

raised, and discuss the questions affecting that interest either with the liquidators or with the shareholders, or with anybody else concerned. An appointment of that kind would be analogous to what very often occurs in the business of this Court, where a common agent is appointed to represent a variety of persons interested in a particular question; and if such a state of circumstances does hereafter emerge, we shall be very glad to listen to any such proposal; but the notion of appointing a representative or common agent, if I may so call him—an agent in the interest of the creditors—when their interests are already represented and attended to by the liquidators, is a proposal which does not commend itself to me as likely to be productive of any useful consequence, and therefore I am for refusing any proposal of that kind also.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The following supervision order was pronounced in the petition at Brightwen & Company's instance:—

“The Lords having resumed consideration of the cause, and heard counsel for the petitioners and the liquidators of the City of Glasgow Bank, and the comparing creditors of the said bank, direct and ordain the voluntary winding-up of the City of Glasgow Bank, resolved on by the members thereof on 22d October 1878, to be continued, but subject to the supervision of this Court, in terms of the Companies Acts 1862 and 1867, and declare that any of the proceedings under the said voluntary winding-up may be adopted as the Court may think fit, and declare that the creditors, contributories, and liquidators of the said company, and all other persons interested, are to be at liberty to apply to the Court as there may be just occasion; and further direct and ordain that, unless and until it shall be otherwise directed and ordained by the Court, the liquidators shall not effect any compromise with any creditors except with the special leave of Court: *Quoad ultra* refuse the prayer of the petition.”

Counsel for Petitioners Brightwen & Company—Trayner—Mackintosh. Agent—John Gill, S.S.C.

Counsel for London and Westminster Bank &c.,—M'Laren—Moncreiff—Guthrie Smith—J. A. Reid—Blair, &c. Agents—Philip, Laing, & Company, W.S.—Hunter, Blair, & Cowan, W.S., &c.

Counsel for Liquidators—Lord Advocate (Watson)—Kinnear—Balfour—Jameson. Agents—Davidson & Syme, W.S.

Counsel for Scotch Creditors, including Banks—Balfour. Agents—Davidson & Syme, W.S.

Friday, December 14.

SECOND DIVISION.

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

Public Company—Register of Shareholders—Rectification of Register where trustee had resigned subsequent to winding-up.

A party, entered upon the register of a bank as trustee upon a trust-estate, subsequent to the stoppage of the bank, and when its insolvency was notorious, but prior to the commencement of proceedings for liquidation, resigned his position of trustee by minute of trustees, and intimated the same to the bank. The officials refused to give effect to the resignation, and to remove the name from the register. He then brought a petition for rectification of the register under the 35th section of the Companies Act 1862. Held that in the circumstances that section did not apply, as there had been no subsequent board meeting prior to the winding-up resolution, and no “default or unnecessary delay” on the part of the officials.

This was a petition for the rectification of the register of members of the City of Glasgow Bank, presented by James Shaw, surgeon, Glasgow. John Scott, bootcloser in Glasgow, had died in 1849, leaving a trust-deed whereby he nominated the petitioner, Alexander Scott, now dead, and Thomas Scott, as his trustees and executors, with the usual powers, including, *inter alia*, the power to lend out upon such securities as they “see right the monies of the trust, for answering the purposes thereof, and generally to do everything in the premises” the truster could have done himself. The petitioner accepted office, entered upon the management of the estate, and by deed of assumption upon 19th October 1874 he, as the only surviving trustee, assumed three additional trustees into the trust, and by another deed of assumption, dated the 3d of January 1878, two more were assumed. Part of the trust-estate consisted of £162 of the stock of the City of Glasgow Bank, which stood in the bank register in the name of the petitioner as sole surviving trustee.

By the Trusts (Scotland) Act 1867, 30 and 31 Vict. cap. 97, it was enacted (sec. 10) that “any trustee entitled to resign his office may do so by minute of the trust, entered in the sederunt book of the trust, and signed in such sederunt book by such trustee, and by other trustee or trustees acting at the time.” The petitioner had resigned his office by minute of the trust dated 21st October 1878, duly entered in the sederunt book of the trust, and signed in that book by himself and by the other trustees. The other trustees (with the exception of William Stout, who was abroad) did the same. The City of Glasgow Bank declined, however, to remove the petitioner's name, or to give effect to the minute of resignation, though a certified copy of it was duly delivered at the head office.

This petition was therefore brought against the bank, which had been, until 29th November 1862, an ordinary copartnership, but which was

on 29th November 1862 incorporated under the provisions of the Companies Act 1862 (25 and 26 Vict. cap. 89). The 35th section of that Act enacted—"If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, . . . as respects companies registered in Scotland, by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding, to have his name entered in or omitted from the register, whether such question arises between two or more members, or alleged members, or between any members or alleged members and the company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register," &c.

Founding upon that section, Dr Shaw applied to the Court to have his name deleted from the register.

In their answers the liquidators of the bank, to whom the petition had been intimated, stated that no intimation of the deeds of assumption of 1874 and 1877 was ever made to the bank, nor was the bank required by the petitioner to make any change in the entry till 21st October 1878.

The ledger was the register of members of the bank, and by section 40th of the contract of co-partnership of the bank it was provided—"The person or persons, companies or corporations, whose name shall at any time stand in the said stock ledger containing the list of partners of the company, whether as original or assumed partners, shall be deemed and taken to be the proprietors of the several shares standing in the said ledger in their respective names, and shall be liable to the payment of every call or calls for instalments of capital stock to be made thereon, and to all actions, suits, obligations, forfeitures, and penalties, and shall be entitled to the whole profits, and liable for all the losses to which the original proprietors of shares in the company are subject, liable, and entitled to by these presents; and the names entered in the said stock ledger, and the amount of shares annexed thereto, shall be the sole evidence receivable at any meeting of the partners as to the right of voting at said meeting."

No provision was made by the contract of co-partnership for the transfer of stock by means of a minute of resignation, and a transfer or conveyance thereof, duly registered, was necessary to divest a former holder, and the provisions of the contract had, therefore, not been complied with.

The provisions of the 10th section of the Trusts (Scotland) Act 1867 had not, the liquidators further averred, been complied with. The minute of resignation, entered in the minute book of the trust, was not signed by William Scott, one of the trustees, as required by the above section, and he was not present at the meeting. It was therefore necessary for any trustee wishing to resign to sign a minute, register it in the Books of Council and Session, and intimate the same to his co-trustee or trustees; the effect of which would be, that the resignation would only take effect from and after the expiry of one calendar month, three months, or six months, according to the circumstances mentioned in the section.

Further, if the petitioner's request were complied with, no person would be left on the register as holder of the stock in question, as no transfer in favour of the other trustees had been executed.

The City of Glasgow Bank was insolvent, and stopped payment on 2d October 1878, and thereupon the directors gave instructions that no transfers or other documents of title should be recorded. By 21st October, when the petitioner professed to resign office, and intimated the same to the bank, a meeting of the shareholders had been convened for the 22d October. At that meeting, in order to the voluntary winding-up of the company, under section 129 of the Companies Act, an extraordinary resolution of the company was unanimously passed, to the effect that "it was proved to their satisfaction that the company could not, by reason of its liabilities, continue its business, and that it was advisable to wind-up the same;" and the liquidators were subsequently appointed.

A joint minute of admissions was put in by the petitioner and the respondents, from which, *inter alia*, it appeared that the truster had been a registered holder of £282 of the City Bank stock, and that the warrants for the dividends which became due upon the stock in question had been after his death made out in favour of "The Trustees of the late John Scott, Glasgow," and the entry on the stock ledger or register of members of the bank specified the names of three trustees as nominated and appointed by the truster's deed of settlement. In November 1850 the stock had been reduced to £162 by a transfer to the truster's widow. The two deeds of assumption had never been produced nor intimated to the Bank, nor was any change in the entry in the stock ledger asked or proposed by the petitioner in consequence thereof. The minute of the trust signed in the sederunt-book on 21st October 1878 was not signed by William Stout, one of the trustees. He did not sign it in consequence of his not being in Glasgow that day, but he signed a docquet to the minute in the sederunt-book on 21st November 1878. All the trustees, including William Stout, were duly summoned to the meeting at which the minute was signed. A copy of the minute was thereafter sent on the afternoon of the same day to the Bank, but neither the directors, manager, nor secretary were in attendance at the Bank on that day nor subsequently. The Bank stopped on 2d October 1878, after which date its insolvency was notorious, and before the minute of resignation was signed the contents of the report and balance sheet by

Messrs Kerr, Anderson, Muir, and Main, C.A., and Messrs M'Grigor, Donald, & Co. were known to Dr Shaw, having been sent to him as to the other shareholders. No transfer or change in the register had been made since the stoppage on 2d October.

Argued for the petitioner—The Bank objected to the prayer of the petition on these two grounds—(1) Because the petitioner had executed no transfer; (2) Because there was no good or effectual resignation, as three modes of resignation had been provided for trustees under the Trusts Act 1867, and no one of these had been followed.

(1) The right to resign was in the Act of 1861 (24 and 25 Vict. c. 84), which declared (sec. 1) that all trusts constituted by gratuitous trustees should be held to include power to resign. The Acts of 1861 and 1867 were to be read together. The bank had no concern with the procedure, and were bound to delete the name upon intimation. If the resignation were good, there was no doubt it was intimated in sufficient time, as the point of time fixed by the Companies Act, after which no alteration could take place in the state of the members, was the resolution to wind up—Companies Act 1862, sections 130 and 131. A transfer, if executed immediately before the resolution to wind up would be effectual even though granted for the purpose of escaping liability, unless it were fictitious or fraudulent. Where a trustee died or resigned the trust estate by accretion fell to the other trustees. As matter of fact, the Bank had not required the executors of a predeceasing trustee to execute any transfer. By the 30th section of the Companies Act 1862 the provision in the 19th section of the Joint Stock Companies Act 1856, in regard to no notice of trust being entered on the register, was confined to England and Ireland. If companies took notice of trustees and recognised trusts, they must also take notice of the ordinary incidents of a trust, and recognise the trustees' right to resign when they thought fit. As to the working of the 19th section of the Joint Stock Companies Act 1856, cf. Lord Westbury in *ex parte Stewart in re Shelly*, 34 L.J., Bankruptcy 6. And it was now lawful for Scotch companies to take notice of any dealings by their shareholders, and the capacities in which they held. In England it was settled that the trust was not a contributory, and in Scotland it was optional to contract with the trust or with the trustees individually. Here the Bank had taken the trust estate.

If the resigning trustee would have been entitled at the time he resigned to have transferred the stock to a third party, then he was equally entitled to resign and have his name removed from the list. If the petitioner's name had been well on the register, and had remained so after the winding-up order, he could not have escaped. It was quite competent for the Court to place on the list of contributories those who had never been on the register of members, it being shown that they had in certain capacities become liable. In terms of section 99 of the Companies Act, Mr Stout, the comparing trustee, should be entered on the list of contributories as a person representing an interest other than his own, thus making the trust-estate liable. As to the question of the refusal of the Bank to transfer, the insolvency was said to have imposed a duty on the officials to the shareholders not to re-

gister any changes—*Ward v. Henry*, L.R. 2 Ch. 436). This case had been shaken by subsequent authorities—(*ex parte Shaw*, L.R. 2 Q. B. Div. 463). The question was not about what were Dr Shaw's motives for resigning, but whether he was exercising a legal right or not; or again, whether any provision existed, either statutory or at common law, to prevent the course taken. Suppose these trustees be treated in any question between them and the Bank as simply joint-holders of a right on a "death and survivorship" holding, then the result would be, as in the present case, namely, that on the death or termination of the interest in the one the right would pass to the other without necessity for transfer or other deed—(*Bisset v. Walker*, M. App. "Deathbed," No. 2). The mode of transfer would much follow the rules in the case of heritage. It was answered that when a right was vested in two persons and the longest liver of them, the survivor had not only a life interest but an absolute fee, and this was indeed the law; by the terms of the destination in such a case the right of each is an immediate right to one-half and an eventual right to the whole. No transfer was needed, the mere fact of death conferred the right. Applying this principle to the present case, even if for the purposes of a liquidation a body of trustees were to be regarded as individual proprietors, yet, as the terms of the destination were to those accepting and surviving, and as the rights passed out of the estate of the deceased trustees clearly by their decease, it was only a variation of the rule to apply it to the case of resignation also. If the statute was to rule, it entirely supported the petitioner's case, because it fixed the commencement of the winding-up as the period after which no effectual transfer or alteration of status could take place. This last expression covered the case of a resignation of a trustee; it was here effected *before* the winding up began, and so was good. In the whole Act there was no such thing contemplated as retrospective bankruptcy; on the contrary, there was the peculiar provision that every one who had been on the register for a year, or until 20s. in the £1 had been paid, was cautioner for those still on the register. This explained the absence of any provision analogous to the Act 1696 for annulling transfers or deeds executed within a certain time of the winding-up. [LORD JUSTICE-CLERK—You admit that the resolution to wind up would stop everything.] In order to have a good case a man must have resigned and have intimated that resignation before any resolution to wind up has been passed. [LORD JUSTICE-CLERK—This all comes back to the original question of whether a transfer is needed or not.] That was so. If a transfer was necessary the petitioner's case failed.

Replied for the respondents—Even if there had been here no insolvency at all, the prayer of such a petition could not have been granted, for when Dr Shaw on 21st October came and required that his name should be taken off the register, the directors were entitled to say he must continue a shareholder until he found some one to take his place as such. In the case of death of a trustee, of course, the right of administration lapsed, but the beneficiary interest remained where it was. Resignation did not act as a divestiture. This was incorporeal property, though moveable, and it required documents and title to

show right to it. Transference and forfeiture were the only two modes of passing shares from one person to another. The respondents relied on the 22d and 196th sections of the Act of 1862. Until there was a divestiture of one partner there could not be investiture of another. The Company here had stopped payment, and could not have altered the register to the effect now demanded without practically defrauding the other contributories and the shareholders generally. In all cases where the question had been considered it had been held a most material point as to the transfer whether or not subsequent to the intimation of the desired transfer there had been no board meeting, so that the directors had sufficient time to place upon the register a properly executed transfer before liquidation commenced—(Lindley, vol. ii. 1413). Now, here no one could impute delay to the Company. There was no board meeting. It was out of the ordinary course of business. The proper officers to execute the transfer were already arrested on a criminal charge. Had the bank been going on in the usual way Dr Shaw must have been prepared to give a new name either of a trustee or of a beneficiary to take the place of his own name when it was removed. And further, the Court would have, it was contended, regarded as perfectly valid an objection to record a transfer founded on the fact that the transferor had not found a transferee.

Authorities—Companies Act 1862, secs. 131, 76, 22, 35, 196; 19 & 20 Vict. c. 47, sec. 19 (Act of 1856); *Ex parte Stewart*, 34 L. J. Banker. 6; *De Pass' case*, 4 De Gex and Jones 544; 24 and 25 Vict. c. 84, sec. 1; *Maxwell's Trustees v. Maxwell*, Nov. 4, 1874, 2 R. 71; *Hill v. Mitchell*, Dec. 9, 1846, 9 D. 239; *Gilmour v. Gilmour's Trustees*, July 18, 1850, 12 D. 1266; *Drummond*, M. 16,206; *Dulziel*, M. 16,248; Lindley, ii, p. 1413, &c.

At advising—

LORD JUSTICE-CLERK—This petition at the instance of James Shaw for rectification of the register of the City of Glasgow Bank was very fully argued before us, and a great many questions of very deep importance and interest were raised in regard to it. The object of the petition is to have the name of the petitioner, who is said to have been entered upon the register of the City of Glasgow Bank as a trustee of a person of the name of Scott, removed from the register, and the ground upon which that prayer is founded is that he had ceased to hold the character in respect of which alone he says he was registered; and the allegation of the petitioner is, that having resigned his position as trustee, he intimated that on the 21st of October last to the bank, that the bank were bound to have removed his name from the register, and that as they have failed to do so, under the 35th section of the Act of 1862, under which the bank was registered, we are entitled summarily on a petition of a similar nature to the present to direct his name to be removed from the register.

The answer that is made on the part of the liquidators is, in the first place, that the case does not fall under the 35th section of the Act of 1862, because the bank, at the date when the alleged resignation took place and was intimated, had shut its doors—having done so on the 2d October previously—that a meeting for liquidation of the bank had been called for the 22d October, the day

following the intimation, and that consequently the terms of the 35th section, under which it is required that the Company should have been in default or should have been guilty of unnecessary delay in entering or removing the name of the party complaining of the register, had not been fulfilled, and that the Court had no jurisdiction to consider the question. It was further maintained that, at all events, there being no transfer produced on the petitioner's own admission, and there being nothing but an intimation of resignation, there was no obligation incumbent on the directors to make any alteration upon the register till a transfer in regular form had been produced, and this last argument of course involved the question whether the registration of an individual as trustee, with that qualification appearing on the register, was equivalent to the registration of his name as a partner or as an individual. On this last question I do not think it necessary in the present state of the proceedings, to give any opinion at all. The question whether the registration of a person as trustee under the Act of 1862 on the statutory register of a joint-stock company is equivalent simply to the registration of his name as an individual partner, is a question which, as we were informed by the bar, was not intended to be raised, and therefore I dismiss that altogether, as not arising under the application here before us. What was raised, and the only matter that was raised, was, as I understand the question, whether the bank were bound to remove the name of the petitioner from the register irrespective altogether of the liquidation.

Now, if the case submitted to us had disclosed an obligation on the part of the company as a going company, to have removed the name of the petitioner from the register prior to the liquidation or prior to the insolvency, I do not say whether that obligation could be enforced, as here the company was insolvent and in liquidation before the application was made. That is a question that might and may give rise to difference of opinion, or at all events on which argument may be made.

The state of the matter under the statute I am not going to enter into at length, because it is not necessary for the object which I have in view. The 35th section gives a power of summary rectification of the register of a going company, and that is manifestly the import of those provisions in the 35th section, although they may also be applicable to liquidation or bankruptcy, as provided for afterwards in the statute. Then in the case of liquidation, the 98th section gives a power to the Court in an official liquidation to alter the register if they think fit for the purpose of settling the list of contributories, and I should imagine also in the event of there being funds enough to pay the debts of the company without contribution. Under the 133d section, which deals with voluntary winding-up, and those subsequent clauses relative to liquidation under judicial supervision, I do not doubt that there is a power of rectifying the register where that is necessary for the purposes of the liquidation.

But these are not the questions that are raised here. The sole question is, whether the 35th section applies directly to the case, which is here made irrespectively of the liquidation altogether? Now, on that question, namely, the

construction and import and extent of the remedy given under the 35th section of the Companies Act, there has been a great deal of discussion and good deal of difference of opinion in the English Courts. In one set of cases it was held on very high authority that unless the company itself were in default, or had unduly delayed to give the remedy and to rectify the register, the Court had no jurisdiction under the 35th section to entertain an application of that kind. On the other hand, in the recent case of *ex parte Shaw*, L. R. 2 Q. B. 463, a very full bench decided that the 35th section was intended to give a remedy between shareholder and shareholder—that is to say, to give a remedy in regard to the right to the shares and the right to be registered irrespectively altogether of any action upon the part of the company, who were the mere stakeholders. I think it is quite unnecessary to deal with that matter at present. My opinion, however, is, that in this case, at all events, and in most cases as between company and shareholder, the question of default or delay will be found to be very material; and here the true question is, whether on the face of the petition there is disclosed an obligation on the part of the directors to have done anything in the way of rectifying the register which they failed to do? I am very clearly of opinion that in so far as that is necessary to support this petition no such case is disclosed at all, but that, on the contrary, the case which is disclosed shows manifestly that the directors would have done extremely wrong if they had meddled or interfered with the state of the register on the 21st of October, and that the liquidators also, so far as that part of it is concerned, are not bound in respect of any obligation on the part of the directors to make any alteration of the kind. It is plain that having shut their doors on the 2d of October the bank ought not subsequent to that date to have altered the condition in which the shareholders stood without judicial authority. And certainly on the 21st of October, seeing that there was no time whatever—even if the company had been solvent and going on with their business—to consider the application or to see whether it should be granted or not, it cannot possibly be said that when on the next day, the 22d of October, the liquidation took place, there had existed prior to that date any obligation on the part of the directors to alter the register in terms of the requisition. That being my view, it is clearly unnecessary for us here to express any opinion as to what the nature of a registration in these terms in the company's register may be, or what kind of transfer or document may be necessary to effect an alteration of the register, or what the liability may be which may arise in consequence. These are questions that do not necessarily arise upon this view of the petition, and I think it quite unnecessary, and indeed entirely out of place, to deal with them at all.

And therefore, in so far as this petition is brought against the directors in respect of default on their part, I am of opinion that it must be refused.

But it is at the same time quite true that in the liquidation there may be a remedy to the petitioner if he be right on the merits of his application—that is to say, if he had or has now a right to be removed from the register. I do not mean

to say that that may not be obtained summarily in the liquidation, and therefore, while I think this petition must be dismissed in so far as it is directed against the existing directors or against the bank as carrying on business, if the parties choose to amend their petition so as to make it applicable to the list of contributories, or to their interests in the liquidation, I do not see at present that there should be any objection to their being allowed to do that, in which case we should simply follow the course which has been adopted in the other cases, and transfer this cause as so amended to the Division in which the liquidation is proceeding.

LORD ORMDALE—This petition has been presented by Mr Shaw, one of the trustees acting under the trust-disposition and settlement of the deceased John Scott, and it prays the Court “to order the stock-ledger or register of the shareholders or members of the City of Glasgow Bank to be rectified by deleting or removing therefrom the name of the petitioner.” It also prays that this should be done in terms of the 35th section of the Companies Act 1862, under which the City of Glasgow Bank has been incorporated.

It is stated in the petition that “part of the trust estate held by the petitioner and his co-trustees consists of £162 of the stock of the City of Glasgow Bank, but which stands in the bank register in the name of the petitioner as sole surviving trustee.” The petitioner also states that he resigned his position as Mr Scott's trustee on the 21st of October 1878 by minute entered in the sederunt book of the trust, and that he “thereafter caused to be delivered for the secretary of the said City of Glasgow Bank at the head office, Virginia Street, Glasgow, a certified copy of the said minute of resignation, and requested that in pursuance thereof his name should be removed from the stock-ledger or register of members of the bank.”

Answers to the petition have been lodged for the liquidators of the bank, in which they state the grounds, very much to the effect adverted to by your Lordship, upon which they oppose the petitioner's demand to have his name removed from the register of shareholders. A minute of admissions has also been lodged for the parties—the petitioners as well as the liquidators—in which they concur in admitting, *inter alia*, that—“On 2d October 1878 the bank ceased to carry on the business of banking;” that “it never resumed business, and its stoppage was caused by its insolvency, which was notorious on and after that date throughout the United Kingdom,” and that a report on the state of the bank's affairs, and a balance sheet showing that the bank was hopelessly insolvent, “were known to the petitioner before the minute of resignation was signed by him on 21st October 1878”—that “the last meeting of the directors was held on the 18th of October, that they took no charge of the business of the bank thereafter, and that they were apprehended on the following day, and were in custody on a criminal charge from and after that date.”

In these circumstances, I am very clearly of opinion that no default was made, and that no unnecessary delay took place on the part of the directors, secretary, or other officers of the bank in entering on the register the fact, if it be one,

of the petitioner having ceased to be a member of the City of Glasgow Banking Company. It is manifest, indeed, that the directors and secretary had no opportunity of making the alteration in the register which the petitioner desired should be made after his resignation as one of Mr Scott's trustees was sent to the bank on the 21st October.

At the debate both parties concurred in stating that they did not propose to try under the present application the question whether the petitioner was liable individually as a shareholder of the bank or only in his representative character of trustee, and yet it is plain, I think, that this question must be tried and determined before his name can now be removed from the register. But in order to have this question tried and determined a new application, not founded on the 35th section of the Act, but on the 98th section, will require to be made, or at anyrate the present application must be amended.

I have therefore no hesitation in holding that the prayer of this petition in its present form cannot be given effect to.

I have only to add, that it must be understood that I neither give nor indicate any opinion on the merits of the application, and in particular on the question whether the pursuer is or is not to be dealt with as a shareholder or member of the City of Glasgow Bank.

LORD GIFFORD—I entirely concur in the result at which your Lordships have arrived. In this case, which was fully argued before us, many questions of very great magnitude and importance have been raised. These questions, or most of them, will require to be decided very soon in the liquidation; but I agree with both your Lordships that it is not necessary to decide any of them in disposing of this petition as it stands, for it is a petition directed not against the liquidators or for their guidance in the liquidation, but against the bank itself and its directors, the liquidation not having been resolved upon at the date of the petition; and the prayer of the petition is not that an adjustment shall be made of the roll or list of contributories in the liquidation, but that a rectification shall be made by the bank itself of the register of its shareholders.

The application is founded solely on the 35th section of the statute, and the provision which is said to apply and is sought to be enforced in the petition is this—I read shortly that part of it on which the application is founded—"if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved" may apply under a summary form for rectification of the register.

Now, the question, and the only question which it is necessary to consider in order to dispose of this petition, as it stands, seems to me to be, Has default been made or has unnecessary delay taken place on the part of the bank in discharging its duty or the duty of its directors or office-bearers in reference to the petitioner's position. Now the bank closed its doors and ceased to carry on business on the 2d of October, at which date the petitioner admittedly was upon the register of shareholders—as he says, in a trust capacity. It was not till the 21st of October that he took steps to sever his

connection with the bank. It was not till that day that he resigned his trusteeship, and it was not till the same date that he made intimation to the bank requiring his name to be struck out of the register. But by the 21st the bank had not only stopped payment, but the necessary notices had been given that a meeting was to take place next day (the 22d) to resolve whether liquidation should be gone into or not, and, as Lord Ormidale has pointed out, the directors had no meeting and no possibility of complying with the request betwixt the 21st and the 22d, they being in point of fact imprisoned on a criminal charge. Now, surely it cannot be said that in a case of that kind, and so standing the position of the bank, there was default of any kind, or unnecessary delay of any kind, on the part of the directors or on the part of the officials of the bank. I should therefore agree with your Lordships on that ground alone in dismissing the petition.

But then I agree with your Lordship that this petition, although formally presented against the bank, and with a view to the rectification of the register, is only a step to a further object which alone is important to the parties, and that is the deletion of the petitioner's name from the final list of contributories which is to be adjusted by the Court. I am averse to new proceedings. This petition may be amended if the petitioner desires it, in which case I agree with the course which your Lordship has proposed.

The Court refused the prayer of the petition.

Counsel for Petitioner—M'Laren—Moncreiff.
Agent—J. W. Moncreiff, W.S.

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

Friday, December 20.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—
(MUIR'S CASE) — MUIR AND OTHERS
(MURDOCH'S TRUSTEES) PETITIONERS
V. THE LIQUIDATORS.

Trust—Partnership—Liability of Trustees—Companies Act 1862 (25 and 26 Vict. cap. 89).

The City of Glasgow Bank was a joint-stock company formed in 1839 under a contract of copartnery, and subsequently incorporated under the Companies Act 1862.

Where notice of a trust appeared upon the register and in the other books and papers of the company, and stock belonging to the trust-estate had been transferred from the trustor's name to that of the trustees by means of a registered transfer—held that the trustees were partners of the company, and as such were personally liable for its debts alike in questions with creditors and *inter socios*, the Court unanimously holding that the case was not distinguishable from that of *Lumsden v. Buchanan*, 4 Macq. 950.

Observed that the 30th section of the Companies Act 1862 did not affect the previously existing practice in Scotland of noticing trusts on the register of joint-stock companies and of describing partners as trustees, and was only of importance as recognising it.