

assume in the appellant's favour that this was not so.

It has been often said in these cases, and it cannot be too steadily kept in view, that these provisions in the Poor Law Act as to settlement are provisions of positive law, and that they do not carry out any natural or moral obligation. There is no natural or moral obligation on a man, simply because he lives in a particular ecclesiastical division, to support another man who lives or was born in the same ecclesiastical division. It is in vain to look for any judicial principle in cases of settlement, the only legitimate question being, what has the statute provided? In both the cases before us I think the contest is between the parish of the pauper's birth and the parish where his wife and family resided. In the case of *Roger v. Harvey* I do not think it can be maintained that the pauper's settlement was in Clatt, for this plain reason, that the pauper's absence therefrom on the occasions when he returned to his house are sufficient to destroy the continuity of residence required by the statute. In the case of *Simpson v. Kennedy* there is no parish other than that of Kincardine O'Neil, where the pauper's house was, in which he could be said in any sense to have resided for five years.

Something like a principle has sometimes been evolved from the provisions of the Poor Law Act, viz., that the parish which has obtained the fruits of a pauper's earnings is liable for his support. I think the principle is somewhat fanciful, because when we come to the case of a birth settlement the liability of the parish of birth depends in no degree on any benefit derived from the pauper's industry, but is matter of positive enactment, and that solely because it is essential to have some law by which a radical and ultimate liability should be established. But it is plain that equity, if we are at liberty to take equitable considerations into view at all, is against the parish of residence. So far from thinking that the balance ought to be held against the parish of birth, as has been sometimes contended, I should rather be inclined to lay down the contrary rule, viz., that the presumption ought to be against the parish of residence. Looking to the common sense of the matter, the pauper in each of the cases before us has been the tenant and occupant of a house in a particular parish for upwards of twenty years. That looks very much as if he resided there. But it is contended that because he worked outside that parish, the parish of his birth must be liable. Now keeping in view the decisions in *Greig v. Miles and Simpson*, 5 Macph. 1132, and *Cruickshank v. Greig*, I do not think that contention can be successfully maintained. I think that if a man maintains a house where his wife and family reside, and whither he returns when his avocations permit, that house is in general his residence in the sense of the Poor Law Act. I do not say that the case of a farm labourer is necessarily identical with that of a sailor, for a sailor while at sea cannot possibly acquire a settlement if the house in which his wife and family reside is not to be regarded as his residence. In the case of a labourer it is perhaps more a question of circumstances, and less may suffice to retain a settlement than to acquire one. To hold that a man resides where his wife and family are is, I think, the general rule, though there may be cases to which it does not apply. But I am clearly of

opinion that the rule does apply to cases like the present, where the paupers have all along worked in neighbouring parishes and returned to their homes at short intervals.

LORD ORMDALE and LORD GIFFORD concurred.

The Court adhered in both cases.

Counsel for Pursuer (Respondent)—Darling—Dickson. Agent—George Andrew, S.S.C.

Counsel for Harvey (Appellant)—Moncreiff—Murray. Agents—Gibson-Graig, Dalziel, & Brodies, W.S.

Counsel for Morison (Respondent)—Dean of Faculty (Fraser)—Reid. Agents—R. C. Gray, S.S.C.

Wednesday, January 15.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION— (OSWALD'S CASE) OSWALD AND OTHERS (OSWALD'S EXECUTORS) v. THE LIQUIDATORS.

Public Company—Winding-Up—List of Contributories—Right of Representatives of Deceased Trustee to be Removed from List.

The names of several trustees appointed under a trust-disposition and settlement containing the usual clause of survivorship were entered on the register of a company as in right of stock previously held by the trustee. There was no notice of the clause of survivorship. One of the trustees having died previously to the liquidation of the company, held that his personal representatives could not be included in the list of contributories, although no intimation of his death had been given to the company.

Trust—Trustee—Termination of Office by Death—Clause of Survivorship Implied.

Opinion that in all mortis causa destinations to a number of trustees there is an implied destination to the survivors or survivor.

Partnership—Termination of, by Death—Intimation.

In the case of an ordinary partnership no notice of the death of a partner is necessary as in a question with the public.

Question, Whether this doctrine applies in all circumstances to partners of joint-stock companies?

John Clinkscales, bookseller in Johnstone, died on 8th February 1869, leaving a trust-disposition and settlement by which he nominated his widow and two other persons to be his trustees and executors. By a codicil he made certain alterations on his settlement, and in it, *inter alia*, there occurred the following words—“Trustees—David Palmer, Edinburgh; Robert Oswald, Edinburgh.” The trust-disposition contained the usual destination to the survivors or survivor of the persons named. The widow alone accepted office, and *ob majorem cautelam* executed a deed of assumption, also containing the clause of survivorship found in the deed, in favour of the two trustees mentioned in the codicil. On exhibition of these deeds the Commissary of Had-

dington issued a testament testamentar in favour of the trustees, which also contained the clause of survivorship found in the original deed. Part of the estate of which confirmation was thus taken out was a number of shares in the City of Glasgow Bank. The testament testamentar was produced to the officials of the bank, who made this entry in the stock register:—"Mrs Elizabeth Holywell or Clinkscales, widow, residing in Dunbar; David Palmer, corn merchant, Cowgatehead, Edinburgh; and Robert Oswald, clothier, High Street, Edinburgh, the accepting and assumed trustees of the deceased John Clinkscales, Dunbar, acting under his trust-disposition and settlement of date 1st October, and holograph codicil 22d July 1868, both registered in the Books of Council and Session 12th March 1869.—Trustees of John Clinkscales."

These three trustees entered on the management of the estate, but on 27th August 1878 Mr Oswald died, leaving a trust-disposition and settlement by which he nominated his widow, Mrs Elizabeth Blower or Oswald and three other persons, the present petitioners, to be his trustees and executors. These persons made no intimation of his death to the bank, and his name was not removed from the register. This petition was presented on the commencement of the liquidation to have the liquidators ordained to remove the names of the deceased and of his representatives from the list of contributories, and to have the register rectified by making an entry therein at the date at which Robert Oswald ceased to be a member.

Argued for them—The question was, Who were the representatives of Mr Oswald as regarded the stock in question? His personal representatives were not, for the whole rights and liabilities of the trust-estate upon his death devolved on his surviving co-trustees—Stair, iii. 1, 2, i. 12, 13; *Gordon's Trustees v. Eglinton*, July 17, 1851, 13 D. 1381; *Findlay*, June 30, 1855, 17 D. 1014; Bell's Lectures, 878. It was the survivor and no other who was the representative of the trust-estate. The holding was of the same nature as joint-tenancy in England, and it had been decided that on the death of one of two joint-tenants the whole liability fell to the survivor—*Hill's case*, L.R. 20 Equity 585; *Kirby's case*, Reilly's Albert Insurance Arbitration Reps., June 15, 1871, 67; Lindley 1364. Nor was it necessary that any clause of survivorship should appear on the register. The qualification of the holding, as that of trustee, imported survivorship. There was no necessity of any notice of the death—Bell's Comms. ii. 529; Lindley 404; *Christie v. Royal Bank*, May 17, 1839, 1 D. 765. If it was necessary, the burden of giving it lay on the surviving trustees, who alone were in the knowledge that Oswald was a trustee on Clinkscales' estate.

Argued for the respondents—There could be no relief unless by some such operation as a transfer. At all events, some step must be taken before a name could be read out of the register. While it remained, it remained as the name of an individual, with all the liabilities of an individual, and with its succession regulated as though it were nothing more than the name of an individual. No effect could be given to the description of the parties as trustees—*Blakely's Executors*, 3 M'N. and G. 726; *Baird*, July 7, 1870, 5 Ch. App. 725.

At advising—

LORD PRESIDENT—The petitioners Mrs Oswald and others are the executors of Robert Oswald, who was one of three trustees upon the estate of a person of the name of Clinkscales, who died in 1869. Part of the estate of Mr Clinkscales was £280 stock of the City of Glasgow Bank, and that therefore was part of the estate administered by the late Robert Oswald and his two co-trustees. The settlement of Mr Clinkscales appointed certain persons to be trustees, conveying the estate to them and to the acceptors or acceptor, and survivors and last survivor of the persons named or to be named or assumed, the majority of the said trustees, whilst more than two accepting or alive and acting as trustees, being always a quorum. The testator Mr Clinkscales by a codicil made an alteration on the constitution of his trust, but he made it in a very informal way, by merely appending to his codicil the words—"Trustees—David Palmer, Edinburgh; Robert Oswald, Edinburgh"—being two different persons from the two who were associated with his wife in the original settlement. And therefore, in order to give effect to the testator's intention, his widow after his death executed a deed of assumption by which she conveyed the estate to "myself and the said David Palmer and Robert Oswald as trustees under the said trust-disposition and settlement and codicil, and the survivors and last survivor of me and them as trustees for executing the trust created by said trust-disposition and settlement and codicil, the majority of the said trustees, whilst more than two accepting are alive and acting as trustees, being always a quorum." It will be observed therefore that the deed of assumption executed by the widow gave effect not merely to the nomination of the persons intended by her husband, but it conveyed the estate to them on the very same terms as regards the condition of survivorship, the quorum, and the succession of the heir of the last surviving trustee, as in the original settlement of Mr Clinkscales.

These three persons, Mrs Clinkscales, Mr Palmer, and Mr Oswald were confirmed executors of the personal estate of Mr Clinkscales, and the confirmation, including the £280 stock of the City of Glasgow Bank, which I have already mentioned, was sent to the bank that the trustees might be registered in due form as partners of the bank. The entry upon the register stands thus—"Mrs Elizabeth Holywell or Clinkscales, widow, residing in Dunbar; David Palmer, corn merchant, Cowgatehead, Edinburgh; and Robert Oswald, clothier, High Street, Edinburgh, the accepting and assumed trustees of the deceased John Clinkscales, Dunbar, acting under his trust-disposition and settlement of date 1st October, and holograph codicil 22d July 1868, both registered in the Books of Council and Session 12th March 1869—Trustees of John Clinkscales."

The bank officials sent a certificate of the registration in due form, dated the 9th of July 1869. It is not disputed that this registration of the trustees as partners of the bank was done with their authority, and after the registration they continued to draw the dividends which accrued upon the stock through Mrs Clinkscales, who acted as their mandatory under a mandate signed by the trustees. It cannot admit of doubt therefore that these three persons, Mrs

Clinkscales, Mr Palmer, and Mr Oswald, were partners of the bank in respect of this £280 of stock.

But upon the 27th of August 1878 Mr Robert Oswald died, and the present question regards the effect of that death upon the trust, and through the trust upon the condition of this £280 of stock in respect of his holding. I think it cannot be disputed that trustees who are named and appointed in such terms as I have read from the deeds in this case are what may be called joint-owners of the trust estate, and that when one of them dies the trust does not come to an end, nor do his representatives take up any part of the trust estate, but the entire trust estate immediately devolves upon the two survivors. And that such was the effect of Mr Robert Oswald's death in this case I think is very clear.

But then, it is said that the condition of survivorship upon which this depends did not appear upon the register of shareholders. Now, I think there are two very good answers to that objection. In the first place, it appears to me that if the death of Mr Oswald did *de jure* put an end to his connection with the trust-estate—if after that time no obligations undertaken on behalf of the trust-estate could bind him or his representatives—then effect must be given to that in dealing with the question now before us, whether it appeared on the face of the register or not that such would be the effect of his death?

But further, I think that this answer may well be made, that even supposing the constitution of the trust to be accurately represented upon the face of the register, and that three persons were named as trustees upon this estate without any condition of survivorship expressed, the same result would in law follow, because in the case of such a nomination I hold it to be settled that the condition of survivorship is implied. I think this would be clear upon principle, but I think it has also been settled by authority. It is laid down very emphatically, in the most instructive and able opinion of Lord Justice-Clerk Hope in the case of *Gordon's Trustees v. Eglinton*, 13 D. 1381. It may be said that the proposition so enounced was not necessary to the determination of that case, and that is so, but then in the subsequent case of *Findlay*, 17 D. 1014, which occurred just two years afterwards, the same proposition was adopted as a ground of judgment by the First Division of the Court, and it was enounced in these terms by the late Lord Colonsay, then Lord President—"In a testamentary deed in which trustees are appointed, the condition of survivorship is implied, on the principle that the truster prefers that any one of the trustees nominated should manage the estate rather than a judicial factor." Therefore I think that it sufficiently appeared upon the face of this register that when any one of these three persons who are there described as the trustees of the deceased Mr Clinkscales died, his connection with the trust-estate came to an end altogether, and that the trust-estate would thereafter be vested in the two surviving trustees. So that the bank and the creditors of the bank were not entitled to rely that they should have three persons constantly bound to them for the amount of this

stock, but that was subject to the contingency that upon the death of any one of them the number of partners interested in that stock would be reduced to two.

But then it is said further, that in order to free Mr Oswald and his representatives from the consequences of his becoming a partner of the bank in respect of this stock, his death ought to have been intimated to the bank. Now, that might under certain circumstances raise a question of delicacy. In ordinary partnerships it seems pretty well settled, as laid down in Bell's Comm. ii. 529, that no notice of the death of a partner is necessary in order to bring home the fact to the knowledge of anybody. It is taken to be a fact so notorious and public that all who are interested in the partnership are assumed to know it. Whether that may under all circumstances extend to the case of the death of a partner in a joint-stock company, I am not prepared to say. But I do not think the absence of intimation here is of very much consequence when we look at what the effect of the principle of law to which I have adverted is upon the question of the liability of the present petitioners, because, as was very well argued in the course of the debate, the executors of Mr Oswald do not represent him in the matter of that trust estate. They represent him in his own personal estate, but no part of the trust-estate is *in bonis* of them; it passed at the moment of his death to his co-trustees, and therefore the representatives of the deceased trustee in the matter of these shares are not his executors, but his co-trustees. I think that is a perfectly sound argument, and therefore the proposal to make these petitioners liable for Mr Oswald's liabilities as a partner of the company previous to his death is, I think, an un-sound and an inadmissible proposal.

I do not mean to say that for liabilities incurred by a trustee before his death in the administration of the trust-estate his executors will not be answerable. On the contrary, it is perfectly clear that they will, but then that is only a liability as the representatives of a past member, and we are not dealing at present with the making up of a list of past members or of representatives of past members, but only with a list of contributories, including those who are or ought to be present members of the company, and persons liable for them.

The position of the executors of a deceased trustee is one of great peculiarity in a question of this kind. Are they under an obligation to send to the bank intimation of the death of their ancestor? If they are, it must, of course, be upon the ground that they have full knowledge of the necessity for making such an intimation. But there are many cases, I apprehend, in which the representatives of a deceased party are not at all aware of the trusts in which he was engaged. They do not find anything regarding these trusts in his settlement, supposing that he has made a settlement, and still less have they as executors any knowledge of it. There are some persons who are engaged in a great many trusts, and who may leave no record whatever behind them of their connection with these trust-estates. And therefore it appears to me that if there was a duty on anybody to make intimation to the bank of the death of this trustee, it was a duty laid on his co-trustees and not upon his executors—upon

those who really come in his place to represent him in regard to that trust-estate of which he was originally an administrator. But I am not prepared to say that there is any positive obligation incumbent upon these surviving trustees, or that this failure on their part to make such intimation can be followed by any important consequences. And therefore it really comes to this, that there being nobody in such circumstances upon whom there can be imposed any duty to make the intimation which is said here to be wanting, the bank must just be left to find out in the best way they can when one of three co-trustees whom they have thought fit to register as partners of the bank dies and leaves the trust-estate vested for the future entirely in his surviving colleagues.

I think that these views are sufficient for the disposal of this petition, because if the petitioners as the executors of this gentleman are not liable as the executors would be for a partner deceasing who was himself the owner in his own individual right of shares in the bank, then your Lordships will have no difficulty in directing the names of these executors to be removed from the present list of contributories, reserving, of course, what it is not necessary specially to reserve, the right of the liquidators hereafter to treat Mr Oswald as a past member, and to come upon his executors as representing him in that capacity.

There was only one other argument urged in support of the demand that these executors should be made contributories in the meantime, and that was upon the ground that to hold that trustees are joint owners of the trust-estate, and not severally owners of parts of the trust-estate, is inconsistent with what was decided in the case of *Lumsden v. Buchanan*, 4 Macq. 950—that trustees as partners, and while they continue on the register, are jointly and severally liable as partners.

Now, it appears to me that there is no inconsistency in this at all, because trustees while engaged in the management of a trust-estate, if they jointly contracted engagements on behalf of that estate, must always be jointly and severally liable. Suppose they borrow money for behoof of the trust-estate, and grant a bond for that as trustees, can there be any doubt that they are jointly and severally liable? I think that has been settled, and I find it very well laid down by Lord Mackenzie in the case of the *Commercial Bank v. Sprott*, May 27, 1841, 3 D. 939. He says that trustees when bound for money advanced for the trust-estate are liable *singuli in solidum*. I have no doubt each of them equally has received the whole money; it has all been paid equally into the affairs of each of them—that is, the trust affairs—and each must be liable *in solidum* to repay it, whether out of the trust funds, if sufficient, or out of their own means, if necessary.

Now, if that be a sound doctrine of the law as applicable to the liability of trustees acting in the management of trust-estates, it is upon that ground that in *Lumsden v. Buchanan* trustees holding shares in a joint-stock company are jointly and severally liable for all the consequences of their holding these shares. But how is that inconsistent with their being joint owners of the estate in this sense, that so soon as one of them die, the title of administrator of the trust which was in him passes of necessity, by the condition of survivorship, to those who are left?

I cannot find any difficulty whatever in reconciling these two things, and therefore I am not at all moved by the argument which was urged on behalf of the liquidators. I am for directing the names of the petitioners to be removed from the list of contributories.

LORD DEAS—There is no doubt at all. I take it that by our law where three persons are appointed trustees in the terms which we have here, the trust accrues to the survivors, and that by the death of one of them his connection with the trust-estate is altogether dissolved. There is just as little doubt that his representatives do not by his death come in his place as trustees or acquire any right whatever to administer the trust. Applying that to this case, the consequence is inevitable, that when Mr Robert Oswald died there was nobody representing him or coming in his place at all, and his connection with the trust-estate ceased altogether.

If I were called upon to reconcile this case with the decision which we have pronounced as to the liability of trustees under the authority of the House of Lords, I should find myself greatly puzzled to do it. I think there is great incongruity both in that and in other respects resulting from holding that those trustees became personally liable for the bank. There is great incongruity in reconciling our holding that the bank by putting trustees on the register in the way they did, had three estates bound to them, and in now holding that they had only two. If they had been put on the register as individuals *eo nomine*, it is perfectly plain that Mr Oswald's death would not have released him or his representatives from any obligation whatever, and we could not have allowed his name to be taken off either the register or the list of contributories without the names of his representatives coming in his place. I hope the House of Lords will be able to reconcile the cases, but I confess I am not able to do so.

LORD MURE—I concur in your Lordship's opinion on all branches of this case, and after the very clear exposition of the law which has fallen from your Lordship I do not think it necessary to detain the Court by any further observations.

LORD SHAND—This case undoubtedly raises a question of considerable importance and of extensive application in the liquidation of this unfortunate bank. The bank has been in existence for about forty years, and throughout that period large quantities of stock have been held by trustees. I believe there are about 200 cases in which parties are now entered on the register as trustees. During the last twenty years there must have been numerous cases of persons who were trustees having died, and of the trust devolving upon others who were with them upon the register. It is not disputed that, although in the cases which are now to be decided, the deaths occurred within the last two years or so, the principle to be applied to these cases would equally apply to the case of trustees who died fifteen or twenty years ago. That being so, it is obvious that the question is one of considerable importance.

The Statute of 1862, under which the bank was registered, does not in its terms provide for a case

of joint holders of any shares, nor so far as one can see does it seem to contemplate the case of joint holders of shares. But the contract of co-partnership is different in this respect, for in section 14 I find there is a reference to the case of persons holding shares as joint property, and a provision that whenever any shares shall be vested in two or more persons jointly, or in a company or corporation, the votes must be given in respect of these shares in a particular way by the person standing first upon the register. In both of the cases before us (*cf.* end of report, p. 226), the existence of the trust is expressly set forth in the books. I rather think that in both cases there is enough upon the face of the books not only to show that there was a trust, but that the trust title expressly bore to be in favour not only of trustees but of the survivors and survivor of them.

I concur with your Lordship in thinking that the circumstance that the clause of survivorship appears on the face of the books is not of great materiality; for if you have an entry in the company's register so expressed as to show that there was a trust, although survivorship may not be expressly mentioned, the legal effect must be the same. I agree with your Lordship that the effect of an entry of this kind is, that on the death of one of the body of trustees the continuing liability of the trustee who has died is at an end. I say continuing liability, meaning that any liability for future obligations of the bank is closed. It is not necessary to say more upon the authorities to which your Lordship has adverted; but I think it is clear upon these authorities, and on sound legal principle, that in the case of trustees the title and interest of a deceasing trustee in the property and stock of the trust accrues to the survivors of the trustees. The title plainly accrues to the survivors according to common law from the existence of the trust, and the result so far as the title is concerned is practically this, that death is equivalent to a transfer of all interest that was in the deceasing trustee to the survivors in the trust. As the title is transferred, so I think the interest necessarily goes with it. It is clear that after the death of one of a body of trustees his representatives can take no benefit from the shares. They have no interest in them, and it is equally clear that they have no control over them. They can transfer nothing from themselves, because any right that was in the deceased has not passed to them, but to the remaining trustees. In that state of matters it appears to me that the partnership so far as the future is concerned is necessarily at an end.

Of course the result cannot be that by death the liability for past transactions shall at once come to an end. The person who has died having been a party to partnership transactions during his life, his liability for these will remain. But that is subject, as your Lordship has noticed, to the provisions of section 38 of the Act of 1862, which are, in the first place, to this effect, that no past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; in the next place, that no past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required; and,

in the third place, that no past member shall be liable to contribute to the assets of the company at all if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up.

We have not to consider the case of a last surviving trustee; but it is obvious, I think, that if a trustee were the last survivor, very different considerations must operate. You have not in that case the transfer operated by law in favour of any joint owners as survivors, as in the case of the death of one of a body of trustees, and that case is therefore plainly to be distinguished from the present.

It is satisfactory that in coming to the conclusion we now do we are substantially adopting the view which recommended itself to Lord Cairns in an important case which came before him in the Albert arbitration. I mean *Kirby's* case, in 1871, which was referred to in the argument. In that case it appeared that two persons were on the register as joint holders of the same shares. It did not appear on the books of the company that they held these shares in a fiduciary capacity, but in the course of the argument it seems to have been admitted that the holders had not the beneficial ownership—that is to say, they were not themselves owners, but were merely representing others in whom the beneficial ownership was. Lord Cairns held that one of these persons having died, his interest in the shares accrued to the survivor, and that the liability of the deceased terminated at his death, except in regard to the past transactions of the company. His Lordship there says,—“If it had been proved or suggested that Mr Kirby was beneficially interested in these shares—that is to say, that although he and Mr Anderton were on the register, they were not on as joint tenants” [which we would describe as joint owners], “but as tenants in common—the question might have arisen as to whether there would not after his death be continuing liability. But if it is the case, as has been assumed, that the shares were standing in these joint names without beneficial ownership,—that is, that they were joint tenants with the interest accruing to the beneficiaries—then it seems to me there would be no liability in respect of contracts after the death of Mr Kirby, but there would be liability for every contract that had been entered into before his death. In my opinion, therefore, his liability ended at his death, and his executors must be put on the list jointly with Mr Anderton, but in that way in respect of his liabilities up to the time of his death.” The same principle received effect in *Alexander's* case (1871), 15 *Solicitors' Journal* p. 788. Now, that is precisely the view to which effect has been given in this case—the case of joint owners of shares with a clause of survivorship—the result of holding shares in that way being that upon the death of one of the joint owners the title and interest of the shares goes to the other, and there is no continuing liability.

In the case of the petition *Muir and Others* I took occasion to make this observation with regard to the provision in the Joint Stock Companies Act which allows of the notice of trusts on the register—“It may be that the notice of trusts on the register which the Legislature has always allowed, even in the case of Joint Stock Companies registered under statute in this country, may also have important effects in questions of title and trans-

ference of stock, in questions as to the effect of the death or resignation of one or more of a body of trustees—a view which has been the subject of argument in other cases during the last two days." I had formed no conclusive opinion at that time as to whether that observation might be well founded, because the matter was not then under argument. But we have now had the argument, and it appears to me that the clause of the statute which allows notice of trusts is not only useful in this country in ear-marking the property as belonging to the trust, but is also of use in such questions as we have now before us, in showing that the property being held by the owners of the stock jointly, not as the beneficial owners for themselves, but in trust for others, there is necessarily an accrual of the title on the death of one of the trustees in favour of the others. The difficulty that occurred in the case before Lord Cairns, of having to go behind the register to ascertain whether there was beneficial ownership or not is avoided here, because a trust ownership is expressly entered upon the register as allowed by the statute.

I have only farther to say, that I do not think that this decision in the slightest degree trenches upon the decision we have already pronounced in the case of the petition *Muir*, or in the previous case of *Lumsden v. Buchanan*. I hold that persons who enter their names on the register of a bank, though describing themselves as trustees, are personally responsible for the debts of the bank incurred during their lives, but it is not in the least degree inconsistent with the view that they are personally responsible, and jointly and severally responsible for the debts of the bank, to hold that that liability ceases upon death. The liability ceases for this reason, that the title and interest in the stock is thereby transferred to the other joint holders of the stock. It is worthy of remark that the case of *Kirby* is the same with the present in this respect. Lord Cairns proceeded on the view in *Kirby's* case, that there was joint and several liability of both persons on the register so long as they lived, which is precisely the position in which we have held trustees to be. He nevertheless held that although there was personal liability, and joint and several liability during the life of these joint owners of the shares, upon the death of one of them that liability came to an end so far as any continuing obligation was concerned, and that is precisely the view on which we have proceeded in the decision in the present case.

I may farther say, that I do not think it makes any difference whether the death had been intimated to the bank or not. I take it that having on the face of the register a title of this kind, in which the parties are entered as joint owners in trust, if one of the body of trustees dies, that is a public fact of which the bank is bound to have knowledge, just as I think in the ordinary case of partnership, creditors and partners are bound to have knowledge of the death of a partner who is liable under the contract.

On the whole, I am of opinion with your Lordship that these petitions ought to be refused.

LORD PRESIDENT — I think it right to explain, in consequence of what has fallen from my brother Lord Deas, that I should come to the same result here although there had been no

tice of this trust upon the register. The three trustees might have been registered as joint owners of these shares without any notice of the trust at all, and if it had appeared in point of fact that they held that estate as joint owners with the condition of survivorship, precisely the same result I think would have followed.

The Court directed the liquidators to remove the names of the petitioners from the list of contributories, and appointed them also to make an entry in the register of shareholders of the date of the death of the late Robert Oswald.

In another case (*John Cochran's* case), where the only difference was that the death of the trustee had been more than a year before the date of the stoppage of the bank, the Court ordered the name to be deleted from the register of shareholders.

Counsel for Petitioner—M'Laren—G. R. Gillespie. Agents—Waddell & Mackintosh, S.S.C.

Counsel for Respondents—Kinnear—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Wednesday, January 15.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—
(*BIGGARTS CASE*) BIGGART AND SPOUSE
V. THE LIQUIDATORS.

Husband and Wife—Jus mariti and Right of Administration—Partnership—Joint-Stock Company—Validity of Wife's Obligation, and Husband's Liability where jus mariti and Right of Administration Excluded.

A married woman, after her marriage, and with funds from which the *jus mariti* and right of administration was excluded, purchased shares in a joint-stock banking company of unlimited liability, registered though not formed, under the Companies Act 1862. She bought part of the shares in 1855, (these were afterwards converted into stock), and she accepted an allotment of new stock in 1864. She always drew the dividends, and transacted with the company in her own name, and in entire independence of her husband. He admitted his signature to the acceptance of the transfer of the original shares, but he was not a transferee, and his signature was not tested. The fact that the shares were held exclusive of his *jus mariti* and right of administration did not appear upon the register of the company, nor was his name entered therein. On the liquidation of the company the names of both husband and wife were placed in the first part of the list of contributories containing the names of contributories in their own right.

Held (1) that the wife's name was rightly placed there, and that she was bound to contribute to the extent of her separate estate; but (2) that the husband's name ought to be removed, he being in no way liable in respect of his wife's shares.

The petitioners in this case were Mr and Mrs Biggart, Kirkland House, Dalry. There were two petitions, one at the instance of Mrs Biggart,