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*

the judgment of the Court of Session) that the directors of the bank were entitled to decline to make any change upon the register after the issue of the notice of 5th October.

Opinion per the Lord Chancellor (Cairns) that the power given to the directors of a joint-stock company to transfer shares was a power which was not intended to be in operation for the purpose of enabling individuals to escape from liability when the company has ceased to be a going concern, and when the general clauses of the deed of copartnership are no longer capable of being acted on.

Observed per Lord Penzance that the principle which obtains in all systems of bankruptcy—that the act of closing the trader's doors and suspending his business is the dividing period of time after which the rights of creditors ought not to be compromised by any transaction of the bankrupts—is alike applicable to the case of a joint-stock company incorporated under the Companies Act.

This was an appeal at the instance of Alexander Mitchell against a judgment of the Court of Session refusing a petition at his instance to have his name removed from the register of the City of Glasgow Bank. The circumstances will be found narrated in the report of the case in the Court of Session, *ante*, p. 165, and in the opinions delivered in the House of Lords (*infra*).

At delivering judgment—

Lord Chancellor — My Lords, The general question of the liability of the appellant in this case as a trustee is disposed of by the decision in *Muir's* case. The only point to which I have to direct your Lordships' attention is the claim of the appellant under the 35th section of the Joint Stock Companies Act to have his name removed from the register upon the ground that before the winding-up of the bank commenced he resigned his office of trustee and intimated his resignation to the bank.

The facts are these:—The appellant was a trustee and executor of Andrew Waters, deceased, who died in 1875, and on the 16th of October 1878, £3500 stock of the bank was standing in name of the appellant and his co-trustees in the books of the bank.

On the 16th of October 1878 the appellant resigned his office of trustee under the 24th and 25th Vict. cap. 84, by a minute entered in the sederunt-book of the trust, and signed in the book by himself and the other acting trustees. On the 17th of October he caused a certified copy of the minute of resignation to be delivered to the secretary of the bank at its head office, and requested that in pursuance thereof his name should be removed from the register. On the same day the secretary replied—"I am instructed to say that under present circumstances we are unable to comply with your request." The "circumstances" referred to in this letter were of course the insolvency and stoppage of the bank, and the facts with regard to the stoppage of the bank are these:—On the 2d of October it ceased to carry on business and closed its doors. It never resumed business, and it is admitted between the parties that its stoppage was notorious on and after that date throughout the United Kingdom, and that the directors knew at the time of the stoppage that the insolvency of the bank was irretrievable. On the 5th of October the directors convened an extraordinary general meeting of the shareholders by advertisement for the 22d of October, to consider, and if thought fit to pass, resolutions under the Companies Act 1862, to wind up the bank voluntarily by reason of its inability to carry on business. On the 11th of October the directors instructed the secretary, by a minute of that date, to reply to all requests for transfer of shares that the directors did not feel warranted to prepare or register any transfer of the bank stock. On the 16th October a further minute on the same subject was made, stating that counsel concurred in thinking that the directors in present circumstances were not warranted, and that it would be improper for them to execute or register any transfer. The last meeting of the directors was held in the forenoon of the 18th of October, and they took no charge of the business of the bank thereafter; and the following morning they were apprehended on a criminal charge. On the 22d of October the resolution was passed for the voluntary winding-up of the bank, and the winding-up under the Act commenced from that day.

The name of the appellant having been duly entered upon the register, and appearing there at the time of the winding-up, he is clearly liable to be placed on the list of contributories unless he can show something more than his mere resignation of his trusteeship. His resignation of his trusteeship alone would not terminate his liability to the bank. He ceased to be a trustee; but it remained for him to terminate his liability in respect of the bank by a transfer, or something equivalent to a transfer, of his shares. This transfer the bank refused to make, and the appellant has therefore to show, under the 35th section, that default has been made, or that unnecessary delay has taken place in entering on the register the fact of his having ceased to be a member.

The words of the section with regard to delay may be put out of the case. There is no question of delay. The application of the appellant was considered and was answered, and the answer was a refusal under the circumstances to remove his name. The real question therefore is, Was there a default in the directors in not removing his name?

My Lords, in an ordinary partnership there is of course no power in a partner to assign over his interest in the partnership, and thus to get rid of liabilities to those who have claims against the partnership. In the case of a joint-stock company the shares are made transferable; and the arrangements for effecting a transfer are part of the general power given to the directors in the management of the concern—the control vested in the directors over the right of transfer being in some companies greater and in others less.

My Lords, I should be very much disposed to hold that the power given to the directors to transfer shares—whether it were a power merely ministerial, or a power attended with a right of investigation or option—was, as was said by my noble and learned friend Lord Selborne in *Allin's* case (L.R., 16 Eq. 449), a power intended to be in

operation together with the other clauses of the deed of settlement, and while the company was carried on as a going concern for the purposes of a common agreement, and was not intended to be in operation for the purpose of enabling individuals to escape from liability when the company had ceased to be a going concern, and when the general clauses of the deed were no longer capable of being acted on.

But, my Lords, I do not think that it is necessary in the present case to lay down a general rule in terms so extensive. The directors of the Glasgow Bank were acting in the management of the business of the company as the agents of the shareholders. Among their other duties was that imposed on them by the 46th article of the deed, which provided that if it should appear at any time on balancing the books that a sum equal to the whole of the reserved surplus fund, and also to one-fourth part of the paid-up capital stock, had been lost, a special general meeting of the shareholders should be called, and the company should thereupon be dissolved, unless a majority of two thirds in value should determine otherwise. The directors had closed their doors and publicly announced the stoppage of the business on the 2d of October. It would have been competent to any creditor at any time afterwards to have presented a petition to the Court for the winding-up of the company—for which petition there were ample materials—and the presentation of the petition would, under the Act, have been the commencement of the winding-up, after which no valid transfer of a share could have been made. It is impossible to doubt that what prevented an adverse application to wind-up the company was the notice issued by the directors on the 5th of October which, in effect stated to the public that they would call the shareholders together on the 22d for the purpose of winding-up the company voluntarily, on the ground of its insolvency. There was involved in this notice an appeal to all persons interested to support the directors in the proposal for a voluntary liquidation in preference to a judicial liquidation. Now, if the directors, after thus taking the step most calculated to disarm those who had a right to proceed adversely against the bank, had used the interval to permit or facilitate arrangements in the constitution of the bank, it appears to me they would have been acting both in opposition to the spirit of the 46th article and in bad faith to those having claims upon the company; and that not only were the directors of the company precluded under the circumstances from assenting to transfers, but that the shareholders also, whose agents and representatives the directors were, were precluded from making these transfers.

I am therefore of opinion that there was no default under the 35th section in the directors not entering on the register the fact of the appellant having ceased to be a member of the company, and that the decision of the Court of Session was right, and I must move that this appeal should be dismissed, with costs.

Lord Hatherley—My Lords, I concur entirely in the view which has been taken of this case by my noble and learned friend. I do not know that there is any special point of law which arises upon it, and as to the facts I am, as I have already said, satisfied with the printed opinion of my noble and learned friend, which I have read, and which sets forth the facts very clearly and concisely.

The appellant applied to have his name removed from the list of shareholders, not substituting any other, and not having made any arrangement with his co-trustees themselves by which he was to be removed from the list. The removal of his name from the share-list of the company under those circumstances would so far have removed, not only a security which his co-trustees had, but also a security of every shareholder and creditor of the bank. It seems to me that if this application was justified, a name might be removed on the application of any shareholder at the mere will and pleasure of the directors, at their option, and without any special ground for exempting that shareholder from the liabilities which had been incurred and which were then obviously on the point of being enforced. I do not think the section which speaks of "delay" and "default" is applicable to a case of that description, thinking, as I do, that it would have been a breach of duty on the part of the directors, who were to hold an equal hand as between all the shareholders, to show a favour to one particular shareholder, under the circumstances of the case, more than another.

Lord Penzance—My Lords, the facts upon which the present appellant contends that his name should be removed from the list of contributories have been stated by the Lord Chancellor.

There is no doubt that on the 16th of October 1878 he ceased to be a trustee by resignation of that office, but the question is, Whether in the events that happened he has established to your Lordships' satisfaction that his name ought to be removed from the register, and thereby from the list of contributories? There are two sufficient answers, I think, to this claim.

It is argued by the respondents—I quote from their printed case—that "the appellant's resignation of the office of trustee and executor cannot dissolve the partnership relation into which he and his co-trustees entered, in terms of the contract of copartnery of the City of Glasgow Bank. The office of trustee and executor, which the appellant took up by acceptance and laid down by resignation, is entirely different from the relation of partnership into which he entered, not by accepting office as trustee and executor, but by producing and recording the confirmation in the bank's books. He entered the partnership in terms of the contract, and must retire in conformity therewith." In this reasoning I think your Lordships ought to concur.

Now, the only way in which a partner could, under the provisions of the deed of copartnery, divest himself of his share in the bank, would be by a deed of transfer, the form of which is to be regulated by the directors. But no such deed has ever been executed, and although the appellant would after his resignation have a right to call upon his fellow-trustees to concur in all necessary deeds and acts for effecting a transfer of his interests in the bank, and the bank would be bound under ordinary circumstances to give effect to such deeds and acts by removing his name from the register, the mere act of resigning

his office of trustee cannot, even though communicated to the directors, properly be held to be equivalent to a transfer, or "*per se*" to entitle the appellant to have his name thus removed.

But there is a wider and more substantial ground upon which I consider the appeal should be rejected. The powers which the Court of Session and your Lordships are asked to exercise are the statutory powers conferred by the 35th section of the Companies Act 1862, by which it is provided that the Court may, "if satisfied of the justice of the case, make an order for the rectification of the register" by deleting the name of the applicant. But can it be said that the Court of Session ought to have been "satisfied of the justice of the case?" The bank had ceased to carry on its business upon the avowed ground of its hopeless insolvency before the appellant resigned the office of trustee or took any step to retire from the partnership. When he applied to the directors, therefore, to sanction his retirement from the partnership, he did so, not for the purpose of terminating his connection with the bank in future, and thereby exempting himself from its future obligations, for there could be none, the business being wholly suspended, but for the sole purpose of escaping his partnership liability for the past. The most that the appellant can urge is, that the resignation of the office of trustee operated as a gratuitous assignment of his shares, which "to be effectual" required, under section 34 of the deed, "to be sanctioned by the directors." But how could the directors, with justice to the creditors and the other shareholders of the bank, sanction an assignment which, instead of being made in the ordinary course of business, and for the purpose of putting an end to the assigner's interest in the bank in future, could be designed only to free the shareholder from liabilities already incurred?

Without going so far as to say that the suspension of business on account of insolvency would necessarily in all cases operate to suspend all the powers of the directorate respecting the transfer of shares—upon which I offer no opinion—it is, I think, clear that such powers could not be exercised without a dereliction of duty in a case like the present. It is common, I believe, to all systems of bankruptcy to take the act of closing the trader's doors and suspending his business as the dividing period of time, after which the rights of his creditors ought not to be compromised by any transaction of the bankrupt. This is entirely conformable with justice; and although the present case, being that of a company, does not arise under the bankrupt laws, the principles of justice which should govern it appear to me to be the same. If, then, there had been an actual assignment by the appellant of his interest in the partnership stock, there is no clause in the deed which obliges the directors to "sanction" it, and there is nothing in the events and circumstances which occurred that ought to "satisfy" the Court of Session or your Lordships "of the justice of the appellant's case" in claiming to have his name removed from the register of shareholders.

Lord O'Hagan—My Lords, the sole question in this case is, Whether the appellant on the 17th of October 1878 was entitled to require of the directors of the City of Glasgow Bank that his name should be taken from the register? If he was not, his appeal should be dismissed; if he was, it ought to be allowed.

He was admittedly the trustee and executor of Andrew Waters. As such he had stock duly registered in his own name in the month of October 1878, and unless the responsibility attaching to him as the holder of it has been somehow discharged, it equally attaches to him now. On the 16th day of October 1878 he ceased to be a trustee by resignation; and on the 17th he endeavoured to have his name taken from the register. His abandonment of the trusteeship could not confessedly affect his relations with the bank whilst his name continued on the register, and he did not require the removal of it until the 17th of October, after insolvency had been declared and business suspended, and the directors had summoned a meeting for the 22d of that month with a view of winding-up the concern.

Under those circumstances, I concur with my noble and learned friends that it was not only the right, but also the plain duty, of the directors to refuse the demand for removal. In refusing it they were not guilty either of "delay" or of "default." They had closed the bank, and undertaken, subject to the opinion of a general meeting, to wind up the company; and the admission of a claim in the meantime to escape liability on the part of the registered stockholders would have been, in my opinion, at once a breach of their duty as agents for the persons interested, a misuse of powers which the position of the bank appears to me—although it is not necessary to give a decision on the point—to have rendered them incapable of exercising, and a fraud upon the creditors, who might easily, by the multiplication of such claims, if they were at all admissible, have been robbed of the entire security on which they had relied.

I think that this appeal also must be dismissed.

Lord Selborne—My Lords, with respect to this case, and all others which depend upon the question whether the right of transfer continued to exist down to the commencement of the winding-up order under the Act of 1862, it is necessary to consider the general question of the position of the bank after its stoppage, or at all events after the issue by the directors of the circular calling the meeting with a view to the necessary resolution for a voluntary winding-up.

I think that after that circular had been issued it was too late for any shareholder to transfer his shares either to the copartnership itself or to any other person, and therefore too late for a trustee, previously registered and liable, to relieve himself from liability by resigning his office and intimating that resignation to the directors. The conclusion, as it appears to me, might safely be rested in this and the other cases depending on the same principle with which your Lordships have now to deal, on the 46th clause of the copartnership deed, which provides that, in the events which in the present case had beyond all question happened "a special general meeting of shareholders shall be called by the manager, under authority of the ordinary directors, and the company shall thereupon be dissolved, unless a majority of two-thirds in value of the share holders, personally or by proxy, present at such meeting shall determine otherwise," and shall thereupon fulfil certain onerous conditions. A

special general meeting was (in the circumstances which brought this clause into operation) actually called for the purpose contemplated by the clause (for winding up is dissolution) on the 5th of October by the manager under the authority of the directors; and the circumstances were such as to make it certain, beyond the possibility of doubt, that the alternative course contemplated by the deed could not and would not be taken. The directors in issuing that notice under the deed were clearly acting in the due discharge of their duty as the common agents of all the then shareholders, however much they might have previously departed from their duty in any other respects. What was the consequence? Under the deed itself there was from that moment an inchoate dissolution, subject only to a contingency which could not happen, but which, even if it had been possible, would not have prevented the notice from having the effect of an inchoate dissolution until it actually happened. From the time when the machinery for dissolution created by the deed was so put in motion (and which would naturally prevent the creditors from pursuing other remedies equally effective which they might otherwise have immediately put in force by presenting a petition for compulsory winding-up under the Companies Act of 1862) I consider that the bank was, by the very terms of the common contract, incapable of continuing its business, and that the directors could thenceforth do nothing except on the footing of dissolution. They were, therefore, right in refusing to accept or register any transfer, &c., the whole arrangements of the deed for changes in the constitution of the partnership being of a kind to which the obligation to dissolve necessarily put an end.

Lord Blackburn—My Lords, the City of Glasgow Bank closed its doors on the 2d of October; on the 5th October the directors convened an extraordinary general meeting for the 22d of October, for the purpose of passing resolutions to wind up the bank voluntarily, and on that day the resolutions were passed. The appellant was a person whose name stood on the register, and who had taken steps to transfer his shares; and after the 5th October, and before the 22d October, brought the transfer to be registered. The directors refused to do so, not on any special ground applicable only to this particular transferror, but on the general ground that under such circumstances they were not warranted in registering any transfer of bank stock.

The present proceeding is under the 35th section of the Act of 1872, and the first question, which if decided in favour of the respondents disposes of this and also of some other cases, is, Whether a refusal of the directors under such circumstances to register any transfers during the interval between the stoppage of the bank and the holding of the meeting on 22d October was a rightful refusal or was a default? This is, I think, a new question, not decided by any authority either in English or Scottish law which I have been able to discover.

If either those who framed the Act of 1862, or those who framed the deed of copartnership, had thought of providing for such a case, I cannot much doubt that it would have been expressly declared that it should not only be in the power, but should be the duty of directors to act as those did; but it has not been provided for expressly. I have felt more hesitation than either the Court below, or I believe any of your Lordships, as to how far we can properly import a condition which, however just and expedient, is not in terms expressed. But I have come to the conclusion that we must hold that the directors had authority to do this.

The board of directors are constituted the managing body of the company, and as such are agents of necessity, having authority to act for it in all cases of emergency where there is not time to consult their constituents. And therefore when the bank stopped payment they were acting strictly within their implied authority when they closed its doors and convened the extraordinary meeting; and it seems to me that no such meeting could properly and effectually be convened if all or any of the shareholders who were on the register and liable for its debts could use the necessary interval so as to escape from that liability. The maxim *Quand alioquid, mandatur, mandatur et omne per quod pervenitur ad illud*, is, I think, founded in reason, and applicable to these cases. And consequently, I think that, having come to the conclusion that authority was given to the directors to convene the meeting, I am bound to conclude that authority was also given to them to suspend the registration of all transfers till the result of the meeting so convened was known.

I consequently agree that this appeal must be dismissed, with costs.

Lord Gordon—My Lords, I am of the opinion expressed by my noble and learned friend on the woolsack, and I concur in the motion which he has proposed.

Interlocutor appealed against affirmed, and appeal dismissed with costs.

Counsel for the Appellant—

Counsel for the Respondents—Kay, Q.C.,—Benjamin, Q.C.,—Davey, Q.C.,—Kinnear.

Tuesday, May 20.

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

CITY OF GLASGOW BANK LIQUIDATION—
—(*KER'S CASE*)—ALAN KER (FYFE'S TRUSTEE) *v.* THE LIQUIDATORS.

(In Court of Session January 24, 1879, *ante*, p. 285)

Public Company—Winding-up—Circumstances from which Authority to Register inferred.

The name of a trustee under a marriage-contract was by the instructions of the agent to the trust entered along with the names of his co-trustees in the register of members of a joint-stock company. The trustee himself never by any formal writing accepted office,