which do not open to her until, it may be, long after her marriage, and her conveyance of *acquirenda* is quite as effectual as her conveyance of *acquisita*, and quite as much beyond her own power to recal or alter.

If, therefore, these two legacies of £3000 each left to Mrs MacOwan and Mrs Baxter respectively had come from a stranger or from some collateral relative without any special condition attached to them, there can be no doubt that such legacies would fall under the conveyance in the marriage-contracts, and the marriage-contracts being intimated, the same would be payable, not to the ladies themselves, but to their respective marriage-contract trustees.

The only question, then, in the present case is, Whether there is any peculiarity in the terms of the settlements of the father of the ladies, the late Mr Pullar, or in the circumstances in which the bequests were made, to prevent the general rule from taking effect? Certainly the bequests do not fall under the exceptions contained in the marriage-contract, and the general breadth and force of the conveyance is increased by the very fact that specific exceptions are made therefrom. Now, Mr Pullar's bequest of £3000 each is made in quite general and unlimited terms. He bequeaths £3000 to each of his three daughters in the same terms, and it is not unimportant to note that he makes no distinction between the bequest of £3000 to a third daughter Mrs Phibbs, who was married without a marriage-contract, and the similar bequests to his daughters Mrs MacOwan and Mrs Baxter.

No doubt besides these special legacies of £3000 each he leaves a further provision of £10,000 each, afterwards increased to £12,000 each, in trust for his three daughters, and he empowers his trustees in certain cases to transfer these larger sums to the marriage-contract trustees of his daughters, but he nowhere says that the special bequests of £3000 each shall not fall under the conveyance contained in his daughters' respective marriage-contracts, and this although the late Mr Pullar was a party to one of these marriage-contracts, and was perfectly conversant with the terms of both.

In these circumstances I cannot find any sufficient grounds for holding that the two bequests of £3000 each to Mrs MacOwan and Mrs Baxter do not fall under their respective marriage-contracts. I think they do, and that they fall now to be paid to the marriage-contract trustees.

It is to be observed that there is no exclusion of the *jus mariti* and right of administration of the husbands in Mr Pullar's settlements. The only provision excluding the husbands' *jus mariti* is contained in the marriage-contracts, and the renunciation of the *jus mariti* and right of administration is over *acquirenda* as well as *acquisita* in precisely the same terms as the ladies convey their *acquirenda* as well as *acquisita*. If, therefore, it were held that the legacies of £3000 each do not fall under the conveyance of *acquirenda*, I think it must also be held that they do not fall under the renunciation of *jus mariti*, and the result would be that the sums would fall under the acts and deeds of the husbands—would really become the husbands' absolute property—and would be exposed to the diligence of their creditors. I do not think that this was intended either by the late Mr Pullar or by the parties to the antenuptial contracts. I am therefore of opinion that the first question should be answered in the negative, and the alternative question in the affirmative.

Lord Ormidale and the Lord Justice-Clerk concurred.

The Court held the first parties bound to pay the legacies of £3000 to the fourth and fifth parties respectively, and found both parties entitled to their expenses out of the estate.

Counsel for First, Fourth, and Fifth Parties—Campbell Smith. Agents—J. L. Hill & Co., W.S.

Counsel for Second and Third Parties—Dean of Faculty (Fraser)—Thomson. Agents—Thomson, Dickson, & Shaw, W.S.

Saturday, July 19.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*WISHART'S CASE*)—JOHN WISHART AND OTHERS (GALLETLY'S EXECUTORS) *v.* THE LIQUIDATORS.

Public Company—Winding-up—Trustees and Executors—Liability of Executor where Part of Executry Estate consists of Shares in a Joint-Stock Company.

The trustees and executors of a deceased shareholder in a joint-stock bank at their first meeting directed their law agent—who was one of their number—"to take all steps necessary to make up a title in the person of the trustees and executors to the heritable and moveable estate left by deceased, and generally to do everything he may think necessary for the preservation of the estate." The minute of the second meeting bore that the agent "had had the confirmation sealed with the seal of the High Court of Probate in England, as required by statute, had exhibited the same to the various companies (except two) in which the deceased held shares, and got the whole stocks and shares transferred to the executors' names, with the exception of the above two, which would be so transferred before the end of the week," and that "the trustees approved of all that had been done." They subsequently, on his advice, resolved to sell the stock of the bank in question, but they had done nothing towards a sale when the bank failed. The confirmation had been sent to the bank by the agent with a request that a new certificate in the names of the executors should be returned, and in consequence their names were entered in the register of members. In a petition for rectification of the register and of the list of contributories by the executors other than the agent, *held* after proof that the agent had acted without authority in

getting the stock transferred to the petitioners—a step not necessary under the 24th section of the Companies Act 1862 to give them a title to sell; and (2) that they had not in any way homologated his act—*petition therefore granted.*

The petitioners in this case were John Wishart, Gilbert Heron, and James Nicolson, three of the accepting trustees and executors of the late David Galletly. There was one other accepting trustee and executor, Mr John Galletly, S.S.C. The following were the chief averments in the petition:—

Mr Galletly died at Edinburgh on 17th January 1878, and a meeting of, *inter alios*, the petitioners was held in his house after his funeral, when Mr John Galletly was appointed to be agent and factor in the trust, and was directed, as the minute of meeting bore, "to place the trust-disposition and settlement of the testator on record, and take all steps necessary to make up a title in the person of the trustees and executors to the heritable and moveable estate left by deceased, and generally to do everything he might think necessary for the preservation of the estate." No other instructions were given by the petitioners to Mr Galletly, who proceeded to expede confirmation of the moveable estate.

The confirmation included £2400 consolidated stock of the City of Glasgow Bank which belonged to the deceased, and a dividend of £144 which had accrued at the date of the oath to the inventory. With reference to this stock the said Mr John Galletly, without further communication with the petitioners, addressed the following letter to the agent and manager of the bank at Edinburgh:—

"Wm. Bain, Esq. 8*th March* 1878.

"*Mr Galletly's Trust.*

"Dear Sir—I now send you (1) Bank passbook, (2) certificates, six in number, for £2400 stock held by deceased, and (3) confirmation of deceased's executors, dated 6th currt., and will be glad to receive a discharge of the balance due deceased on current account for signature by the executors, and new certificate of the above stock in their name.

"Please either destroy my letter of obligation of 24th January, or write me, holding it to have been implemented."

Following upon this letter and enclosures the usual entry was made in the transfer register of the bank, and the names of the executors were subsequently entered in full in the stock ledger. Thereafter in the annual return made to the registrar of joint-stock companies the holders of the stock were described as "Executors of David Galletly."

The petitioners further averred that they "never agreed to become, and did not become, partners of the said bank. They gave no authority to Mr Galletly to make them partners thereof, nor were they aware till after the bank stopped payment of the terms of the said entries in the bank's transfer register and stock ledger. They have now ascertained and explained that a dividend of said stock was received by the said John Galletly on behalf of the executry in the month of August 1878, but they granted no mandate or other writing in connection therewith, nor did they ever see any certificate of the said stock as standing in their names. The petitioners never contemplated holding the said stock. They had been advised that they had no power to do so, and had resolved to realise the whole stocks and shares of the deceased, and were in course of doing so when the bank stopped payment." They also averred that the 38th article of the contract of copartnery of the bank was not complied with. The article is:—"Every assignment of shares in security, or *mortis causa*, and confirmations thereof by right of succession, shall, after being completed, be recorded in a book to be kept for that purpose, and such deeds, transference, assignments, and confirmations shall be delivered or returned to those in right of the same after having marked thereon a certificate of the registration thereof: And it is hereby declared that the production of such writings to the said manager or ordinary directors for the purpose of registration shall *ipso facto* infer the acceptance of the capital stock therein specified, and the liabilities of the parties having right to the same as partners of the company; but it is hereby declared that no purchaser or other assignee of, or successor to, shares so acquired shall be recognised as a partner until the writing constituting his title is recorded in the books of the company in manner above specified." In these circumstances the petitioners submitted that their names should be removed from the first part of the list of contributories, and transferred to the second part thereof, so as to appear in said list as liable for calls only in their representative capacity—(1) Because the petitioners never agreed to become, and did not become, partners of the said bank; and (2) because in any view they never agreed to become, and did not become, partners in their individual capacity, or otherwise than as representing the deceased."

There was a proof, the purport of which will be found in the opinions of the Court *infra.*

Argued for the petitioners—It was not necessary for executors to become shareholders in order to transfer shares belonging to the deceased—Companies Act 1862 (25 and 26 Vict. c. 89) sec. 24. And accordingly a broad distinction was drawn in England between executors and trustees. There were many cases in which executors were found not liable even where they had drawn dividends—*Blakley's*, *Armstrong's*, *Gouthwaite's*, *Crossfield's*, *Doyles'*, *Baird's*, and *Bulwer's* cases. In *Buchan's* case it was held that the executor intended to become a shareholder, and in *Spence* the executors had themselves acquired the shares. In the present case the facts in favour of the petitioners were peculiarly strong. They intended to sell the shares, for they were told, and told rightly—*Brownlie's Trs.*, *ante*, p. 731—that they could not legally continue to hold them. It was therefore plain that they did not intend to become shareholders, and they had done nothing to manifest a contrary intention. The minutes of their meetings did not authorise the agent to do what he did, if at least that involved his fellow executors in the liabilities of shareholders. Nor had they done anything to homologate his acts. They knew nothing about the dividends, and gave him no mandate. But in any case, as already shown, the drawing of dividends was not a fatal act. Then, again, the formalities required by the 38th article of the bank's contract of copartnery had not been com-

plied with, and that vitiated registration—*Macdonald Hume.*

Authorities—*Blakley*, 1850, 13 Bevan 133, 3 Mac. and G. 726; *Armstrong*, 1849, 1 De. J. and S. 565; *Gouthwaite*, 1850, 3 Mac. and G. 187, 3 De J. and S. 258; *Crossfield*, 1852, 2 De J., M., and G. 128; *Doyle*, 1850, 2 Hall and Twells, 221; *Baird*, 1864, 5 Ch. App. 725; *Bulwer*, 1864, 33 Bevan 435; *Fearnside* v. *Dean*, 1865, 1 L.R., Ch. App. 231; *Buchan*, May 20, 1879, *ante*, p. 512; *Spence*, 1853, 17 Bevan 203; *Macdonald Hume*, February 9, 1879, *ante*, p. 290.

Argued for the respondents—The question was, had the executors by their actings assumed the position of shareholders? Now, whatever the meaning of the first minute was, the second must be taken as homologating what the agent had done, for the petitioners, as the minute bore, knew what he had done, and approved. As to the informalities, these were of no moment when the registration had been otherwise fully completed—*Bell's* and *Cochrane's* cases.

Authorities — *Ness* v. *Armstrong*, 1849, 4 Welsby, Hurlston, & Gordon, 21; *Armstrong* v. *Burnett*, 1855, 21 L.J., Ch. 473; *Bell*, January 22, 1879, *ante*, p. 234.

At advising—

Lord Mure—This is one of a class of cases, several of which have already been under the consideration of your Lordships, in which the petitioners seek to have their names removed from the list of contributories of the City of Glasgow Bank on the ground that they never authorised their names to be inserted on the register or intended to become in any respect partners of that bank. In most of those cases the trustees and executors by whom the question was raised were authorised by the trust-deed under which they acted to hold bank stock, and had either themselves acquired City of Glasgow Bank stock or continued to hold stock of that Bank which had belonged to the truster, and to draw the dividends themselves or grant mandates and authority to others to draw these dividends for a series of years for the benefit of the trust-estate, from all which it was inferred that they must have intended to become, and must be held to be, partners of the bank, and were therefore liable to be placed on the list of contributories. The petitioners in the present case are however in a different position from the petitioners in the cases to which I have alluded, and that, as it appears to me, in material respects. Under the settlement of the late Mr Galletly, his executors had no power to hold bank stock, and were therefore advised by their agent soon after they had entered upon their duties as executors, and acted throughout in the belief that they would require to realise the bank stock which had belonged to the truster, and to invest the trust funds in heritable security or in other securities of a description in which trustees are authorised by Act of Parliament to invest. In these circumstances there is plainly no presumption that the petitioners would ever have proceeded to take steps with a view to making themselves shareholders of the bank, or to do anything more than was necessary to enable them to realise the stock, and as I read the minutes there is nothing to show that the petitioners did in point of fact directly take any steps or directly authorise any steps to be taken by which they were to be made shareholders of the bank. The mandate given to their agent at the first meeting held after the truster's death in January 1878 was of a limited and qualified description, for the minute bears that their agent was directed to "take all steps necessary to make up a title in the person of the trustees and executors to the heritable and moveable estate left by deceased, and generally to do everything he may think necessary for the preservation of the estate." This minute of instructions, which was the only authority written or verbal that the agent received from any of the executors, must, as I apprehend, be read with reference to the position in which the executors were placed as executors who were not entitled to hold bank stock, but were bound in the opinion of their agent to realise the stock with a view to reinvestment of the funds as soon as they could conveniently do so within a reasonable time after the death of the truster. And so reading the minute the question at once arises, What was it necessary for the agent to do in order to effect that object? Was it necessary not only to make up a title to the stock by confirmation, but also to place the petitioners upon the register in respect of the stock in the sense of being partners of the bank. Now, the answer to this question is, in my opinion, to be found in the provisions of the 24th section of the Joint Stock Companies Act 1862, under which the bank was incorporated, and which expressly provides that any transfer of the share or other interest of the deceased member of a company under this Act made by his personal representatives shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. All therefore that it was necessary for the agent to do in order that the executors should be able to avail themselves of this enactment was to expede a confirmation to the personal estate of the deceased, including the bank stock in question, and to exhibit that confirmation to the bank in their favour, to transfer the stock, and intimate their intention to dispose of it as soon as purchasers could be found. That, as I read the section, is all that it was necessary for the agent to do to effect the object which the petitioners had in view, namely, to realise the bank stock by disposing of the shares. But if in addition to this the agent did anything whereby the petitioners were registered as shareholders of the bank, he, in my view, exceeded his instructions, and the act is not an act authorised by the petitioners. In this view of the case the petitioners are, I think, entitled to have their names removed from the list of contributories, unless it can be shown that they were distinctly made aware that their agent had caused their names to be registered as shareholders in the bank, and afterwards allowed their names to remain in the bank books, and held themselves out or otherwise acted as shareholders in the bank.

Now, the facts applicable to this part of the case are shortly these—the agent Mr Galletly having obtained confirmation on the 6th of March, wrote upon the 8th of that month to the agent of the City of Glasgow Bank in these

terms — "I now send you (1) bank pass-book, (2) certificates, six in number, for £2400 stock held by deceased, and (3) confirmation of deceased's executors, dated 6th curt., and will be glad to receive a discharge of the balance due deceased on current account for signature by the executors, and new certificate of the above stock in their name." And I observe that in that letter Mr Galletly does not in point of fact ask to have the transfer of the stock made to the petitioners; he simply asks for a certificate of the stock in their name. On receipt of that letter the agent of the bank forwards the confirmation to Glasgow, and says— "I enclose for inspection and return confirmation in favour of the late Mr David Galletly's executors. I also enclose certificates of £2400 company's stock, which amount you will please have transferred into the names of deceased's executors and send me new certificate." That is the request of the bank agent in Edinburgh to the bank in Glasgow. He asks for a transference of the stocks to the names of the executors—which had not been asked by Mr Galletly. Following upon that letter we have the certificate of the bank, which I believe is in the usual terms—"These certify that the executors of the deceased David Galletly . . . . have been entered in the books of this company as the holders of £2400 consolidated stock." The certificate is endorsed with the names of the executors, and they appear to have been entered in the transfer register of the bank.

Now, having got this certificate and the documents relative to the trust-estate, a meeting of the trustees was called on the 3d of April, being the first regular meeting of the trust at which Mr Galletly reports verbally what had been done. The minute of that meeting is printed, and it bears that Mr Galletly stated that after making the necessary investigation into the deceased's affairs he had prepared and given up the inventory of his estate, and that he had got the whole stocks and shares transferred to the executors' names. The minute bears that the testament-testamentar was produced, but it does not appear from the minute, and I do not understand from the evidence, that any of the certificates or other documents which Mr Galletly had obtained from the time of making up his title were laid before the meeting. As I understood the argument of the respondents, it was upon the terms of this minute that they mainly relied as showing that the petitioners were aware of the fact that their names had been entered as shareholders of the bank, and that they were therefore properly put upon the list; so that the question is, whether that passage must be held to have conveyed to the minds of the executors that they had been registered as shareholders in the City of Glasgow Bank, and not only in that bank but in all the other companies in which the truster held stock. In disposing of this question the passage must, as I conceive, be read as the minute of the 21st of January must be read, with reference to the position which the petitioners occupied as executors under Mr Galletly's settlement. They were not under the provisions of that settlement entitled to acquire bank stock, or even to retain or hold it as partners of the bank. They had been informed by their agent that such was their position, and the concluding paragraph of this minute bears — "Mr Galletly gave it as his opinion that the trustees had not the power to hold on any of the stocks or shares held by deceased, but that the same should all be realised." Now, such being their position, I am not prepared to hold that this passage, taken as it stands, is sufficient to justify the inference which was in argument attempted to be drawn from it, that the petitioners were thereby informed that they had been registered as shareholders of the bank, and as such were holding bank stock, and so doing the very thing which in the concluding part of this minute they are advised it was beyond their power as executors, and consequently contrary to their duties as executors, to do. Taking the minute as it stands, and assuming it to state correctly what was communicated to the meeting, that is the conclusion, even upon the minute as it stands, I should be disposed to come to, and to hold that its terms are altogether insufficient to warrant such an inference. But it is by no means certain that the minute states correctly what actually occurred. Mr Galletly's evidence as to this is I think important, more especially as the minute was not written out at the time, but was extended from jottings some time afterwards. As to this Mr Galletly says in his evidence— "The first meeting of the trustees thereafter was held on 3d April 1878. After the meeting I drafted No. 12 of process. (Q) The minute was not read to that meeting, was it?—(A) No; I merely reported verbally and very shortly what I had done. (Q) The minute was prepared as a record of what had occurred, was it?—(A) As a record of what had been done between the funeral and the 3d of April. (Q) In the minute it is stated that you 'had had the confirmation sealed with the seal of the High Court of Probate in England, as required by statute, had exhibited the same to the various companies (except two) in which the deceased held shares, and got the whole stocks and shares transferred to the executors' names, with the exception of the above two, which would be so transferred by the end of the week'—do you recollect exactly the words that you used in conveying that information?—(A) I think as nearly as possible it was that I had got the confirmation sealed and exhibited to the different companies except two, and that I had procured certificates in favour of the executors." Therefore there was nothing said there by Mr Galletly according to his own evidence about transferring shares from the one party to the other, but merely that he had got certificates of the shares. And the evidence of Mr Nicolson is confirmatory of this. He says— "There was no meeting between 21st January 1878 and 3d April 1878, nor was I consulted between these dates. I did not know what steps Mr Galletly was taking further than that he came to me to sign the inventory before the justice of the peace. On the 3d April Mr Galletly reported what he had been doing; I have a very distinct recollection that Mr Galletly had the confirmation in his hands sitting at his own table, and he reported that he had now expede confirmation, or this confirmation, or some such expression as that, and intimated to the different companies in which David Galletly had stocks. (Q) Do you remember anything more specific than that?—(A) Nothing; I am quite positive there was nothing more specific. (Q) Do you recollect these words being used, that he had got the whole of the stocks and shares transferred to the executors' names?—(A) No,

I never heard of it, and have not the least recollection of it. Indeed I am certain it was not said." I think Mr Wishart says substantially the same thing as to that. Now, that being so, I have come to be of opinion that that passage when so explained was not calculated to convey to the minds of the trustees to whom the statement was made any such information as that the stock had been transferred to their names as shareholders of the bank, and that they were in that way put in the very position in which under the trust-deed it was their duty not to allow themselves to be placed. The minute of 17th April bears that that of 3d April was read over and approved of. But if I am right in the construction which I have put upon the import of the minute of 3d April taken by itself, the reading over of that minute cannot materially affect the question. But it is in evidence as regards Mr Nicolson that he was not at the meeting when the minute was read over, and the minute does not bear to be signed by him, and though his name is at the head of it he appears to have come in after that part of the business was over. Therefore I do not think that the mere fact of that minute bearing to have been read over and approved of by the two trustees Mr Wishart and Mr Heron materially affects the question. I think the meaning of the minute of 3d April, which is the foundation of the respondents' case must be dealt with by itself, and having put that meaning upon it, I have come to the conclusion that there is nothing there so far as the evidence goes to show that these gentlemen adopted the act of the bank under the direction of Mr Galletly in putting their names on the register of shareholders, and that therefore they are entitled to have their names removed from the list of contributories. As I said before, the evidence of the two other trustees is substantially the same upon that point as that of Mr Galletly as to their understanding of what took place at the meeting—and that is quite distinct—as to his never having drawn any conclusion from what took place, or from what had been reported to them, that what had been done by the agent in taking out confirmation and sending it to the bank had been done for any other purpose than merely to certiorate the company that the executors had now right to the truster's stock, and as such were entitled to realise the stock; and that, in the view I take of the law applicable to the provisions of the 24th section of the statute, is what the petitioners were justified in assuming.

It is of importance, I think, also to observe in this case that there was no mandate by these parties to anybody to draw the dividends, and no dividends were drawn by them. That was done by Mr Galletly alone, without any specific instructions, for though it bears to be per mandate, no mandate was ever given. Upon the whole, therefore, though the case is attended with some nicety with reference to that part of it which refers to the minute of 3d April, I have been unable to come to any other conclusion than that, in the present instance, the names of the petitioners were inserted in the register of this bank without authority from them, and that they never knew that they had been made shareholders of the bank.

Lord Deas—There is no doubt of what Lord Mure has said, that this case is attended with some nicety and requires careful consideration; but it is distinguished from other cases of this kind by certain important peculiarities. The truster died upon the 17th of January 1878, and the petitioners were appointed by the trust-deed as trustees and executors, and they were afterwards confirmed expressly in the character of executors. The stoppage of the bank took place upon the 2d of October 1878, within seven months of the confirmation, and about the same time after the registration in the stock-ledger of the bank. Therefore not nearly a year elapsed between any of these dates and the stoppage of the bank. Now, I do not think it can be doubted that the executors had, at all events, the period of a year to realise the stock. There was therefore no necessity for their being registered at the time this registration was made, and it is perfectly clear on the face of the documents as well as upon the evidence that they never intended or contemplated holding this stock as proper partners of the bank. They were advised that they ought to sell it, and whether they were entitled to retain it or not, it is perfectly clear that they never meant to retain it, and that their purpose from first to last was to sell it. If anything, therefore, makes them liable as partners at all, it is the act of Mr Galletly in placing their names upon the register as partners. It is quite plain that it was not necessary in order to carry out their duties as executors that they should have been put upon the register. It was quite premature, and it certainly does not appear that they gave Mr Galletly any express authority to do so. He himself says the reverse. If, therefore, he had any authority originally to do that act, it could only be in consequence of the general authority given by the first meeting, which was to make up titles as trustees and executors to the heritable and moveable estate, which might quite well be understood to mean to make up titles to the heritable estate, and to make up a title by confirmation as executors to the moveable estate; and so accordingly it seems to have been understood by Mr Galletly, who obtained that authority.

I think your Lordships are all clear, and have always been clear, that an authority of that kind standing alone will not entitle an agent to put the names of the parties upon the stock register of any bank. Unless there has been more than that, there is no authority at all. Any evidence connecting these parties with that registration is therefore to be gathered, if at all, from their having subsequently approved of it. It is perfectly clear that if they did to any extent subsequently approve of it, it was still upon the footing that the stock was forthwith to be sold, and, as Lord Mure has mentioned, even the drawing of the dividends was not their direct act, but was the act of Mr Galletly, who does not seem to have sought authority for it. Therefore it seems to my mind clear enough that, excepting in regard to the National Bank, Mr Galletly in putting their names on the register as executors did what was not necessary, and what he was not entitled to do in order to carry out his own view about a sale, and that he did not inform them or obtain their authority to do this on the footing that they were to be made shareholders of the bank. Now, that seems to me to constitute a very great distinction between this case and any of the cases that we have hitherto dealt with. If executors continue

to hold stock, and deal with it upon the footing of being partners of the bank, I do not mean to say that that will not make them partners of the bank, although they were only registered as executors. But I fail to see anything of that kind here—anything to show that the intention was to hold the stock, and not to do what executors generally do, namely, wind-up the matter by selling. I see no evidence of that at all. As regards the National Bank stock, it stands in contrast upon this subject, if it was only that the registration with that bank was sanctioned because it refused to pay any dividend unless the executors were put upon the register. That exception therefore rather appears to show that they did not intend at any time to hold the stock, and all this having happened within considerably less than a year of the truster's death, I concur with Lord Mure that the petitioners are not to be held liable as contributories in their own right in this liquidation.

I have only further to say, and I think it right to say, that it appears to me that supposing we had found ourselves constrained to hold that there was a general liability against these petitioners, I could not come to that result with reference to Mr Nicolson, for if we were separating the cases they stand in a very different position. He signed the general authority in the outset. The only other minute that he signed was the minute of 3d April. Mr Galletly expressly depones that the meeting of the 17th took place at three o'clock, and Mr Nicolson only came in at twenty minutes to four, and he further says that the minute of the meeting of the 3d was read over before he came in. It was not read over after he came in, and if it was read to him at all, it was never read over till after the failure of the bank, so that Mr Nicolson was never made acquainted with its contents so far as we see. He swears expressly that he was not. No doubt his name is at it, but Mr Galletly explains that that was done subsequently, and that he was asked to put it there without reading it over. Now if that be so, there is nothing under his signature to connect him with this registration except the minute about the National Bank stock, and, as I have already said, that stood in this way, that it was simply because the National Bank had a rule that they would pay no dividend without registration that that was done. Therefore, even if I had been of opinion, which I am not, that some of these trustees were liable, I could not apply that to the case of Mr Nicolson. He may have been fortunate, but when a party in a case of this kind is unfortunate we do not let him off on that ground, and we are not to come to a contrary conclusion if he has been fortunate in this question of liability.

With that explanation I entirely concur in the opinion which has been delivered by Lord Mure.

Lord Shand—In this case we had a very full argument on questions of law arising out of the position of executors in regard to stock held by the deceased, whom they represent, particularly with reference to what fell from the noble and learned Lords in the case of *Buchan*, *ante*, p. 512, which was recently decided on appeal. I confess I think that the law in such a case presents no difficulty whatever. Executors taking up the estate of a person deceased, in so far as consisting of shares in a joint-stock company, have an alternative presented to them under section 24 of the Statute of 1862. They may either simply make up a title by confirmation, and so vest themselves with a right or title to the shares, which will enable them to dispose of the shares without going on the register, and it may be they may intimate the fact of confirmation to the company as a mere notice that they have made up such a title, or they may, if they think fit, having obtained confirmation, intimate it to the bank and request that the shares shall be transferred to their names, the legal result of which is that they thereby make up a title of ownership in themselves to the shares and thereby become partners. And I think the simple question of fact which arises in this class of cases is, whether the executors have not only made up a title by confirmation, but have completed a title of ownership in their own persons by recording their confirmation in the bank's books, or requesting that it should be recorded, so as to have the shares transferred to themselves. Executors have a strong presumption in their favour which will not arise in the case of an ordinary transferee, as, *e.g.*, in the case of a purchase, and will not arise in the same degree in the case of trustees who are going on with a continuing trust; and possibly, in the view of retaining the shares, they have this strong presumption in their favour, where they do not intend to hold the stock, but mean to sell it within a short time, that they do not mean to put their names on the register, and so acquire a title of ownership in their own persons as individuals in the shares.

The question of fact to be determined in this case is, whether these executors did authorise the transfer of the stock to their names so as to make them owners or shareholders, or merely authorised the making up of a title by confirmation? On that question I think they are entitled to the full benefit of the presumption to which I have referred, because it appears that from the very first meeting of the trustees they had their law agent's advice that they were not entitled to hold the shares, and because I think their resolution as recorded in the minutes and stated in their evidence—which upon that matter I entirely believe—is that it was their intention without delay to realise the whole of the testator's stocks, and to put the price into securities of a safe character. But giving them the benefit of that presumption, I confess I have felt the question of fact to be one of great difficulty. I understand all of your Lordships are of opinion that the petitioners are entitled to have their names removed from the register, and although I have had more difficulty than your Lordships in reaching that result, at least in regard to two of the petitioners, I do not withhold my assent to the judgment which your Lordships propose to pronounce.

There have been two points raised entering into this question of fact with which I am now dealing—the first being whether Mr Galletly gave authority to the bank to put the shares in the name of the executors? and the second, assuming that the bank were entitled, so far as Mr Galletly was concerned, to register the shares as they did, whether his act was authorised by the executors or subsequently approved of by them? On the first of these points I am of opinion that

the argument of the petitioners entirely fails. Mr Galletly sent to the bank the letter of 8th March, and in which, transmitting the confirmation, he says he will be glad to receive a new certificate of the above stock in name of the executors. That was a distinct request to the bank to issue a certificate—and a certificate of stock, it is well known, infers a previous registration in the names of the persons to whom that certificate is granted, for the certificate is a document of title given to and in the name of the holders of the stock. Not only so, but the certificate was given to Mr Galletly in the names of the executors, and received by him as in fulfilment of his request. If there had been any doubt that what he meant was to have the shares put in the names of the executors, and to get a certificate in their names, it must, I think, be assumed that he would have at once returned the document which showed him that the shares were registered in the name of the executors, and that in that view an act had been therefore done which he had not authorised. But, in the third place, I think it is evident that nothing more was done than Mr Galletly intended and authorised from the terms of the minute of 3d April, which, whether it records precisely what occurred at the meeting or not, at least contains the statement in Mr Galletly's handwriting that he understood that the shares had been transferred to the names of the executors. And so I am of opinion that the bank were entitled upon Mr Galletly's instructions to put the shares in the name of the executors as they did, and that Mr Galletly must be held as having approved of what the bank did.

That, however, only advances one to the remaining question, whether the executors authorised Mr Galletly to do this, and there it is that I feel constrained—giving considerable weight to the unanimous opinion of your Lordships to that effect—to give my concurrence to the judgment which is to be pronounced. It is clear, I think, that there was no authority antecedently given to Mr Galletly to transmit the confirmation for registration, and request the transfer of the stock to the names of the executors in the books of the bank. At the meeting after the funeral the authority given was only to make up a title to the shares, and I have already stated in the case of *Macdonald Hume*, *ante*, p. 290, referring to what occurred with Mr Dickson, one of the petitioners in that case, that in my opinion an authority merely to make up a title to stock in the person of an executor does not infer authority to do more than take out confirmation, and does not therefore infer authority to make the parties confirming partners of the bank. But the difficulty and nicety of this case lies in what followed. Assuming, as I do, that Mr Galletly had not authority to make these gentlemen partners of the bank, the question remains, whether his act in that respect was not adopted by the subsequent proceedings?

In the minute of the 3d April it is expressly stated that the agent "had got the whole stocks and shares transferred to the executors' names," and I confess that if it had appeared that a statement in these terms had been made to the executors, and, as the minute bears, they had approved of what had been done, I should have had very great difficulty in saying that they had not thereby adopted Mr Galletly's act. It may be quite true—I believe it to be quite true in this case—that none of these executors knew that the result of having the shares transferred to their names would be to make them personally liable as partners; but that is not the question we have to deal with. We know that in the majority of cases—at least in many cases—trustees who knew that their names were registered in the books of the bank did not know that that would make them personally liable; and if it appeared as matter of fact that the petitioners were informed that the shares had been placed in their names, and they had approved of what had been done, even although they did not know the legal consequences of that act, I should have been unable to hold that they were free from the consequences. But taking the case as a whole, I think it appears that the language used in this minute does not correctly state what was in fact said at the meeting. Mr Nicolson distinctly depones on this matter of comparatively recent occurrence—and I am satisfied he gave his evidence with all truthfulness—that all that was said was that confirmation had been obtained and intimated to the various companies. Mr Galletly also says that the words embodied in the minute were not used at the meeting. What he believes he said was that certificates of the shares had been got; and I am not prepared to say that the mere mention to persons who had given no antecedent authority for a transfer of the shares to their names that certificates had been got was necessarily enough of itself and alone to inform them that they had been made shareholders. That being so, the proceedings at the meeting of 3d April are not, I think, enough to infer adoption of Mr Galletly's act. The chief difficulty I have had has arisen from what followed after that meeting; for, in the first place, the minute was written out and signed by all the trustees, and, in the next place, at the subsequent meeting of 17th April, which we find from the minute was attended by Mr Wishart, Mr Nicolson, and Mr Galletly, it appears that the minute of 3d April was read over and approved of. But while that raises the difficulty, as it seems to bring home to the parties signing the minute of 3d April and present at the meeting of 17th April knowledge that the shares had been transferred to their names, I have come to the conclusion that, taking the evidence as a whole, the fact of such knowledge has not been made out. It must be observed that the minute is a record subsequently prepared of what was said to have taken place before. The reading over of a minute recording the business of a previous meeting is often not regarded with the close attention which the actual business taking place at the meeting receives, and the parties might not so observe or note the language as to lead them to take exception to the form of expression used in regard to what had been reported to them at the previous meeting. If language such as is used in this minute of 3d of April had been contained in a document signed by the parties and communicated to the bank, and which therefore the bank were entitled to rely upon, I confess I should have been constrained to decide the point differently; but the specialties of the case which seem to me to warrant the judgment in favour of the petitioners are these—that, in the first place, there was a clear intention to realise the stock from the first without delay, and plainly therefore no possible object that the executors could

have in putting themselves on the register; in the second place, I think there is no antecedent authority proved; in the third place, the evidence does not prove adoption by the executors of Mr Galletly's act, and there is no document communicated to the bank signed by the trustees which can be held to have authorised or approved of the transfer of the stock to their names.

On these grounds I concur with Lord Mure and Lord Deas in thinking that all of the petitioners are entitled to be relieved from responsibility. But I feel bound to add that I think with Lord Deas that there is a difference in the case of the petitioners individually if we were to go upon specialties. The case of Mr Wishart, when one reads his evidence as a whole with reference to the minute of 3d April, and the case of Mr Heron—who unhappily through the misfortune of the bank failing has entirely lost his memory—appear to me to be different, and to present circumstances more serious than that of Mr Nicolson. The letter of Mr Heron of 20th April 1878 in reply to Mr Galletly's letter of the 18th shows that the minutes were communicated to him, and put him very much in the same position as Mr Wishart; and there is altogether more evidence in support of the view that they had knowledge of what was done than I think there is as against Mr Nicolson. The peculiarity of Mr Nicolson's case arises from the circumstances that he was not present when the minute of 3d April was read over. He does not appear to have read that minute when he signed it; and as the case against him really depends upon the statement in that minute, I think this would have made a specialty in his favour, even if we had been constrained to hold that the case against the other executors had been made out. But as I have said, I concur with your Lordships in thinking that while the case is one of difficulty as regards Mr Wishart and Mr Heron, the application should be granted in regard to all of the petitioners.

Lord President—I think this case a narrow and difficult one upon the evidence, but on the whole I have come to concur in the opinion of Lord Mure, and I do not think it at all necessary to repeat the grounds of that opinion.

The Court therefore ordered the names of the petitioners to be removed from the first part of the list of contributories.

Counsel for Petitioner — Dean of Faculty (Fraser)— Mackintosh. Agents — Boyd, Macdonald, & Co., S.S.C.

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

HOUSE OF LORDS.

Tuesday, July 1.

CITY OF GLASGOW BANK LIQUIDATION— (*GILLESPIE & PATERSON'S CASE*) — GILLESPIE & PATERSON *v.* THE LIQUIDATORS.

(Before The Lord Chancellor (Cairns), Lord Hatherley, Lord O'Hagan, Lord Selborne, Lord Blackburn, and Lord Gordon).

(In Court of Session, Feb. 27, 1879, *ante*, p. 473).

Public Company— Winding-up— Where Partners of a Firm held Stock for themselves and the Survivor for behoof of the Firm.

Two persons had carried on business for some years, when it was agreed to form a new firm with a third partner. Prior to the execution of the contract of copartnery, but with a view to the arrangements of the new firm, stock in a bank of unlimited liability was purchased by the original partners and the transfer taken in favour of themselves, "and the survivor for behoof of the firm." The new partner was not a party to the transfer. The entry in the stock ledger was in similar terms. In a petition for rectification of the list of contributories, upon which the names of the two partners were entered, each being described as "trustee for" the firm—*held* (*affirming* judgment of Court of Session) that their names were rightly so entered, each being liable *in solidum*, and not merely for half the amount of stock held by them.

This was an appeal by Messrs John Gillespie and Thomas Paterson against the decision of the First Division of the Court of Session, reported *ante*, p. 473. The circumstances are sufficiently narrated there, and in the opinions of the House of Lords *infra*.

At delivering judgment—

Lord Chancellor—My Lords, I should desire, in the first place, to direct your Lordships' attention to the form in which the list of contributories has been settled in the present case. In the first instance, when the liquidators settled the list of contributories the firm of Gillespie & Paterson were entered upon that list as a firm, and as holding the sum of bank stock in question. That entry has been struck out, and there is no appeal upon that subject; therefore that is out of the question. But there remains two entries, in one of which Mr John Gillespie is entered as the holder of £1000 bank stock as trustee for Gillespie & Paterson, and another entry in which Mr Thomas Paterson is entered as holding £1000 bank stock as trustee for Gillespie & Paterson. It is not in controversy that although there is a mention here of two sums, which might at first sight appear to be separate, they really are one and the same sum; and although perhaps in this country there would have been one entry comprising the two names—both John Gillespie and Thomas Paterson as holders of the sum—the same end is