I do not think that anything turns upon that. It is rather singular that these words should have been omitted in the recital of the limitation, but, be the reason what it may, I find nothing whatever that indicates that either the father or the son thought in the slightest degree of varying the agreement or of doing otherwise than carrying it into full effect.

And if the agreement was to be carried into full effect, then I think the case is clearly brought to what the Lord Justice-Clerk and Lord Gifford consider the true construction to be placed upon it, namely, that the £3000 was the son's fund, given to him as part of the consideration for his agreeing with his father to bar the entail. It remains the fund of the son, subject only to such power and control as the father might have over it in the way of arresting alienations of a certain character, as to which nothing need be said, because nothing of the kind took place; but the agreement did not give the father the power to dispose of the fund, nor does it appear to me that the son's concurrence in the subsequent deed is given with the purpose of enlarging the authority of the father, or of parting with the control over the fund to the father and enabling him to hand it over to the aunt. The effect of it appears to me to be simply this—The son had this control over the property guarded in the way I have indicated, and that son said (this is the legal effect of it in my mind) that out of his moneys he was willing at that time that the capital at his death should pass over to the person indicated in the deed. But then, as regards that, it was entirely a voluntary disposition; there was no bargain between the father and the son that that should be the case. They having previously agreed to bar the entail, there was no new bargain entered into at that time of this kind—"You shall also agree with me to give a certain sum of money in this way." If it had been so, the cases which have been cited might have had some application, but that was not the case. I do not see that they intended to agree to anything of the kind in 1871. I think that the deed of declaration of trust left the parties in exactly the position in which the original agreement left them, and that left the property in trust for the use and behoof of the son which he was at that time minded to dispose in a certain way, but the deed being entirely without onerous consideration, it left him full power to dispose of the property by a testamentary act afterwards, and that power he exercised by testamentary disposition.

Under these circumstances, my Lords, I agree with my noble and learned friend on the woolsack that the appeal must be dismissed.

Lord Selborne—My Lords, the recital of the agreement between the father and the son in this deed of trust is imperfect and might not impossibly be misleading. If the agreement had been in these terms, and these only, it would (according to the opinion of the Lord Ordinary and Lord Ormidale) have justified the father in dictating at his own mere will and pleasure the succession to this sum of £3000 after the son's death. But that sum really belonged to the son absolutely and would necessarily be part of his *post mortem* succession (failing his issue) after his death, and the father's power of control really extended no further than to the restriction of the manner in which the son's life-interest was to be enjoyed, and to securing the succession of his issue if issue he should have.

When the deed of trust was executed there was no new bargain and no new consideration. The son could not possibly be bound by any erroneous interpretation which that deed might have put upon the original contract so as substantially to vary its operation and effect (if it ought to be so understood), either on the principle of estoppel or on any other; unless there were some new bargain or new consideration, which there was not, that deed in all its material provisions was the deed of the father speaking in the first person singular, and purported to operate by virtue of the father's power of control. There were no dispositive or conveying words on the part of the son; he merely acceded to the deed and declared his acquiescence and concurrence. This could at the utmost amount to no more than the expression of his will at that time—that his *post mortem* succession as to this fund should go in the order and course declared by that deed. Such a mere expression of his will was at the most testamentary and revocable, and it was duly revoked.

I agree therefore with the view of this case taken by the Lord Justice-Clerk and Lord Gifford, and with the reasons for their decision, which are clearly and ably explained in Lord Gifford's judgment.

Their Lordships dismissed the appeal with costs.

Counsel for Appellants — Benjamin, Q.C. — M'Clymont. Agent—A. Beveridge, Solicitor.

Counsel for Respondent — Lord Advocate (Watson)—E. E. Kay, Q.C. Agents—Simson, Wakeford, & Simson.

Tuesday, May 20.

(Before the Lord Chancellor (Cairns), Lord Hatherley, Lord Penzance, Lord O'Hagan, Lord Selborne, and Lord Blackburn.)

CITY OF GLASGOW BANK LIQUIDATION —(*BELL'S CASE*)—BELL AND OTHERS (LANG'S TRUSTEES) *v.* THE LIQUIDATORS.

(In the Court of Session January 22, 1879, *ante*, p. 249.)

Public Company—Transfer of Shares—Entry on the Transfer Register where New Trustees Assumed—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *sec.* 25.

Trustees whose names were entered on the register of a joint-stock bank, registered but not formed under the Companies Act 1862, executed a deed of assumption of new trustees, which they intimated to the bank. The bank official made an entry of the terms of the deed in the stock ledger, following the previous entry, and giving the names and designations of the new trustees.

Held (*affirming* decision of the Court of

Session) that they thereby duly became shareholders of the bank; and *objections* that the deed of assumption should have been entered in the transfer register, and that there was a want of compliance with the provisions of section 25 of the Companies Act 1862, *repelled* —the facts showing that it was with their full knowledge and consent that the trustees became shareholders in the bank, and that they had been regularly entered as such.

Held, in the case of a married female trustee, that if her name fell to be placed on the list of contributories, her husband's name ought, under the 78th section of the Companies Act 1862, to be placed along with it, as the question of liability should be decided in his presence, and that it was not enough that the suit should be carried on by her "with the consent of her husband."

This was an appeal at the instance of Mr John Bell and others, Lang's Trustees, against a decision of the First Division of the Court of Session, who had refused a petition at their instance to have their names removed from the list of contributors of the City of Glasgow Bank. The circumstances of the case are sufficiently narrated *ante*, p. 249, and in the judgment of the Lord Chancellor (*infra*).

At delivering judgment—

Lord Chancellor—My Lords, the appellants in this case were registered at the time of the failure of the bank as the holders of £855 of stock. They were described as the trustees of the late James Lang. The appellant Bell was the survivor of the original trustees named in the trust-disposition and settlement of James Lang, dated in 1850. The other appellants were assumed as trustees by deed dated the 18th of May 1865, and they are also beneficially interested under the trust. They have been fixed upon the list of contributors as personally liable in respect of the shares, and they appeal from an interlocutor of the Court of Session, which has refused to take off their names.

The general liability of trustees has been settled by the decision of your Lordships in the case of *Muir*. In the present case it only remains to consider the special grounds of objection which the different appellants make.

With regard to John Bell, he contends in substance that the stock was not validly transferred into his name, and that he never has been a shareholder in the company.

The facts of the case as to Mr Bell are very simple. He and certain other trustees, since deceased, of James Lang, were confirmed executors after Mr Lang's death, and £400, part of the stock in question, was transferred into their names, and entered in the transfer register as transferred on the production of the confirmation. Mr Bell signed a mandate on the 30th of July 1851, addressed to the directors of the bank, authorising Mrs Lang, the widow, to receive the dividends — a mandate which would have no meaning if the shares had not been in his name. In December 1851 Mr Bell and his co-trustees bought for the trust £550 more of the bank stock. He signed the transfer for this stock, and it was duly registered in the names of himself and his co-trustees. He gave a new mandate authorising Mrs Lang to receive the dividends of all the stock. On the 17th of April 1867 he signed a mandate at a meeting of the trustees agreeing that the stock should be transferred to the surviving original trustees and the assumed trustees; and on the 26th of September 1872 he signed another mandate recognising that this transfer had been made. It appears to me to be not open to dispute that Mr Bell was, with his full knowledge and consent, a shareholder in the bank, and regularly entered in the bank books as such.

I may take together the case of the other appellants, excepting for the present Janet Lang. They say that they never gave any authority for their names being placed on the register of shareholders, and that in fact they were never received by the company as shareholders.

On the 18th of May 1865 the original trustees of James Lang were reduced to two in number, Bell and M'Callum. At a meeting of the trustees held on that day, and entered in the book of the trust, M'Callum laid before the meeting of the trustees a deed of assumption nominating the appellants Mrs Lang, John Lang, Margaret Lang, Agnes Lang, and Janet Lang, to be trustees with Bell and M'Callum in the management of the trust-estate, and they being called in, accepted the office and subscribed the minute in proof of their acceptance. The deed of assumption was duly engrossed in the sederunt-book of the trust. At another meeting of the trustees, held on the 17th of April 1867, the minute of which was signed by the same parties, the meeting, taking into consideration that the whole of the bank stock stood in the names of the original trustees, unanimously agreed that the stock be transferred to the surviving original trustees and the assumed trustees, and Mr Lang was instructed to have this done forthwith. At another meeting of the trustees, held on the 26th September 1872, the minute of which is signed by the same parties, Mr Lang is stated to have produced the scrip of the bank stock, showing that the same had been transferred into the names of all the trustees, original and assumed, as directed at a previous meeting. The stock ledger of the bank contains a note of the deed of assumption, and of the names of the assumed trustees; and the certificate of stock which was produced at the meeting of the 26th September 1872 certifies that the trustees of the late James Lang had been entered in the books of the company as the holders of £855 consolidated stock, and on the back are written, apparently in the same writing, the names of the trustees, including the appellants. Putting aside for the moment the case of Janet Lang, I cannot doubt but that on these facts your Lordships have a clear and complete case of the other appellants agreeing to have the bank stock placed in their names, and of this having been done in a form perfectly sufficient, and to which neither they nor the bank could afterwards take any exception. I think the reasoning of the Lord President upon this point is perfectly satisfactory, and I do not think it necessary to repeat it.

With regard to Janet Lang, it is to be observed that she was not of age at the meetings of the trustees in 1865 and 1867, and she cannot therefore be held bound by what passed at those meetings. She was of age at the time of the meeting of 26th September 1872, but she was then married to her present husband Robert Hill, and he is no party to this appeal, and was not a

party in the Court of Session. It is possible that besides the minute of the 26th of September 1872, the previous minute, dated the 27th June 1871, made after she came of age and before her marriage, may have to be considered with regard to her liability; but if she is to be placed upon the list of contributories, her husband's name ought, under the 78th section of the Companies Act 1862, to be placed along with hers, and the question of her liability should be decided in his presence.

I propose, therefore, to move that, except as to the appellant Janet Hill, the appeal should be dismissed; and that as to Janet Hill, it should be declared that her name should *in hoc statu* be removed from the list of contributories, without prejudice to the right of the official liquidators to place upon the list the names of her husband and herself in her right. I do not think this slight variation of the interlocutor ought to make any difference as to costs, inasmuch as this was not the point raised by the petition to the Court of Session; and I therefore shall move that the appellants pay the costs of the appeal.

Lord Hatherley—My Lords, I agree in the conclusion which has been come to by my noble and learned friend on the woolsack; and I take this opportunity at once of stating that as these numerous cases which have been argued at your Lordships' bar have a great many points in common, I shall not think it necessary to repeat on every occasion the grounds of my concurrence. I think we have established by the decision of your Lordships' House in *Muir's* case that those persons whose names appear upon the register as holding shares are personally liable, and must continue on the list of contributories notwithstanding that there may be added to their names a description of them as being trustees for A or B or C, or whoever it may be. The grounds for this were given in *Muir's* case, and of course I do not now repeat them. Perhaps I ought to observe that there is one case on which I shall take the liberty of making a few observations to your Lordships, and that is *Buchan's* case, (*infra* p. 512) where the question arises in a somewhat different form.

I apprehend, my Lords, that in each of these cases the first thing we have to ascertain, guided by the decision which has preceded these cases, isthis—Was the person at the time when the list of contributories was made out rightfully upon the list of shareholders at all? If he has been induced by misrepresentation to let his name be placed there, that may be one thing which may have to be considered, regard being had to the rights of third parties and creditors in the case. If he has been put upon the list without any authority from himself, he is not rightfully upon the list at all. But when we have been satisfied that he was upon the list at the time when the liquidators came to deal with it, if they find him as a shareholder of the company at the time to which their attention is directed, namely, the time of the winding-up, then I apprehend there can be no doubt of his being responsible personally, and that responsibility is not qualified by his describing himself as 'trustee.'

A second point we shall have to inquire into and to decide in some of these cases, although it does not occur in this case, is—Whether or not he made due application to withdraw his name from the list of shareholders at a proper time for that to be done, and whether the delay in withdrawing his name has been from some neglect or default on the part of those whose duty it was to remove it at his request? In such cases we must consider how far the application has been such as ought to have been complied with, and we must examine into the facts of the case in that respect. Having done that, I apprehend, my Lords, if we find that he was originally on the list by his own authority, and that he never took any adequate steps in point of law for the removal of his name from the list, the consequence is inevitable, that, having begun to be, he continues to be, at the time we have to take into our consideration, a person proper to be placed upon the list of contributories at the time of the winding-up.

Now, my Lords, in the cases we have to determine the points will be, I apprehend, principally matters of fact. They will require some application of principles of law to the facts of the case, but those principles of law are, nearly all of them, very well known and undisputed. There may be one or two at most of the cases upon which I shall feel it necessary to make some observations. Generally speaking, when I find the facts narrated in the opinion of my noble and learned friend upon the woolsack, which I have had the privilege of seeing before entering this house, in its printed form, I shall think it quite sufficient to say that I concur in the judgment, as I do in the present case.

Lord Penzance—My Lords, it appears to me to have been clearly established by the entries made in the sederunt book of the trust, to which the Lord Chancellor has referred in detail, that the original trustees of James Lang, together with the assumed trustees (the other appellants), determined on the 17th of April 1867 to have the stock now in question transferred into their own names, and that they authorised Mr Lang, as, their legal adviser, to effect and complete this transfer. The question raised on this appeal is Whether he effectually did so? There is no doubt that he communicated to the bank the deed of assumption by which the new trustees were added to the remaining original trustees, and there can, I think, be little doubt or question that he did so for the purpose of causing the new trustees to be entered on the stock ledger as joint-owners of the bank stock. There is also no doubt that the officers of the bank treated the matter in the same light, for they issued a certificate, which the entry in the sederunt-book of the 26th September 1872 declares that Mr Lang "tabled, showing that the stock had been transferred into the names of all the trustees, original and assumed, as directed at the previous meeting."

Your Lordships have therefore before you proof of the most unquestionable nature that the appellants desired and intended that the stock should be placed in their names, and themselves registered as owners of it—that the officers of the bank intended the same thing—and that both parties considered that the thing had been effectually done.

It is in this state of circumstances that the appellants contend that no such transfer was legally effected, because they say the proper entries were not made in the book which is called the "stock ledger."

I pass by the question, whether, if there had been a defect in the entry made in that book, it would have availed to relieve the appellants from the responsibility of shareholders, because I am of opinion that the entry actually made in that book was sufficient. The entry is in this form. It first gives the names of the original trustees and executors of James Lang, and underneath those names is an enumeration of the stock held by th em—and then at the foot of the above particulars there is an entry headed "Note," stating that "by deed of assumption by the above named survivors of the trustees and executors, of the date of the 18th of May 1865," they "nominate and assume to act with them;" and then follow the names in full of the new trustees, the present appellants. The effect of this "note" in connection with the entry to which it is a "note" appears to me to be this, that it was a short and convenient way of writing in the names of the new trustees into the previous category of trustees, to whom the original entry declared the stock to belong; and that it is as if a marginal note had been placed opposite the word "trustees" in the original entry, stating that certain individuals had since been added to the number of those who originally filled that office. So read, the entire entry would be a substantial statement that the original trustees, together with those added since, were the holders of the stock to which the entry related. In no other view could the fact of the assumption of new trustees properly find its place in the stock ledger, which professed to be a list of the holders of stock, and nothing more.

With regard to Janet Lang, although I confess I should have thought that, as the present suit was carried on by her 'with the consent of her husband,' he had had ample opportunity of opposing through her the addition of her name to the list of contributories, I am not prepared to dissent from the Lord Chancellor's proposition.

Lord O'Hagan—My Lords, I concur with my noble and learned friends, and I can add nothing material to their observations. Your Lordships' ruling in *Muir's* case determines that all the appellants are liable unless they, or some of them, can show that they were not validly registered as shareholders.

It seems to me that they have failed in showing this. John Bell was an original trustee of James Lang. The other appellants were assumed trustees. On this there is no controversy.

As to Mr Bell, it is equally uncontroverted that the stock of the City of Glasgow Bank was transferred to him, and that he signed repeated mandates to the bank authorising a particular disposition of the dividends, which involved an admission of his knowledge of the transfer, and an adoption of any liability legally attaching to it. I confess I do not see the smallest reason to doubt that he became a shareholder, and has continued a shareholder with his own privity and consent, and that his appeal must therefore be dismissed.

As to the assumed trustees, the case is not less clear. Of their assumption of the trust no doubt has ever been suggested, and of their agreement that the stock should be transferred to themselves and the original trustees, and of their knowledge that it had been effected accordingly, the evidence is conclusive. They became shareholders to all intents and purposes, and according to the decision in *Muir's* case their liability is complete.

Therefore I concur that the appeal must be dismissed, save as to Janet Hill, as to whom I agree that your Lordships should make the declaration suggested by the Lord Chancellor.

Lord Selborne—My Lords, I am of the same opinion, and I do not think it necessary to add anything.

Lord Blackburn—I also, my Lords, am of the same opinion. Having had an opportunity of perusing the opinion of the noble and learned Lord on the woolsack, which has been already delivered, I do not think it is necessary to add anything.

Their Lordships decided that as to Janet Hill, her name should *in hoc statu* be removed from the list of contributories, without prejudice to the right of the official liquidators to place upon the list the names of her husband and herself in her right. With this exception, interlocutor appealed against affirmed, and appellants ordered to pay to respondents the costs of the appeal.

Counsel for the Appellants—Higgins, Q.C.—Romer.

Counsel for the Respondents—Kay, Q.C.,—Benjamin, Q.C.—Davey, Q.C.—Kinnear. Agents—Martin & Leslie, Solicitors.

Tuesday, May 20.

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

CITY OF GLASGOW BANK LIQUIDATION—(*ALEXANDER MITCHELL'S CASE*)—ALEXANDER MITCHELL *v.* THE LIQUIDATORS.

(In the Court of Session, Dec. 21, 1878, *ante*, p. 165).

Trust—Resignation by Trustee after Commencement of Liquidation Proceedings—Right to have Name Removed from Register.

The City of Glasgow Bank stopped payment on 2d October, and no business was transacted thereafter. On 5th October notice was given to shareholders that at a meeting to be held on the 22d a resolution would be brought forward to have the bank would up by reason of its insolvency. A trustee resigned his office by minute of resignation dated 16th October, and entered the resignation in the sederunt book of the trust. The minute was signed by all the other trustees and by the beneficiaries. A certified copy of it was delivered next day to the secretary of the bank, with a request to remove the party's name from the register of members, or to make a note of the resignation upon the stock ledger, as was the bank's custom in such cases. The directors declined to do either.

In a petition brought for removal of the name from the bank's register—*held* (*affirming*