LORD M'LAREN—I agree with your Lordship on all points.

LORD KINNEAR—So do I.

LORD PEARSON—I also agree.

The Court answered the first three questions of law in the affirmative, found it unnecessary to answer the other questions of law, and decerned.

Counsel for the First and Fourth Parties—D. Anderson. Agents — Steedman, Ramage, & Co., W.S.

Counsel for the Second and Third Parties —Macgregor. Agents—Ketchen & Stevens, S.S.C.

Tuesday, November 24.

FIRST DIVISION.

[Lord Johnston, Ordinary.

HUNTER'S EXECUTRIX *v.* GENERAL ACCIDENT FIRE AND LIFE ASSURANCE CORPORATION, LIMITED.

Insurance—Accident—Conditions of Policy —Claim to be Made "within Twelve Months of Registration of Holder's Name"—No Regular Register—Date of Registration Held to be Date when Insurer Informed that Registration had been Made.

A coupon insurance policy provided, *inter alia*, that a claim must be made within twelve months of the registration of the holder's name. A applied for registration on 25th December 1905. On 4th January 1906 he received a letter from the company, dated 3rd January 1906, enclosing an official acknowledgment, dated 29th December 1905, of the registration of his name. It was impossible to say exactly what was the actual date of A's registration, as the company kept no regular register. In practice, however, the applications were, on receipt, registered by being stamped, dated, and filed, after which acknowledgments were issued to the couponholders intimating that they had been duly registered. A was injured in a railway accident on 28th December 1906, and died the following day. Notice of claim was given on 2nd January 1907.

Held that as the company kept no regular register, and could not say exactly when A's name had been registered, the date of registration must be held to be the date when they informed him that his name had been registered, and that accordingly the claim was timeously made.

On 21st February 1907 Mrs Janet Armstrong Robertson or Hunter, Wilton Hill, Hawick, widow and executrix of Adam Turnbull, commercial traveller, Hawick, brought an action against the General Accident Fire and Life Assurance Corporation, Limited, for payment of £1000, the sum contained in a coupon insurance policy of which he was the holder.

The following narrative is taken from the opinion of the Lord President—"This is an action raised by Mrs Hunter, the widow and executrix of the late Adam Turnbull Hunter, commercial traveller in Hawick, against the General Accident Fire and Life Assurance Corporation, Limited, in which the pursuer seeks to recover the sum of £1000 in respect of an accident insurance policy which she alleges was held by the deceased. The deceased was injured in the Elliot Junction railway accident on 28th December, and died on 29th December 1906.

"Now the policy held by the deceased had its origin in the following circumstances. The deceased had been a purchaser of a Letts' Diary, and in Letts' Diary there was a coupon. The coupon, after setting forth the name of the company, its offices, and so on, reads as follows:—'One thousand pounds will be paid under the following conditions by the above Corporation to the heirs, executors, or administrators of any person killed solely and directly by bodily injuries received in an accident to'—and then comes various forms of travelling, including, of course, railway travelling; 'or who shall have been fatally injured thereby should death result within three calendar months after such accident.' There are other stipulations as to smaller sums being paid under other conditions of transit, and still smaller sums if the injury was not death, but the loss of both arms and legs, or an arm and leg, by separation above the wrist or ankle. But the whole of these stipulations are conditioned by this proviso:—'Provided that at the time of such accident the person so killed or injured was the owner of the publication in which this insurance coupon is inserted, that such person had duly caused his or her name to be registered at the head office of the Corporation in Perth, and had paid the fee for registration and cost of acknowledgment, and that notice of claim is sent to the registered office of the Corporation at Perth within fourteen days of the occurrence of the accident, and that such claim be made within twelve months of the registration of the holder's name.' Attached to the coupon there is a form of application for registration, which can be torn off, printed in these terms:—'To the General Accident Assurance Corporation, Limited, General Buildings, Perth, N.B.—In accordance with the terms of the insurance coupon to which this is attached, I request you to register my name as below—for which purpose, and also to cover cost of acknowledgment, I enclose remittance value 6d.' Then there are blanks for full name, full address, profession or occupation, and date.

"Now it is admitted that the deceased Mr Hunter was the proprietor of a Letts' Diary, as such had the coupon, detached from that coupon the form of application for registration, filled it up by inserting his name and address and the date, 25th

December 1905, and sent it to the office of the company for registration. He sent it with a letter of the same date, in which he said—'Enclosed please find my coupon fully signed. I take it the 6d. covers all the policy, both accidents and sickness. Is that so? What is the 1s. fee for? Your kind reply will greatly oblige.' The letter was written on the 25th December, that is to say, on Christmas Day, and the day after Christmas was observed as a holiday by the officials of this company, and therefore nothing was done about the coupon. The first that Mr Hunter heard of it was that in the course of post of the 3rd January, that is to say, on the 4th January, he got a letter from the Insurance Company dated Perth, 3rd January 1906, in the following terms—'Dear Sir, *re* Messrs Letts' coupons. Enclosed please find official acknowledgment of the registration of your coupon, and in reply to your inquiry, same covers you for accident and sickness as specified thereon.' The enclosure is an enclosure in these terms—'*Perth*, 29th December 1905. A. T. Hunter, Esq. Dear Sir—We have received your intimation of the purchase of Messrs Charles Letts & Company's insurance coupons, with 6d. in stamps enclosed, and have registered your name as being insured against accidents in the United Kingdom and on the Continent of Europe in terms of the said coupon.' The notice of the claim was given by the widow of the deceased to the company on the 2nd January 1907.

The defenders pleaded, *inter alia*—"(2) In respect that the accident to the late Mr Hunter did not occur, *et separatim* that the claim in respect thereof was not made, within twelve months of the registration of Mr Hunter's name, the defenders should be assoilzied, with expenses."

On 27th November 1907 the Lord Ordinary (JOHNSTON), after a proof—the import of which sufficiently appears from his Lordship's opinion—granted decree as craved.

Opinion.—"... [*After narrating the terms of the policy*] ...—One of the principal difficulties in the present case is to determine what the company mean by registration, and whether indeed anything which they do can legitimately bear that name. To clear up the company's practice in general and to ascertain what was done in Mr Hunter's case in particular, the parties have agreed by joint-minute on certain facts and supplemented these by a short proof.

"The practice of the company is as follows:—On receiving a counterfoil or form of application for registration at their office in Perth, either over the counter or by post, it is the duty of a clerk to stamp it with an india-rubber stamp bearing the amount of the remittance or premium, and the date of the document being received. To facilitate this stamping the counterfoils are sorted into bundles according to the remittance, whether 2d., 6d., or 1s. At the close of the same day the gross number of counterfoils of each class received are entered in the respective columns on one line of the account book, the gross number of counterfoils of all grades is entered in the next column, and the amount of money received in remittances or premiums received is entered in the last. I do not think that on any conceivable view can this book be termed a register. The entries are in gross and not in detail, and the object is not to record the insurances but to record the cash received during the day, and as a check upon the correctness of the cash the gross number of the insurances of each grade producing the cash are inserted.

"So far the evidence is clear as to the company's practice, but in what follows there is indefiniteness because there is irregularity, owing to the business being of an irregular or spasmodic character, and in one important point the evidence is unsatisfactory, notwithstanding the pains taken by counsel to come to an agreement about facts.

"What follows, though in what order is not made certain, is—(1) the marking on the counterfoil of a running number; (2) the acknowledgment, of which No. 21 of process is a blank form, and No. 7 of process that sent to Mr Hunter; and (3) the filing in alphabetical order of the counterfoils in small bundles of 50 or 100 according to circumstances, of which bundles No. 22 of process is an example. As to these bundles there is this to be noted—as they are arranged alphabetically it follows that they are not in the order of their running numbers, and as the counterfoils come in irregularly throughout the year it depends on the supply how many days are included in a particular bundle. For instance, No. 22 of process contains the letter 'H' for 27th and 28th December 1905, but when it was made up nobody knows.

"From a consideration of the above, taken in connection with the presumption from circumstances, I conclude, for it is not definitely proved, that the running number is only put on the counterfoil at the same time as the acknowledgment which refers to it is filled up, and that the filing in bundles is the last operation. From a comparison of Nos. 21 and 7 of process it is apparent that the acknowledgment form has not the running number on it when blank, but that the running number is put on by some method of consecutive printing when the acknowledgment is being filled up. Further, I conclude that while the date stamp is impressed on the day of receipt upon the counterfoil, the running number is put on, the acknowledgment filled up and dispatched, and the counterfoil filed at no definite interval or intervals after receipt of the request for registration.

"To take Mr Hunter's case as a particular example. He bought his Letts' Diary on or before Christmas Day 1905. He filled up and posted the counterfoil on 25th December. It was admittedly received at the company's office in Perth on 26th December. As the company kept the 26th as well as the 25th as a holiday, it was not opened till 27th, and on that day was impressed with the stamp $\frac{6d}{27\ Dec.\ 1905.}$

It is not definitely proved when it received its running number, &c. But I must assume that it was numbered $\frac{\text{L C.}}{2}$ 7727 (which means $\frac{\text{Letts' Continental}}{\text{2nd year}}$ number 7727) on 29th December 1905, the day on which the acknowledgment was filled up. Though filled up on 29th December this acknowledgment was not forwarded, for a special but insufficient reason, until the 3rd of January 1906, accompanied by an explanatory letter.

"It will be apparent that as the accident occurred on 28th December 1906, much depends on the date of registration. If the date of registration be held to be the 26th of December 1905, as maintained by the learned Solicitor-General, the accident would have occurred more than twelve months from the date of registration. If the date of the registration be held to be 28th December 1905, or any later date, then the accident would have occurred before the expiry of twelve months from the date of registration.

"I asked the learned Solicitor-General what was the company's register, and he candidly admitted that they had none, and looking to the nature of the business could not afford to have one. But he maintained that registration in the sense of the company's practice was the act of stamping the counterfoil with the date of receipt, and if this were not accepted, then as registration might, and possibly should have been, effected on the date of receipt, that that date must, in a question between the insurer and the insured, be held to be the date of registration. If the stamping with the date of receipt were not registration, the learned Solicitor-General declined to tie himself to any other date. No other date, in fact, would suit his purpose.

"I am of opinion that the mere stamping of the date of receipt upon the counterfoil was in no sense registration, but I am further of opinion that the principle *quod fieri debet infectum valet*, while it may be appealed to by the party creditor in an obligation *ad factum præstandum*, who seeks to enforce the obligation, cannot as of right be founded on by the debtor in such obligation in order to avoid the obligation. Though counsel for the defenders declined to suggest any other act than the stamping of the counterfoil with the date of receipt as the act of registration, I am inclined to think that the nearest thing they can show to registration is the marking the counterfoil with its running number. For I cannot hold the act of filing the counterfoil to be such. It is too impalpable and too indefinite as to time. Now I hold the marking of the running number to have taken place on the 29th December 1905, just before filling up the acknowledgment, which was ultimately forwarded to Mr Hunter on 3rd January following. What then does the acknowledgment say? It says this—'Perth, 29/12/1905. A. T. Hunter, Esq. No. $\frac{\text{L C.}}{2}$ 7727. Dear Sir,—We have received your intimation of the purchase of Messrs Charles Letts & Co.'s insurance coupon, with sixpence in stamps enclosed, and have registered your name as being insured against accidents, &c. In future communications please quote above number,' referring to the running number marked, as I hold *unico contextu* with the filling up of the form of acknowledgment, on the counterfoil. I think that the insured was entitled, as he had no other information as to the date of registration, and was not bound to inquire into the company's practice, to accept as fact that the registration had at anyrate not been made earlier than the date which the letter of acknowledgment stating that his name had been registered bore. It was essential that the assured should know the date of registration, with a view to the renewal of the insurance if that was desired, and I hold that the company are barred from trying to fix the assured with any earlier date than that of their own acknowledgment in order to avoid liability owing to his failure to renew. The date of actual registration is the earliest point of time at which the company can maintain that there was a completed contract. Personally I do not think that there was a completed contract until the company had not only registered Mr Hunter's name but issued their acknowledgment. For I am not to be held as determining that there was any contract until the issue by the company of something equivalent to an acceptance of Mr Hunter's offer. I find that in the letter of acknowledgment, bearing a lithographed signature, which in the circumstances must be held to bind the company. But though dated 29th December 1905, this acknowledgment was not issued till 3rd January 1906. But for the present purpose it is enough, in my opinion, to assume it issued of the date it bears.

"If, then, the date of registration is held to be the 29th December 1905, the accident occurred within twelve months of that date.

"But the defenders maintain another ground for avoiding liability. They say that the insurance is under the condition (4) that notice of the claim is sent to their registered office within fourteen days of the occurrence of the accident (this they admit was done), and (5) that such claim be made within twelve months of the registration of the holder's name (this they say was not done, whether the date of registration be, as they hold, the 26th December 1905, or, as I hold, the 29th of that month). I find myself unable to give effect to this contention, as I think, in view of the whole terms of a somewhat confusing document, that to do so would disappoint the natural and just expectation of the ordinary person to whom the document is addressed (*Life Association of Scotland* v. *Foster*, 11 Macph. 351, *per* Lord President Inglis at 358, and Lord Ardmillan at 371). At the outset of the coupon insurance policy it is represented to the members of the public, that if their death is occasioned by railway accident they will, on insuring with the company receive £1000 should death result within three calendar months of such acci-

dent. I do not think that any ordinary person reading the subsequent conditions would arrive at the conclusion that if he was injured within twelve months, and notice of the accident was duly given, his representatives were to be cut off from all claim if he lingered on for a few days beyond the twelve months, though dying within three months of the accident, so that notice of the actual death could not be given within the twelve months. If the company mean this by their so-called policy, I think they should state it in such language, and print it not in the minute pica of No. 13 of process, but in such legible type as would make it clear to those to whom the document is addressed, and give them a chance of understanding it. Instead of that, they veil what they now say is their meaning under a cryptic distinction between 'notice of claim' and 'making of claim.' I am sure that no ordinary insured would read the first as 'notice of a contingent claim,' which, if it was not, in certain cases such as the present, preceded by the second, 'the making of actual claim' free from any contingency, would be futile. I think that whatever meaning may be deduced from the terms used in the different parts of the coupon by their piecing together by a skilled lawyer, the ordinary reader to whom these terms are addressed would understand them to mean 'provided your claim attaches within twelve months of the date of registration of your name by reason of your accident within that time, and you give notice of your accident within fourteen days of it, and you die within three months of the accident, your representatives will be paid.'

"The defenders commence by advertising a wide and general proposal to the public in unmistakeable language. If this is to be whittled down, it must be done so clearly, and so that those to whom it is addressed may understand it. The contract is not what the defenders mean to deduce from misleading and inconsistent phrases, but what those in the position of the pursuer will reasonably suppose their general statement in its entirety to convey. The insured is not to be caught by allowing the company to put a different interpretation on the word 'claim' in two consecutive lines of their policy, without any explanation to their customers that they intend a distinction, and what that distinction is.

"I do not think that any ordinary person reading this document could conceive, for instance, that this Mr Hunter injured within the twelve months, and actually dying not merely within three months of the accident, but within the twelve months, his representatives would be denied the benefit of the policy, because though they could give notice of the accident within fourteen days of its date, they could not give notice of the death before the lapse of the twelve months. If the company mean that, why do they not say in the forefront of their advertisement after the statement 'should death result within three calendar months after such accident,' in plain words, 'provided it occurs within twelve months of the registration of the holder's name, and notice is given of the accident within fourteen days of its occurrence.' As I think that this document must be interpreted *contra proferentem*, and would reasonably be interpreted as I have indicated by the class to whom it is addressed, I reject the defenders' second line of defence.

"But were it necessary, I should be prepared to hold that this contract was not complete until actual issue on 3rd January 1906, of the acknowledgment, on the day before which in the following year, the notice not only of the contingent claim, but of the actual claim, was given. If they chose to hold up their acknowledgment for some days, I do not think that that entitled them virtually to antedate their acknowledgment in a question with the late Mr Hunter and his representatives, or fixes him and them with a knowledge of his registration prior to 3rd January 1906."

The defenders reclaimed, and argued—The Lord Ordinary was wrong in holding that the contract was not completed till acknowledgment had been made by the defenders of the receipt of Mr Hunter's application. The contract was completed by his acceptance of the offer, on 25th December 1905, which was received and stamped by the defenders on 27th December following. This date must be taken as the date of registration. The defenders were bound to register the coupons at once, and if the accident had happened the day after Mr Hunter's coupon had been received they could not have escaped liability. *Esto*, however, that the date of registration was 29th December 1905—the date of the official acknowledgment of registration—the claim was not made till 2nd January 1907, so that in either case the policy had expired. The contract was enforceable any time within twelve months of the date of registration. That period having expired, the pursuer's claim came too late.

Argued for respondent—The Lord Ordinary was right. The question was not as to the date of the contract, but as to the date of the conditions. The true date of registration was neither 27th December nor 29th December 1905, but 3rd January 1906—viz., the date when intimation was given to Mr Hunter that his name had been registered. The coupons had to be stamped, dated, and filed, so that until notice of registration had been given it was in the defenders' power to accelerate or to postpone registration according as it suited them to do so. It was not till the intimation of 3rd January had been given that this was beyond their power. The defenders having kept no register in the proper sense of the term, must *in dubio* be held strictly to such of the dates admitted as were least favourable to their contention. In these circumstances the true date of registration, as against the company, was 3rd January 1906. Reference was made to the *Printing, &c., Company of Agence Havas, Limited*, [1894], 63 L.J. Ch.

536, *per* Lindley, L.J., at p. 539. The insured was entitled to know when his contract would end, and he could not know that until he knew that his name had been registered. It was not till 3rd January 1906 that that information was sent him.

At advising—

LORD PRESIDENT—. . . [*After narrative, supra*] . . .—Referring to the conditions under which payment is made and which are precedent to payment being made, it is quite clear that all these conditions have been complied with, with the possible exception of one upon which the argument in the case turns. It is quite certain that Mr Hunter was the owner of the publication, and that he had paid the fee for registration. It is also quite certain that notice of claim was sent to the registered office of the company within fourteen days of the occurrence of the accident. The point on which parties are not at one was whether such a claim was made within twelve months of the registration of the holder's name.

I may say, first, that as regards the construction of the sentence, that I do not myself think that the construction of the sentence really causes any difficulty. I think it is quite clear that there are two things which are separate and which must both be complied with. The notice of claim must be sent within fourteen days of the occurrence of the accident, and the claim made must also be within twelve months of the registration of the holder's name. The question in this case is, was the claim made within twelve months of the registration?

Reading that policy, one would naturally suppose that the company kept a register in which were duly inserted these applications as they arrived, and if a register was regularly kept, then, subject of course to objections based upon what might be called *laches* of the company in not inserting the applications, I take it that the date of insertion in the register would be conclusive. But, curiously enough, it seems that the company keeps no register in the proper and strict sense of the word—that is to say, it does not keep a regular register book in which these applications are entered as they come in. Accordingly, the real dispute here has turned on the question of what particular action of the company it is that is equivalent to registration. The practice of the company is detailed by a witness who was examined, one of the female clerks of the company, and it is also set forth by the Lord Ordinary. The company has argued that the true date of registration is the date of receiving the application, when the date is put upon it with an impressed stamp.

I think that in a matter like this the company must be held to the solemn statement which it made, no doubt after full consideration of the matter when the pleadings in the case were adjusted; and when I go to the pleadings I find this in answer 3—"Explained that by the practice of the defenders all coupon slips received from holders of Letts' Diary, with the necessary remittances, are, on receipt registered by being stamped, dated, and filed, and thereafter acknowledgments are sent out on printed forms intimating to the coupon holders that they have been duly registered." There being no regular register, I think that by that statement the company have tied themselves down to the view that registration is only fully effectuated when they are stamped, dated, and filed.

It appears from the evidence that I have already quoted that it is not quite easy to say of any particular application exactly when it was filed, because practically the officials in the defenders' office get through the work as it comes—that is to say, if there are a great many applications it will take longer to get them all stamped, dated, and filed than if there are few. In the same way, there having been at this particular time a holiday immediately after the application came in, the operation was no doubt delayed more than it would otherwise have been.

In this state of uncertainty, there being no regular register, and there being no possibility of being absolutely certain when the operation is complete, I think the company cannot complain if it is taken as against them that the operation is complete when they inform the other party that it is complete. Accordingly I think here the only date of registration which it is safe to go upon is the date when it was communicated to the deceased, namely, the 3rd of January. If that is so, that of course ends the case, because the notice of claim is still in time, as it is still within the year.

Accordingly I come to the same conclusion as the Lord Ordinary, although not upon precisely the same grounds. And, in particular, I cannot quite agree with him as to the question of contract. I think the contract here was undoubtedly made by the sending of the deceased's communication to the Insurance Company—in other words, I think that the communication embodied in the coupon is an open offer which is made into a contract by acceptance, and that it does not require a further acceptance on the part of the company. But that does not really matter, because according to the terms of the contract the claim has still to be made within the year, and for the reasons I have explained I think the claim was made within the year of registration. Accordingly I am of opinion that we should adhere.

LORD KINNEAR — I also think that the Lord Ordinary has come to a right conclusion. In my view there was a valid contract of insurance completed between the company and the deceased Mr Hunter by his acceptance of the company's offer to insure. If the offer expressed in the terms of the company's advertisement had been made directly to Mr Hunter as an individual, and he had accepted it in terms for himself, there could have been no question whatever as to the completion of a valid contract. It is true, as the Lord Ordinary points out, that the document containing the offer is not probative, but it can be

proved, and as matter of fact in this case its authenticity is not disputed. If that be so, it makes no difference, in my opinion, that instead of being addressed directly to an individual, it is a general offer made to all persons to whose knowledge it may come and which may be accepted for himself by anyone who receives it.

It is suggested that this is making a contract by an advertisement, but it is none the worse for being an advertisement if it is a distinct and definite offer unconditionally accepted. The instances of such a contract are familiar. They are to be found in the books, and perhaps the most common example is a contract made by advertisement undertaking to give a definite reward for the performance of certain services. It is held that the offer is accepted by the person who performs the services, and thereupon makes a claim, in respect of his having done so, to the reward in terms of the offer. But the principle is quite clear—that when a general offer addressed to the public is appropriated to himself by a distinct acceptance by one person, then it is to be read in exactly the same way as if it had been addressed to that individual originally.

There may, of course, be a question—it is always a question of construction merely—whether a public announcement of this kind is in fact an offer, or whether it is a mere advertisement of a desire on the part of the advertiser to do business in a certain way. In the latter case it is not a contract; but if it contains a definite offer undertaking to pay money upon perfectly distinct specified conditions, then it is an offer, and when anyone into whose hands it has come accepts the terms and performs the conditions, there is to my mind a perfectly valid contract. The real question in this case—I mean the question that was most seriously disputed, is, as your Lordship has pointed out, whether the terms of the offer have been satisfied in respect of the registration of the coupon—the due registration of the coupon at a certain date.

Now upon the terms of the advertisement it seems to me to be clear enough that the company undertakes the duty of registration. The condition is that a claim is to be made within twelve months of the registration of the holder's name. Registration can be made by the company only, but they keep no formal register, and they say that the way in which they register their insurances is that the coupon slips which they receive with the necessary remittances are registered by being stamped, dated, and filed, and thereafter acknowledgments are sent out intimating to coupon holders that they have been duly registered. I do not doubt that it is perfectly lawful to keep a register by filing the documents which constitute a title, just as it is by keeping a book in which the holders of such documents are registered in order. It is a perfectly lawful and effectual method of keeping a register.

But then it is a more complicated operation, or rather series of operations, as it is described by the defenders, that is followed, and if they choose to keep their register in that form, it lies upon them to prove that the whole operation was completed upon a certain date, if they are to allege that the completion of the registration excludes a claim in respect of the accident having occurred beyond the term of liability. The insured knows nothing except what he is informed, and they undertake to perform this particular duty in their own office. In this case it appears to me that they have not proved that the whole process which they say amounts to registration was completed before 29th December. I agree with your Lordship, for the reasons you have given, that it must be taken against them that the process was not completed until they informed the insured by the letter of 3rd January that registration had been duly made. If that is to be taken as the date, there is of course an end of the question, because the accident happened on the 28th December.

But then it might be argued that the completion of the registration itself was not determined by the date of the letter communicating the fact to the insured, but by the date of the official acknowledgment which they sent to the insured, that is to say, the 29th of December. If that were so, it appears to me that there would be good ground for the pursuer's argument that the conditions that the claim shall be made within twelve months after registration would still be satisfied. The company is admittedly liable for an accident occurring on the last day of the twelve months, and the clause can hardly be held to mean that in such a case the claim must be intimated to the company on the day of the accident, and that then the claimant is to have fourteen days to give notice that he is going to claim. There seems to me, therefore, to be ground for Mr Thomson's argument that the true meaning is that the claim shall emerge, that is, that the cause of action shall arise within twelve months.

I prefer, however, the view that your Lordship has taken that the true date for the purposes of this action must be taken to be the date when the company informed the insured that they had duly registered his coupon, and that they cannot be heard to say that they did so before that date to the effect of limiting the period within which he is to have a claim. I should desire to say at the same time that I do not think that can be laid down as a proposition of universal application in all circumstances in which the question can be raised, because, as your Lordship has pointed out, it is quite possible that registration may be unduly delayed by the default or unnecessary delay of the company whose duty it is to register, and that they could not be allowed to take advantage of their own delay or their own default in order to limit the claims of the insured. It is enough for the purposes of this case that they have to my mind failed to prove any other date except the date when they told the late Mr Hunter that his coupon was duly registered.

LORD MACKENZIE—I agree with your Lordships that the issue of the coupon by the Insurance Company was an offer; that the request for registration was an acceptance by the deceased Mr Hunter of that offer, and that thereby the contract was constituted. The contract provided that in the event of such an accident as the deceased met with, the claim was to be made within twelve months of registration. For the reasons explained by your Lordship in the chair, I am of opinion that the date of registration must be held to be the 3rd of January 1906; that when this claim was made on the 2nd of January 1907 it was made in due time; and that therefore the executrix is entitled to recover.

LORD M'LAREN and LORD PEARSON were sitting in the Extra Division.

The Court adhered.

Counsel for Pursuer (Respondent)—Dean of Faculty (Scott Dickson, K.C.) — W. Thomson. Agents—Steele & Johnstone, W.S.

Counsel for Defenders (Reclaimers) — Solicitor-General (Ure, K.C.) — Constable, K.C.—Orr Deas. Agents—Bonar, Hunter, & Johnstone, W.S.

Thursday, November 26.

SECOND DIVISION.

[Lord Dundas, Ordinary.

HARVEY *v.* M'LACHLAN'S TRUSTEES.

Succession — Testament — Construction — Bequest of Whole Estate to "My Spouse and My Heirs and Assignees"—"And" Equivalent to "Whom Failing"—Error in Use of Printed Form—Marginal Notes on Printed Form.

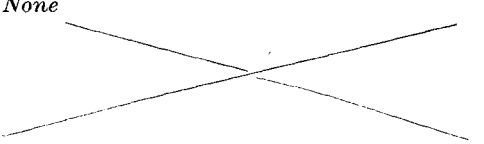
A will executed by A on a printed form, in which blanks were left to be filled in by any testator who might use it, bequeathed his whole estate, heritable and moveable, to "*my spouse* . . . and *my* heirs and assignees"—the words in italics being in writing and those in ordinary lettering being printed. A further nominated his wife, who survived him, to be sole executor, and imposed upon her "the burden of the payment of my whole just and lawful debts and sickbed and funeral charges."

Held that the wife was entitled to the whole estate—*per* the Lord Justice-Clerk and Lord Dundas, on the ground that that was the intention of the testator, and that an error had been made in filling in the printed form by inserting the word "my" for "her" before the words "heirs and assignees"; *per* Lord Low and Lord Ardwall, on the ground that the word "and" occurring in the clause "and my heirs and assignees" did not import a disposition to the wife and the heirs and assignees of the testator jointly, but must in the circumstances of the case be read as meaning "whom failing," and as intending to introduce a conditional institution of the testator's heirs.

Observed that marginal printed directions for filling up the printed form, appearing on the document, must for the purposes of the case be regarded as *pro non scripto*.

Francis Wood Clark and another, trustees acting under the trust-disposition and settlement of the deceased Mrs Margaret Scotland or M'Lachlan, who resided at 89 Lochleven Road, Glasgow, widow of the late Donald M'Lachlan, venetian blind manufacturer, Glasgow, brought an action of multiplepoinding and exoneration, the fund *in medio* being one-half of the said Donald M'Lachlan's estate. Claims to the whole fund *in medio* were lodged (1) by the said trustees, and (2) by Mrs Catherine Mullen or Harvey, wife of James Harvey, residing at Providence, Rhode Island, U.S.A., and others, who claimed to be the next-of-kin and heirs in moveables of the said Donald M'Lachlan.

Donald M'Lachlan died on 27th April 1902, leaving a testamentary deed dated 4th June 1877 (recorded 1st May 1902), consisting of a printed form of general style with blanks in the form filled in in writing. This deed was, so far as material, as follows, the written portions being in italics—"I, *Donald M'Lachlan, Venetian Blind Manufacturer*, residing in *Twenty-two Clarendon Street, New City Road, Glasgow* (a), being desirous of settling the succession to my Means and Estate so as to prevent disputes after my decease, Do therefore Give, Grant, Assign, Dispone, Devise, Legate and Bequeath to and in favour of *Margaret Scotland or M'Lachlan, my spouse*, residing in *Twenty-two Clarendon Street, Glasgow* (b), and *my* (c) heirs and assignees, heritably and irredeemably All and Sundry" . . . [testator's whole estate] . . . : "And I hereby Nominate and Appoint the said *Margaret Scotland or M'Lachlan, my spouse*, to be my sole executor and universal intromitter with my moveable means and estate: But these presents are granted and shall be accepted by the said *Margaret Scotland or M'Lachlan, my spouse*, and the foresaid lands and other heritages hereby conveyed are disponed with and under the burden of the payment of my whole just and lawful debts, and sickbed and funeral charges, and of the payment of the following legacies, viz., (d) *None*



And I reserve my own liferent use and enjoyment of the premises and full power and authority to me, at any time of my life, and even on deathbed, to cancel or alter these presents at pleasure: And I dispense with delivery hereof: And I consent to registration for preservation. In witness whereof I have subscribed these pre-