this was made to the debtor, or to anyone on his behalf, nor was he cited to the adjourned diet. On the 16th March the Sheriff-Substitute (Mair) pronounced this interlocutor—"In respect of no appearance by or for the defender, decerns the debtor John Reid to execute a disposition *omnium bonorum* to and in favour of Robert Burns M'Caig, accountant, Glasgow, who is hereby appointed trustee for behoof of the creditors of said debtor, dispensing with the trustee finding caution *hoc statu*."

Reid raised this action of reduction against Somerville & Company and M'Caig, and pleaded —"(1) Said decree of *cessio* having been obtained by the defenders in violation of the terms of the arrangement come to between the said D. Munro junior and the defender M'Caig, decree as concluded for ought to be granted. (2) The procedure in said petition of *cessio* having been illegal and disconform to the Cessio Acts and relative Acts of Sederunt, the said decree should be reduced in terms of the conclusions."

Proof was allowed, the import of which appears from the note by the Lord Ordinary