"The cases of *Robertson* v. *Rutherford*, July 18, 1840, 2 D. 1494, and *Whyte* v. *Lee*, February 22, 1879, 6 R. 699, on which the pursuer relies, do not appear to me to support his argument. But they are not directly in point, because the only question in this case is whether the language employed by the defenders in their letter imports an unqualified acceptance of the terms proposed to them; and that is a mere question of construction, upon which there is no light to be derived from decisions as to the interpretation of other documents in different terms."

The pursuer reclaimed, and argued—There was here a completed contract. The offer was unambiguous. The acceptance corresponded with the offer. The words "our interest" made no material alteration on the offer; they meant the acceptors' interest as described in the offer, which the acceptors copied out that there might be no mistake—*Proprietors of the English and Foreign Credit Company (Limited)* v. *Arduin and Others*, March 13, 1871, L.R., 5 Eng. & Ir. App. 64. The Lord Ordinary's view that the acceptance was so qualified as to amount to a new offer was erroneous. There was no room for a new bargain, because the sale was completed. That the acceptors regarded it as such was shown by the fact that they stated they had taken steps to carry it into effect.

Argued for the defenders—There was no completed contract. The acceptance did not correspond with the offer. It contained a material qualification. If it was not a qualified acceptance, the words "for our interest" were meaningless and unnecessary. In the *English and Foreign Credit Company* there was no adjection of a new term as there was here.

At advising—

Lord Justice-Clerk—The pursuer seeks to have the defenders ordained to deliver to him a valid disposition of the subjects described in the summons, and the demand is made in these circumstances:—Mr Logan, a house factor, in whose right the pursuer is, wrote a letter on 6th December 1886 to the Assets Company, in which he offered to purchase certain parts of the tenement at the south-west corner of the entrance from Argyle Street to St Enoch Square, Glasgow, these parts being described in detail. He named a price, and there were certain other stipulations in the offer which are of no importance in the consideration of this case. The answer to this offer was in these terms, and was written by the sub-manager of the company—"As authorised by the directors, and on behalf of this company, I hereby accept your offer, as copied on the other side, dated 6th instant, of £3000 for our interest in the property known as 'His Lordship's Larder,' St Enoch's Square."

Now, the pursuer asks that this acceptance should be read as if it had run thus—"We accept your offer for our interest as described by you," for unless the acceptance is exactly for the subjects the pursuer offered for there can be no valid acceptance. I am unable to adopt this reading. I read the letter of the company as it has been read by the Lord Ordinary. I think the acceptance was one simply for the defenders' interest in the property whatever that might be. I cannot read it as an acceptance by the Assets Company by which they accepted the pursuer's offer to purchase all the subjects described in the letter of 6th December.

There was no completed sale, the acceptance not corresponding with the offer. Further writing would have been necessary to complete a bargain.

I am therefore of opinion that the interlocutor of the Lord Ordinary is right.

Lord Young and Lord Rutherfurd Clark concurred.

Lord Lee—I agree with the opinion of the Lord Ordinary, and upon the same grounds.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for the Pursuer—Sir Charles Pearson—Low. Agents—Dove & Lockhart, S.S.C.

Counsel for the Defenders—Graham Murray—Salvesen. Agent—J. Smith Clark, S.S.C.

Wednesday, July 3.

SECOND DIVISION.

MACINTYRE AND OTHERS (MRS MITCHELL'S TRUSTEES).

Succession—Ademption of Legacy—Shares—Mortgage.

By the Paisley Corporation Gas Act 1870 the shares of the Paisley Gas Company were extinguished, and the Corporation was required to substitute therefor to the shareholders annuities which were declared to represent shares of the company.

In 1886 the Corporation, under the powers of their Act, redeemed these annuities, and by arrangement granted to the annuitants mortgages over the gas undertaking for the amounts due to them.

A mortgagee, who was originally a shareholder of the Gas Company, died in 1888, leaving a settlement dated 1884, whereby she directed her trustees to assign and transfer to her niece "the shares standing in my name in the Paisley Gas Company."

Held (Lord Rutherfurd Clark *diss.*) that the legacy had not been adeemed, and that the legatee, in the absence of any indication of intention to the contrary, was entitled to claim the testator's interest in the mortgage.

By the Paisley Corporation Gas Act 1870 the gas supply was placed in the hands of the Corporation. Section 20 of the Act provided—"In lieu of the dividend which the Board of Commissioners are by the Act of 1845 required to pay to the Paisley Gaslight Company, the Corporation shall pay to the several holders of shares in the company at the commencement of this Act . . . annuities . . . upon the amount paid up on each share of the company held by such shareholders respectively, and all the shares of the company shall, from and after the commencement of this Act, be held to be extinguished." . . . Section 23 enacted that "the annuities shall in all respects be substituted for and represent shares in the capital of the company; . . . and the annuities

shall be conveyed or affected by any deed, will, or other instrument disposing of or affecting such shares. Section 44 provided that the Corporation might from time to time, on the third Thursday of January or the third Thursday of July in any year, redeem any portion of the annuities.

At the date of the Act of 1870 John Mitchell held shares in the Gas Company to the nominal value of £150, and his wife Mary Barbour or Mitchell held shares therein to the nominal value of £50, and thereafter they held annuities corresponding to the said respective amounts. On the death of John Mitchell his wife was decerned his executrix, and on 17th September 1879 transferred the annuities held by her deceased husband to herself as an individual. This she was entitled to do.

In the beginning of 1885 the Corporation, acting under the Act of 1870, gave notice of their intention to redeem the gas annuities upon the third Thursday of January 1886, and advised Mrs Mitchell that the amount to which she was entitled in terms of the statute was £320. They further intimated that they were prepared to receive proposals for loans to replace a portion of the annuities, to bear interest at 3¾ per cent. Mrs Mitchell elected to lend the said sum of £320, and her proposal was accepted by the Corporation. No correspondence took place between the truster or her agent and the Corporation. The loan was arranged verbally between her then agent Mr James Gardner, writer, Paisley, and the Corporation. The latter drew a mortgage for the amount, and this was revised on behalf of the truster by her agent. The mortgage assigned to Mrs Mitchell "and her executors, administrators, and assignees, such proportion of the several rents, charges, and revenues (except the gas guarantee rate) accruing to the Corporation from the lands, property, and works vested in them under the authority of the said Act, and which have been or may be constructed and acquired by them for the purposes of that Act, and from the sale of gas and of residual products, as the said sum of £320 sterling doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rents, charges, and revenues."

Mrs Mitchell died on 19th February 1888, leaving a trust-disposition and settlement dated 2nd August 1884. By the fourth purpose of the settlement the trustees were directed, *inter alia*, "to assign and transfer to my niece Anne Jane Barbour the shares standing in my name in the Paisley Gas Company."

A special case was presented by (1) Mrs Mitchell's trustees, and (2) Anne Jane Barbour or Fergus to obtain the opinion of the Court on this question—"Is the party of the second part entitled to demand, and are the parties of the first part bound to assign and transfer to the second party the said mortgage for £320, or has the said legacy in favour of the said second party been adeemed, and does the amount thereof fall into residue?"

The trustees contended that the bequest was a special bequest of shares in the Gas Company; that it was therefore liable to be adeemed. Although it was possible that the change from shares to annuities might not have rendered this bequest null, when the security was changed into a loan to the company that could only be held as a new contract with the Corporation, and a consequent ademption of the legacy.

Mrs Fergus contended—There was no real change in the subject of the bequest. All that Mrs Mitchell knew she possessed was an interest in the society which provided gas to Paisley. When she had originally acquired that interest it was in the form of shares, and as such she always considered them. She desired to leave her niece her interest in the gas undertaking, and although she used the term shares, when no shares existed, that did not make the legacy abortive or adeemed. It was quite plain what she intended to do, and the Court should carry out her intentions.

Authorities—*Anderson* v. *Thomson, &c.*, July 17, 1877, 4 R. 1101; *Pagan* v. *Pagan*, January 26, 1838, 16 S. 383; *Harrison* v. *Jackson*, November 26, 1877, L.R., 7 C.D. 339; *Luard* v. *Lane*, June 8, 1880, L.R., 14 C.D. 856; *Chalmers* v. *Chalmers*, November 19, 1851, 14 D. 57; Roper's Law of Legacies, i. 331; *Stanley* v. *Potter*, July 16, 1789, Cox's Cases in Equity, 180; *Barker* v. *Rayner*, December 6, 1820, 5 Maddock's Rep. 208; *Gardner* v. *Hutton*, April 2, 1833, 6 Simon's Rep. 93; *Oakes* v. *Oakes*, March 11, 1852, 9 Hare's Chan. Rep. 666.

At advising—

Lord Justice-Clerk—The late Mrs Mitchell in 1879 was possessed of annuities representing certain shares of the Paisley Gas Company. On 2nd August 1884 she executed a trust-disposition and settlement, by the fourth purpose of which she directed her trustees "to assign and transfer to my niece Anne Jane Barbour the shares standing in my name in the Paisley Gas Company." Now, at that time—in 1884—she had no shares in the Paisley Gas Company, and no Paisley Gas Company existed, because the Corporation had converted the shares into annuities.

But a further complication took place between the date of the settlement in 1884 and the death of Mrs Mitchell in 1888. In 1885 the Corporation under the powers contained in the Paisley Corporation Gas Act resolved to redeem the annuities formerly granted, and these then ceased to exist as the shares had formerly done. The Gas Corporation was, however, willing that the sums to be paid for redemption of the annuities should remain with them as loans to the Gas Corporation at 3¾ per cent. interest. In Mrs Mitchell's case this sum was £320; she elected to lend this sum, the Corporation accepted the offer, and her interest in the gasworks was converted into a loan to the Gas Corporation. She very probably knew nothing about the change except that the form and not the substance of her security was being changed, the whole matter being verbally arranged by her agent.

She seems at the date of her will in 1884 to have had no idea that the shares had been changed into annuities, and there is no reason to suppose that after 1884 she knew that the annuities had been changed into a loan. She probably received her return, whether of dividend, annuity, or interest, without troubling herself as to the form of her security.

When we come to the deed we find it requires construction. She leaves certain shares to her niece, but she had no shares to leave; we must therefore look at her estate to see whether we

can arrive at what she intended to leave. We there find this loan to a gas undertaking in Paisley in substitution of the annuities which had been previously substituted for shares, and there can be no doubt that the sum in the loan is the sum which at the time the bequest was made was sunk in the annuity in substitution for the shares. This is not a case of the usual kind where a specific thing is knowingly dealt with by a testator so as to destroy or give away the subject of a bequest. There was no action on the part of this lady indicating any intention to get rid of this money in any way or to deal with the bequest so as to nullify it. The money remains invested where it was although the form of investment is changed. The essential features of ademption are lacking. There is no conversion of the subject so as to indicate an intention to depart from the previously evinced desire that the particular thing should go to a particular individual. It must be observed that none of the changes in form of this investment were voluntary changes. They were all forced upon her by the exercise of the powers given to the Corporation under the Act of Parliament, in the first place to bring the Gas Company to an end and turn its shares into annuities, and in the second place to change these annuities into loans to the Corporation, and it is plain that but for the exercise of these powers no change would have been made upon the investment at all. She knew that she had money invested with the Gas Corporation. The formal shape which her transactions with the Corporation took evidently did not influence her mind at all. She made up her mind that the money so invested was to go to her niece. There is no difficulty in identifying the sum. It is the only sum she can have referred to when she used the expression gas shares in her trust-disposition. Therefore at the date of the deed it is plain that she intended to give this money to her niece.

Now, the question is, does the conversion of the annuity into a loan in these circumstances extinguish the bequest. I am of opinion that it does not. I think we are entitled to consider the whole circumstances, and these, to my mind, indicate that the testatrix intended that the sum invested in her name with the Gas Corporation should go to her niece, and that the changes forced upon her by the resolution of the Corporation to redeem the annuities and borrow the money did not influence her mind at all.

I am therefore of opinion that we ought to find that the trustees must transfer to the niece the mortgage for £320.

Lord Young—I am of the same opinion. The legacy which this lady left to her niece was of "the shares standing in my name in the Paisley Gas Company." Now, that was certainly inaccurate language to describe her investment in the Gas Corporation's business at the time of the will. There is, however, no doubt as to what she intended to leave, or that the will would have been sufficient to carry out her intention so expressed. The language is still more inaccurate when we look at what she had to leave at the time of her death, but I think that her intention is still sufficiently indicated to compel her trustees to give effect to the bequest. She regarded the loan of £320 to the Gas Corporation as the same as the shares in the Gas Company which she had originally held, and which she had never parted with, although the form of the investment was changed, and she meant the sum invested in the gas-works to go to her niece.

On the facts of the case, and without departing from the principle of ademption at all, my opinion is that in this case the legacy was not adeemed, and that the legatee is entitled to it.

Lord Rutherfurd Clark—I regret that I cannot concur in the judgment which your Lordship proposes. It is very likely that the testator intended that the party of the second part should take the money which is in question. But I do not think that we are entitled to proceed on any such conjecture, however probable.

The trustees are directed to transfer to Anne Jane Barbour the shares standing in the testator's name in the Paisley Gas Company. At her death the testator had no shares in that company which under an Act passed in 1870 had been acquired by the Corporation of Paisley. But she was creditor in a mortgage for £320 over the undertaking belonging to the Corporation. The money so invested was the proceeds of an annuity which she had previously held from the Corporation, being the statutory equivalent which she received and was bound to receive for her shares in the Gas Company.

The 23rd section of the Act, by which the shares were converted into annuities, declares that "the annuities shall in all respects be substituted for and represent shares in the capital of the company . . . and the annuities shall be conveyed or affected by any deed, will, or other instrument disposing of or affecting such shares."

The testator's will was made after her shares had been converted into an annuity. I am willing to assume that the direction to transfer the shares would have been sufficient to dispose of the annuity. But to my mind this does not furnish a solution of the question before us. The annuity represents the shares, but there is no similar statutory declaration applicable to the mortgage.

The Corporation of Paisley had a statutory power to redeem the annuities which they had granted under the act of 1870, and they exercised that power. It was in the option of the testator to require payment of the redemption money or to take a mortgage over the undertaking. She chose the latter alternative. If she had taken payment, I conceive it to be clear that the legacy would have been adeemed, because the subject of it had ceased to exist. I see no reason to doubt that the same result would have followed if she had invested the money in another security. The fact that the money so invested could be shown to be the produce of the gas shares or of the gas annuity would not avail to preserve the legacy, for the simple reason that a bequest of the testator's gas shares could pass nothing but the shares themselves or their statutory equivalent. In my opinion a legacy of the shares will not pass the produce of the shares or any security on which that produce may be invested until there be some statutory enactment applicable to such produce or security similar to that which I have quoted regarding the annuity. For the same reason, I think that the bequest which we are now considering cannot transfer

the mortgage held by the testator over the undertaking belonging to the Paisley Corporation. That mortgage is neither gas shares nor has it been declared to be a statutory representative or equivalent for gas shares. It is nothing more than a security which the testator chose to take.

When she parted with her shares, or rather with the annuity which was the equivalent of these shares, the subject of the legacy perished, and therefore in my opinion the legacy is adeemed.

LORD LEE—The question in this case arises upon a direction in the trust settlement of the late Mrs Mary Barbour or Mitchell "to assign and transfer to my niece Anne Jane Barbour the shares standing in my name in the Paisley Gas Company."

It appears that at the date of her settlement (2nd August 1884) there were no "shares" in the Gas Company standing in the testator's name. The Act of 1870 narrated in the case had extinguished the shares, and substituted certain annuities. These were declared to be conveyed or affected by any deed or will disposing of or affecting such shares. But strictly speaking there was nothing standing in the name of shares in Mrs Mitchell's name. She was merely a creditor in a gas annuity due by the Corporation.

The question is, whether the subsequent redemption of this annuity in January 1886 under another clause of the same statute, and in terms of a circular issued by the Corporation proposing to allow the redemption money to be invested as a loan secured upon "the several rents, charges, and revenues (except the gas guarantee rate) accruing to the Corporation from the lands, property, and works vested in them under the authority of the said Act"—viz., the Act under which the Corporation acquired the gas works and gas undertaking—together with the testator's acceptance of that proposal, so completely extinguished the subject of the bequest that the legacy must be held to have been adeemed.

There is no doubt of the general rule of law that if the subject of the bequest ceases to exist the legacy is at an end by ademption. This may occur even without evidence of intention.

I think that in this case the question of ademption depends upon the intention of the testator. For unless it can be made clear that the subject of the bequest, as viewed by her, was brought to an end there is no ademption.

The testator's position at the time of her bequest was that of a creditor of the Corporation for an annuity security upon the gas undertaking, and that the only change which was effected was that she became in respect of her right to the redemption money a creditor in a loan for the capital value of the annuity secured in the same way.

It was not a change from the position of shareholder into that of creditor. Nor was it from the position of creditor to that of shareholder. And on the whole I think that the continuity of the subject of the bequest was sufficiently preserved to entitle the legatee, in the absence of any indication of intention to the contrary, to claim the testator's interest in the Gas Corporation loan as representing the annuity which was declared to be affectable by any deed or will disposing of the original shares.

I am of opinion therefore that the legacy was not adeemed, and that the Court should answer the first part of the question stated in the case in the affirmative.

The Court pronounced this interlocutor:—

"The Lords are of opinion that the party of the second part is entitled, and that the parties of the first part are bound to assign and transfer to the second party the mortgage for £320."

Counsel for the First Parties—Deas. Agents—Fodd, Simpson, & Marwick, W.S.

Counsel for the Second Party—Young. Agents—Winchester & Nicolson, S.S.C.

Wednesday, July 3.

SECOND DIVISION.

WYLIE & LOCHHEAD *v.* HORNSBY.

Cautionary Obligation — Guarantee — Signature upon Blank Sheet of Paper — Proof — New Firm.

A received a blank sheet of paper with a sixpenny stamp upon it from his son, with the request to sign across the stamp. He did so on the understanding that his son was to fill in simply a guarantee for £500. The son filled in the guarantee for £500 and added an obligation to pay certain premiums of insurance upon his life of which his father knew nothing. *Held* that A having given his son no authority to fill in this obligation was not bound to pay the premiums.

Observations upon sec. 7 of Mercantile Law Amendment Act.

James Hornsby junior, son of James Hornsby, builder, Gatehouse of Fleet, Kirkcudbright, was cashier and clerk to Messrs Wylie & Lochhead, Glasgow. He left that employment in 1873 to become a hotel keeper in Oban, and got advances in cash and furnishings from the firm. In security for these advances his father gave the following letter of guarantee—written by his son and signed by himself—to Messrs Wylie & Lochhead—"*Glasgow*, 14*th May* 1873.—Gentlemen,—We hereby guarantee payment of Six hundred pounds sterling by James Hornsby, Oban. Our liability will be held in equal proportions of that amount, and will cease when his debt will have been reduced at 31st December of any year by the said sum.—Yours respectfully," &c. It was intended that a Mr Robert Bell should also sign, but this was never done.

In the following year, 1874, James Hornsby junior removed to a hotel at Gairloch, and agreed to obtain from his father a letter of guarantee for £500 in favour of Wylie & Lochhead, who had made further advances, in lieu of the previous letter of guarantee which was cancelled. He accordingly handed to Wylie & Lochhead the following:—"*Gatehouse*, 31*st January* 1874.—Gentlemen,—I hereby guarantee payment of £500 stg. by my son James Hornsby, of the Gairloch Hotel, and