

ships, and I have only to add that I by no means say that vehicles going slowly upon the level—say in Princes Street—would be entitled to keep in front of a car for a long time when there was no difficulty in moving off the rails. But on the case as presented I have no doubt whatever, and I do not doubt that it may have been the *bona fide* opinion of these men that they were doing right in acting as they did.

Convictions squashed, with £7, 7s. of expenses.

Counsel for Appellants—Dundas Grant. Agent—D. Turner, S.L.

Counsel for Respondent—M'Laren. Agent—Millar, Robson, & Innes, S.S.C.

Thursday, October 30.

HEATHERTON v. WATSON.

(Before Lords Young, Craighill, and Adam.)

Justiciary Cases—General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101), sec. 251—Foreshore—Street.

Heatherton, a coachman, was convicted in the Burgh Court of North Berwick under the 251st section of the above Act, in so far as on the 4th August 1879 he did, “to the obstruction, annoyance, or danger of the residents or passengers, exercise two horses” on a part of the foreshore within the parliamentary limits of the said burgh. Section 251 imposes a penalty on “every person who in any ‘street’ or ‘private street,’ to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences;” and sub-section 1 goes on—“exercises, trains, or breaks, or turns loose any horse or animal.” The Court on appeal held that the foreshore was not a “street” within the meaning of the above section, or of the interpretation clause of the Act, and conviction therefore *quashed*, with expenses.

Counsel for Appellant—Moncrieff. Agents—J. & F. Anderson, W.S.

Counsel for Respondents—Pearson. Agents—Lindsay, Paterson, & Company, W.S.

COURT OF SESSION.

Friday, October 31.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—
(STEEDMAN'S CASE)—MRS STEEDMAN
AND HUSBAND v. THE LIQUIDATORS.

Husband and Wife—Jus mariti and Right of Administration—Competency of going behind the Register of Members in a Case of Husband and Wife.

A marriage-contract provided, *inter alia*, that the husband should make over to his wife's father, as trustee, the sum of £3000,

to be held substantially for behoof of his wife. He never implemented this obligation, but he invested £1000 of his own means in the stock of an unlimited banking company, and gave over the certificates into the keeping of his father-in-law. The transference of £600 of this was taken in his wife's name, and of £400 in his own. His wife signed two transfers, one for £500 and the other for £100, in both of which the consideration was stated to have been paid by her, and in the case of the £100 it was further stated to have “come out of her own special funds and estate.” The entry on the register was in her name only, and bore that she held the stock exclusive of her husband's *jus mariti* and right of administration. At the time of the transfer she was possessed of estate from which her husband's *jus mariti* and right of administration were excluded. She subsequently signed the half-yearly dividend warrants, but the husband treated the dividends as his own. In the winding-up of the bank the names of both spouses were placed on the list of contributories.—*Held*, after proof, that in a case of husband and wife it was competent to go behind the register in order to discover the real nature of the transaction; and (2) that here the wife had acted merely as her husband's agent—*Husband therefore alone found liable.*

The petitioners in this case, Mr and Mrs Steedman, were married on the 15th November 1866. By their antenuptial contract Mr Steedman bound himself, *inter alia*, to pay over on the 1st February 1867 the sum of £3000 to Mr Kerr, Mr Steedman's father, as trustee, for the following purposes, viz. —to be liferented by the spouses during their joint lives, the capital to be paid over to Mrs Steedman should she survive her husband, and in the event of her predecease to her children, subject to their father's liferent, and failing children to be paid to Mr Steedman. It was declared that this payment to Mr Kerr might partly or in whole consist of transfers of securities to be approved of by him. Further, Mr Steedman expressly renounced “his *jus mariti*, right of management and administration, courtesy of Scotland, and every other right, title, or pretension that may be competent to him as husband of the said Mary Ann Kerr or Littlejohn, his promised spouse, in consequence of the said marriage, or of any other title whatever to, in, or over the foresaid annual interest or income payable to the said Mary Ann Kerr or Littlejohn from the estate of the said Thomas Morrison Littlejohn [her former husband] as aforesaid, and also to, in, or over the foresaid goodwill, share of capital, and others belonging to the said Mary Ann Kerr or Littlejohn in the said confectionery business, and also to, in, or over the whole sum or sums of money payable to her under or by virtue of these presents.”

Mr Steedman did not implement his obligation to pay over £3000 to Mr Kerr in 1867, but in August 1869 he purchased £1000 worth of City of Glasgow Bank stock, £600 of which he invested in his wife's name, and £400 in his own; and he handed over the transfers of both lots to his father-in-law Mr Kerr.

The transfers in the case of the £600 in Mrs Steedman's name were two in number, and were in the following terms:—

"Transfer by Rev. F. L. Robertson in favour of Mrs Steedman, 7th, 12th, and 31st August 1869.

"I, the Reverend Frederick Lockhart Robertson, The Manse, Greenock, in consideration of the sum of £850 sterling now paid to me by Mrs Ann Kerr or Steedman, wife of William Steedman, No. 3 Links Place, Leith, hereby sell, assign, transfer, and make over to and in favour of the said Mrs Mary Ann Kerr or Steedman, exclusive of the *jus mariti* and right of administration of her said husband William Steedman, and her heirs, executors, and successors whomsoever, £500 sterling of the consolidated capital stock of the City of Glasgow Bank Company, with the whole interests, profits, and dividends that may arise and become due thereon, the said Mrs Mary Ann Kerr or Steedman by acceptance hereof being, in terms of the contract of copartnership of said bank, subject to all the articles and regulations of the said company, in the same manner as if she had subscribed the said contract: And I, the said Mrs Mary Ann Kerr or Steedman, do hereby accept of the said transfer on the terms and conditions above mentioned, and that with the consent of the said William Steedman: And I, the said William Steedman, do hereby consent to the above-written transfer in favour of my said wife, exclusive of my *jus mariti* and right of administration; and on her behalf I do also accept of said transfer on the foresaid terms and conditions; and I do also hereby renounce my said *jus mariti* and right of administration in so far as regards the foresaid stock; and we all consent to the registration hereof and of said contract for preservation and execution.—In witness whereof, &c.

"F. L. ROBERTSON.

"M. A. STEEDMAN.

"WM. STEEDMAN."

"Transfer by Alexander Johnston in favour of Mrs Steedman, 11th, 17th, and 31st August 1869.

"I, Alexander Johnston, spirit dealer, Dunlop Street, Glasgow, in consideration of the sum of £170 sterling now paid to me by Mrs Mary Ann Kerr or Steedman, wife of William Steedman, No. 3 Links Place, Leith, out of her own special funds and estate, do hereby, with consent of the said William Steedman for all right, title, and interest he may have as her husband or otherwise, hereby sell, assign, transfer, and make over to and in favour of the said Mrs Mary Ann Kerr or Steedman, exclusive of the *jus mariti* and right of administration of the said William Steedman, or any other husband she may marry, and her heirs, executors, and successors whomsoever, £100 sterling of the consolidated capital stock of the City of Glasgow Bank Company, with the whole interests, profits, and dividends that may arise and become due thereon, the said Mrs Mary Ann Kerr or Steedman, with consent of her said husband, by acceptance hereof, being, in terms of the contract of copartnership of said bank, subject to all the articles and regulations of the said company, in the same manner as if she had subscribed the said contract: And I, the said Mrs Mary Ann Kerr or Steedman, with consent foresaid, and I, the said William Steedman for myself and as taking burden on me for and with my said wife, do hereby accept of the said transfer on the terms and conditions above mentioned; and we all consent to the registration hereof and of said con-

tract for preservation and execution.—In witness whereof, &c.

"ALEXANDER JOHNSTON.

"M. A. STEEDMAN.

"WM. STEEDMAN."

The following entries were thereafter made in the stock ledger of the bank:—

"Excerpt from Stock Ledger No. 5, p. 537.

"Mrs Mary Ann Kerr or Steedman, wife of William Steedman, 3 Links Place, Leith, exclusive of the *jus mariti* and right of administration of my husband.

Date.	PARTICULARS OF ENTRY.	Stock.		
		Dr.	Cr.	Balance.
1869.		£	£	£
June 3	By stock, from ledger No. 4	—	500	500
Aug. 31	By stock, p. Revd. F. L. Robertson—489.	—	100	100
	By stock, p. A. Johnston	—	100	200
	„ (balance).	—	—	600
1875.				
June 2	To stock to ledger 6/603	600		
		600	600	

"Excerpt from Stock Ledger No. 6, p. 603.

"Mrs Mary Ann Kerr or Steedman, wife of William Steedman, Napier Villa, Merchiston, Edinburgh, exclusive of the *jus mariti* and right of administration of her said husband.

Date. PARTICULARS OF ENTRY. Dr. Cr. Balance.

1875.

June 2. By stock, p. ledger 5/537 — £600 £600."

The stock certificate was in these terms:—

"Certificate City of Glasgow Bank, No. 31/52. Glasgow, 2d September 1869.

"These certify that Mrs Mary Ann Kerr or Steedman, wife of William Steedman, No. 3 Links Place, Leith (exclusive of the *jus mariti* and right of administration of the said William Steedman), has been entered in the books of this company as the holder of £600 consolidated stock.

"R. S. STRONACH, p. Manager.

"J. MACDONALD ROSS, p. Accountant."

Thereafter Mrs Steedman signed the half-yearly dividend warrants, which were in these terms—

"THE CITY OF GLASGOW BANK.

"Dividend No. 31.—First Instalment for the year 1871-72, payable 1st August 1872.

Warrant, No. 929.

"£30 sterling on £600 consolidated stock standing in the name of Mrs Mary Ann Kerr or Steedman, wife of William Steedman, Napier Villa, Merchiston, near Edinburgh, exclusive of *jus mariti*.

"£30 sterling. (Place and Date) 187 .

"Debit dividend account No. 31 with the sum of £30 sterling, being the first instalment of dividend declared at the general meeting of shareholders held on 3d July 1872 on the above stock.

"(Signature) M. A. STEEDMAN.

"(Address) Napier Villa, Merchiston.

"To the Manager of

"The City of Glasgow Bank.

"* * * The stockholder will please exhibit his proper Address after his Signature."

On the failure of the bank Mrs Steedman's name was placed on the list of contributories in respect of the £600 standing in her own name; and Mr Steedman's name was also placed there as being the husband of a contributory. This petition was then presented to have Mrs Steedman's name removed. The following were the material averments of the petitioners:—"The statement in the first of the said transfers that the price was paid by the said Mrs Mary Ann Kerr or Steedman, and also the statement in the other that the price was paid out of her special funds and estate, were inserted therein without the knowledge and authority of the petitioners, or either of them, and are quite erroneous in point of fact. The information for the preparation of the transfers was given by the said William Steedman alone, and all that he did was to request them to be made out in name of his wife. The transfers which were prepared by the officials of the bank were not read over to or by either of the petitioners when they signed the same, and they were both entirely ignorant of the terms thereof until after the failure of the City of Glasgow Bank. The funds with which the said purchases were made belonged exclusively to the said William Steedman. They were derived from the business carried on by him at Leith, and the said Mrs Mary Ann Kerr or Steedman had no right to or interest therein. The purchases were made on his instructions alone, and for his own behoof, and Mrs Steedman had nothing to do with said purchases. Mrs Steedman signed the foresaid transfers at the desire of her husband in ignorance of the terms and contents thereof. She had no intention of undertaking any liability in connection with the transaction, which had no reference or relation whatever to her own separate means or estate. It related entirely to the estate of her husband, and she had no personal right or interest in the matter. The bank dealt and transacted with the said William Steedman alone, and on his responsibility. The purchase of the stock was made through Mr William Bain, the bank's agent in Edinburgh, and payment thereof was made to him by cheques granted by the said William Steedman on his own account with the said Commercial Bank, Leith. The said Mrs Mary Ann Kerr or Steedman was entered in the register of the said bank as the holder of the stock conveyed by the said transfer. The stock certificates were also issued in her name, but these were retained by, and have been all along in the possession of, her husband. The warrants for the dividends paid in respect of the stock were discharged by her at her husband's request, and as his agent, and the dividends were received and applied by him for his own purposes. No part of said dividends were ever paid to the petitioner Mrs Steedman, or to anyone on her behalf. . . . The said Mrs Mary Ann Kerr or Steedman is not liable as a contributory of the said bank, and she is entitled to have her name removed from the register of shareholders and list of contributories. The said stock never was her property, and she had no right to or interest therein. The purchase thereof was not a transaction relating to or having any reference to her separate estate, and no obligation affecting the same was thereby constituted. The said stock was and is the exclusive property of the said William Steedman, and he is the only party liable for or in connection there-

with. He does not object to his name being placed on the list of contributories as the holder of said stock."

The liquidators submitted — "(1) That the petitioners are not entitled to contradict the terms of the transfers signed by them and produced to the bank, in virtue of which the petitioner Mrs Steedman became a partner thereof; and (2) that the stock in question was purchased with part of the separate estate of the petitioner Mrs Steedman."

There was a proof before answer, the purport of which appears from the opinions of the Court *infra*.

Argued for the petitioners—Mrs Steedman was not liable because she had acted merely as her husband's agent. It was competent to go behind the register—*Pugh and Sharman*—and doing so it was found that the defender Mrs Steedman had separate estate; that was not the source from which the money to purchase the shares had come. The husband had given it. He intended in some sort of confused way to implement his obligation in the marriage-contract, but simply to take some shares in his wife's name and hand over the certificate to the trustee was in no sense a proper way of doing this. He had therefore done nothing more than make a donation to his wife, which was of course revocable and inoperative against his creditors. Even if it was a provision for her, it was contingent on her survivorship. Further, he had throughout treated the dividends as his own.

Authorities—*Biggart*, Jan. 15, 1879, 16 Scot. Law Rep. 226, 6 R. 470; *Thomas*, Jan. 31, 1879, 16 Scot. Law Rep. 244, 6 R. 607; *Pugh and Sharman*, March 2, 1872, L.R., 13 Eq. 566.

Argued for the liquidators—The petitioners desired to go behind the register. That was not competent—*Gillespie & Paterson*—except to determine the authority with which the entry was made. *Pugh and Sharman* was a case of fraud. But what were the facts? A married woman who had a separate estate, and who consequently could act as if unmarried—*Biggart's* case—bound herself in the obligation of a partner of the bank. In one of the transfers she expressly stated that the money had come out of her separate estate, and there was no allegation of fraud or essential error. It was said that the money was in fact not hers, but her husband's. That was true. But he had given her the shares in implement of a prior obligation, and it was no more than a reasonable provision. Even if it was a pure donation, still she was the proprietor until revocation, and therefore must be held liable. Mere defeasibility of tenure would not exempt—*Caledonian Bank* case. In fact it really did not matter where the money used in the purchase came from if the wife had capacity to contract on her own account and the possession of separate estate gave her that capacity. She might indeed have professed to act as her husband's agent, and the result then might have been different; but she did not so profess—on the contrary, everything she did was to the opposite effect. In *Thomas's* case there was no exclusion of the *jus mariti* on the register, and it did appear *ex facie* of the register that the shares were part of a bequest from which there was no such exclusion; and lastly, Mrs Thomas had no

separate estate of her own at the time the shares were bought, and consequently no capacity to contract.

Authorities—*Caledonian Bank* case, July 15, 1879, 16 Scot. Law Rep. 744; *Gillespie & Paterson's* case, Feb. 27, 1879, 16 Scot. Law Rep. 473, 6 R. 714.—H. of L. July 1, 16 Scot. Law Rep. 815; *Matthewmans'* case, Nov. 26, 1866, L.R., 3 Eq. 781.

At advising—

LOLD PRESIDENT—The petitioners Mr and Mrs Steedman were married in the year 1866, and by their marriage-contract Mr Steedman came under an obligation to pay over to a trustee therein named, the lady's father, a sum of £3000 on the 1st of February 1867, with interest from that date; and it was declared that this sum might be provided in the form of a transference to the trustee of securities provided by Mr Steedman. The money was to be held in trust substantially for behoof of Mrs Steedman. She, on the other hand, was a person of considerable means in this sense, that she was carrying on a lucrative trade. Now, after the marriage, and in the year 1869, Mr Steedman, it appears, had some money to spare—£3000 at his bank account, as he mentions in his evidence—and he had some intention of effecting an insurance upon his life, paying up the premiums, and handing that over to the trustee under the marriage-contract in satisfaction of his obligation. But upon thinking the matter over, he says he became satisfied that that would have been a very unfavourable investment for a man at his time of life, and that he thought it better to take this money which he had and invest it in bank shares. Accordingly he did purchase ten shares—£1000 stock of the City of Glasgow Bank—but he invested it partly in his own name and partly in that of his wife. He says himself that he went to Mr Bain, the representative of the bank in Edinburgh, and Mr Bain asked him in whose name the stock was to be put, "and I said I wished six shares put in my wife's name and four shares in my own name. . . . I said, so far as I recollect, that I wished it to be made out so that in the event of anything befalling my business, or my predeceasing Mrs Steedman, the stock would be hers without any dispute." He seems to have had rather a vague notion of what would be the effect of putting a portion of this stock in his wife's name, but I think he makes a very candid and intelligible statement upon the subject. He thought that in the event of his predeceasing the lady there would be no necessity for any transfer of this stock to her, it being already standing in her name; and then he seems to have taken the certificate of this stock and handed it over to Mr Kerr, the trustee under the marriage-contract, along with some other securities, as in satisfaction of his obligation under the marriage-contract. It certainly was not a fulfilment of the obligation under the marriage-contract. One sees that plainly enough. But he seems to have had some confused notion that it would answer that purpose. £600 of stock therefore is taken in the name of Mrs Steedman. There is one transfer for £500 and another for £100. Now, as regards the transfer of the £500, it bears to be granted in consideration of the sum of £850 paid to the seller by Mrs Steedman, and the stock is conveyed to her exclusive of the *jus*

mariti and right of administration of her husband. In regard to the other transfer of the £100 stock, it bears to be granted in consideration of the sum of £170 then paid to the seller by the said Mrs Steedman "out of her own special funds and estate," and the stock is conveyed to her exclusive of the *jus mariti* and right of administration of William Steedman. *Ex facie* of the register, therefore, Mrs Steedman no doubt is the holder of this £600 stock. But then it is certainly proved beyond all question that the money was not paid by Mrs Steedman, as stated in the one transfer, and still less was it paid by Mrs Steedman out of her own separate estate, as stated in the other transfer. It was paid by Mr Steedman himself to the sellers of the stock, and it was paid by him out of his own proper funds and estate, being money then lying in his bank account. This is proved by his own evidence, supported by the cheques which he drew for the money on his bank account, and therefore there can be no doubt left on anybody's mind that the money was his and not his wife's. The effect of this in law is the question to be considered.

It has been said that you cannot get beyond the transfer. Mrs Steedman is the partner on the face of the transfers, and she must continue to be the partner, and the sole partner, of the bank in respect of those shares. But, on the other hand, it is contended that you are entitled to get behind the statement in the transfers and to ascertain the real state of the fact, and the real state of the fact being ascertained to be what I have now mentioned, the result in law, it is contended, is that this case is ruled by the case of *Thomas*—that the wife was merely the husband's agent in this matter, and that he is the true owner of the stock, and ought to be entered as such in the register of shareholders and list of contributories. I think the latter contention is the sound one. I know no authority for saying in a question between husband and wife touching a matter of this kind that we cannot get at the reality of the transaction, and when we do get to the reality of the transaction, you see as distinctly as anything can possibly be proved that this stock was bought by the husband in his own name, and although the wife was apparently the owner and signed the receipts for the dividends, not only was the money furnished by Mr Steedman, but the whole produce of the stock was received by him in the shape of dividends, and used for his own purposes. I entertain no doubt whatever, therefore, although the circumstances of this case may be somewhat different from the case of *Thomas*, that it must be ruled by the same principle. They are essentially different from the other case of *Biggart* which was relied upon, where it was just as clearly proved as the reverse was proved here that the money employed in purchasing the stock belonged to the wife antecedently, and was invested by her in bank stock, and that as regarded that money and the stock which represented it she held it as a separate estate, with an exclusion both of the *jus mariti* and right of administration of her husband.

The conclusion I come to therefore is, that this lady's name ought to be taken off the list of contributories, and that Mr Steedman's name must be put upon it.

LOLD DEAS—I agree with your Lordship that in a question of this kind between husband and wife

we are quite entitled and bound to get beyond the face of the documents, and to ascertain what was the actual nature of the transaction; and having done that here, it is quite clear that this was a transaction of the husband's own—that he acquired the stock with his own money and took the transfer in name of his wife, although in point of fact she had nothing to do with it. It was a transaction in which he was acting entirely for himself, and to no extent for her. It is said that there is a peculiarity in respect that she had some means of her own independent of her husband, and from which his *jus mariti* and right of administration were excluded. I do not think that that peculiarity affects the result at all. If she had been dealing with her own separate estate, that fact would have been very material. But she was not dealing with her separate estate, and that being so, I think the case is the same in substance as if she had had no separate estate at all. A great deal was said on both sides of the bar about the case of *Biggart*; each party seemed to feel that they were entitled to found upon it. I made the observation at the time—and I think I was right in it—that the case of *Biggart* has really nothing to do with this case at all further than that it settles that a wife may hold bank stock or shares in any trading company as her separate estate without the husband being liable in respect thereof. That may be, but that is all that the case of *Biggart* decided, or in which it can be said to have anything to do with this case. If we had been disposed to hold that these were Mrs Steedman's shares, that principle no doubt would come in—that shares from which the husband's right of administration and *jus mariti* were excluded belonged to the wife independent of him. But the nature of this case is quite different. The case here is that she is a mere name for behoof of the husband, who pays the money and draws the dividends and appropriates them to his own purposes. Therefore I entirely concur with your Lordship that the principle of the case of *Thomas* is the principle that must govern here. The circumstances no doubt are different, but the rule that was applied to the one applies equally to the other.

LORD MURE—I concur with Lord Deas in thinking that though in one sense the question in *Biggart* was a question about the effect of the *jus mariti*, the important question which was disposed of there was, whether a married woman could become a shareholder in a company of this kind, upon the ground that a married woman, according to certain authorities, cannot engage in trade; and the point we had to consider there was, whether the authorities which were quoted to that effect were such as prevented a married woman from being enrolled as a partner of a bank. Upon that point your Lordships were unanimously of opinion that the cases which were founded upon with a view to establish that proposition were not calculated to have that effect, but that, on the contrary, a lady holding estate of her own, from which the right of administration and *jus mariti* of the husband were excluded, was entitled to become during her marriage a shareholder in a company so as to bind her own individual estate. That was the great question which was decided in the case of *Biggart*. Therefore I do not myself think that

the case of *Biggart* can be said to rule this in any way, because the circumstances are entirely different, and though the circumstances are not precisely similar to those which occurred in the case of *Thomas*, I think it is very plain that the same rule of law ought to be applied, because here it is distinctly proved in evidence that those shares were purchased with the husband's own money. As regards *Biggart's* case, it was as distinctly proved that the shares were purchased with the wife's own money. Here the whole dividends, though signed by the wife, were applied by the husband for his own uses and purposes, whereas in *Biggart's* case the whole dividends were drawn by the wife and applied to her own uses and purposes. Therefore on these two broad facts the cases are distinctly different, and I agree with your Lordships in holding that in the circumstances the petitioner Mrs Steedman must be held to have been acting in this matter as the mere hand or agent of her husband. The shares were evidently bought without any communication with her, and all this was done by him with some vague notion in his own mind apparently of making some sort of provision for her on his death, but how that was to be done I do not think was ever cleared up in the discussion.

LORD SHAND—The general legal considerations applicable to cases of this class have already formed the subject of much argument and of full opinions by the Court in the two cases that have been referred to by your Lordships—the case of *Thomas* and the case of *Biggart*. The question which has arisen for decision here is practically whether this case falls within the principle of the case of *Thomas*, in which it was held that though the stock stood in the wife's name in respect of transfers executed by her, the husband was nevertheless the partner; or the case of *Biggart*, in which the wife having separate estate, and having with part of that estate purchased stock and put herself on the register, it was held that she and not her husband was the contributory. I agree with your Lordships in thinking that this case falls within the principle of the case of *Thomas*. It is true that here, as in the case of *Biggart*, the wife has apparently a considerable separate estate, which is held indeed on her behalf by a trustee, but it is equally clear that this was no transaction with reference to that estate in any way, but that, on the contrary, the husband Mr Steedman, out of his own funds, supplied from his own business, drawn from his own bank account, and even without communication with his wife on the subject, purchased those shares and put the stock in her name. There was a former petition in which a statement by those parties to a different effect was made, but it has been satisfactorily explained in the evidence in this case that that statement was made by the agent for the parties without knowledge of the circumstances and under an entirely erroneous impression—an impression, indeed, which he says he derived from the terms of the transfer in this case.

It is remarkable that although it is now clear beyond question that this stock was not purchased with any means belonging to the lady, both of the transfers—the transfer of £500 stock and the transfer of £100, making up the full

amount of £600, which is the subject of the application—bear that the money was advanced from funds paid by Mrs Steedman. But I must observe that the way in which that happened has also been cleared up, for Mr Bain, the manager of the bank in Edinburgh with whom Mr Steedman transacted, says in his evidence—“When a transfer is made out in a married lady's name, we put in the consideration as paid by the transferee, unless we are specially instructed otherwise,” and accordingly that seems to have been done. The narrative of those deeds in stating that the money was that of Mrs Steedman seems to have been inserted in the deed entirely by the bank officials, not upon any authority given to them to make such a statement, but in accordance with the practice of the bank thus explained by Mr Bain. Now, in that state of matters I think the case is certainly at once distinguished from that of *Biggart*, and the truth of it appears to be—as indeed is clear on the evidence—that Mr Steedman having purchased the stock with his own funds, intended that it should be made a provision for his wife, and upon that footing he took her acceptance without very much explanation on the subject. We have had an argument from both sides of the bar as to whether the provision so made was one of a nature that was revocable or not, and that argument involved the consideration whether the purchase of this stock could be regarded in any way as an implement of Mr Steedman's obligations under the marriage-contract. On that subject I shall only say that I think it would be extremely difficult to represent this purchase of stock, not made with the sanction of the trustee under the marriage-contract, not accepted by the trustee under the marriage-contract, and taken in name of Mrs Steedman alone, as in any way an implement of these obligations. But I think it really immaterial whether this provision having been so made by Mr Steedman was revocable or not, for even if it were taken to be irrevocable, I do not think this would affect the decision of the case. We had occasion in the case of *Thomas* to consider very fully the position of parties—I mean of husband and wife—with reference to the purchase of stock made by the husband and taken in his wife's name with the view of making a provision in her favour, and I refer to what was there said by your Lordships and by myself. In such a state of facts the wife acquires a certain contingent right—the right merely in the case of her surviving the husband then to be proprietor of the subject conveyed. The husband during the marriage remains the person properly in right of the stock, and entitled to draw the fruits of it, as he drew them here and used them, although no doubt his wife signed the dividend warrants. Again, in the case of the wife predeceasing, the husband becomes the uncontrolled and absolute proprietor. The single right which the wife has, at the highest, even in the case of an irrevocable provision, is of a contingent nature, and that being so, I think that in a question of this kind—a question of partnership—as to who is really the partner of such stock—even assuming this to be a provision irrevocable in its nature, the husband is the party who is the partner and shareholder of the bank.

Taking that view, and holding the case to be

ruled as I have said by that of *Thomas*, I am therefore of opinion that the petitioner Mrs Steedman is entitled to succeed in this application. The counsel for the liquidators maintained an argument founded upon the observations of the Court in the case of *Gillespie & Paterson*. It was maintained that whatever may be the truth of this case as to the source from which the funds came, and the purpose for which the purchase was made, the shareholders of the bank and its creditors cannot be affected by that, but are entitled to regard this transfer as a representation to them upon which they were warranted to act in dealing with this lady as the proprietrix of the stock, and all the more so that she was a lady who had a separate estate of her own. But I must observe, in the first place, that I do not think that cases of husband and wife are at all upon the same footing as a case such as that of *Gillespie & Paterson*. In that case the persons who were put upon the register were registered in terms of the transfer which they presented, which bore that they accepted of the stock and became partners as trustees for behoof of a certain firm, and the attempt was made to get behind the terms of that transfer and the entry which followed upon it, and to show that the stock was in point of fact held upon a different footing, which would have led to the result that in place of having those persons as partners in their character of trustees, certain other persons—the beneficiaries under the trust—would have been put upon the register, each for one-half moiety of stock there in question. But although in *Gillespie & Paterson's* case the Court held that you cannot go beyond the transfer and register, I think a different principle applies to the case of husband and wife. Living as they do with community of goods, with the wife often acting as agent for the husband, the stock being put in her name as really representing her husband, and with the resulting liability of the husband, I think the Court is entitled to go beyond the register, and that creditors and shareholders are equally entitled to go beyond the register, with a view to the ascertainment of what is the fact. When you do that in this case you find the fact is that this was the husband's property. I must further say that, even if there were any substance in the argument which has been presented by the bank on the ground of representation I think it is very much weakened, if not destroyed, by the fact that the representation which is mainly relied on by the bank here, viz., that this was a purchase with the lady's own funds, is one that was never made by either the transferrer or transferee in any proper way, but which the officials of the bank themselves thought fit to put in the transfers in the way which has been explained by Mr Bain. It would be carrying the argument very far to say that the bank are entitled in their form of transfer to insert a representation which the parties did not make, and thereafter, founding upon that representation, to hold that liability has in that way been established against this lady. I therefore concur in holding that the petition must be granted.

The Court ordered that the name of Mrs Steedman should be removed from the register

of shareholders and list of contributories, but that Mr Steedman's should remain upon the latter.

Counsel for Petitioners—M'Laren—Trayner—Strachan. Agents—Mack & Grant, S.S.C.

Counsel for Liquidators—Kinnear—Balfour—Asher—Graham Murray Agents—Davidson & Syme, W.S.

Friday, October 31.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—
(CARMICHAEL'S CASE)—MRS JANE
CARMICHAEL AND HUSBAND *v.* THE
LIQUIDATORS.

Husband and Wife—Jus mariti—Public Company—How far Competent to go behind Register of Members—Where Stock Purchased by Husband stood in Wife's Name but not exclusive of Jus mariti.

A husband purchased with funds belonging to himself three lots of stock in an unlimited banking company, taking the transfers in the name of his wife, the *jus mariti* being specially excluded in two of them. His intention was to settle a provision upon her. He thereafter signed the dividend warrants as on behalf of his wife, but treated the dividends as his own. He also signed on her behalf the acceptance of certain new stock which was subsequently allotted to her as a shareholder. The *jus mariti* was not excluded in regard to this new stock; nor was there latterly any such exclusion on the register of members in regard to any of these parcels of stock, although the original entry contained that qualification. The wife was possessed of separate estate, and under an antenuptial marriage-contract was entitled upon her husband's decease to an annuity of £100. On the liquidation of the bank—held (following *Steedman's* case) that the husband alone was liable as a contributory.

The petitioners in this case, Mr and Mrs Carmichael, were married in 1857. By their marriage-contract Mr Carmichael undertook to secure his wife in an annuity of £100 in case she should survive him, and for that purpose conveyed certain policies of insurance to the marriage-contract trustees. She, on the other hand, conveyed to the trustees her whole estate—the income during the subsistence of the marriage to be paid to her “on receipts signed by herself without the consent of her promised spouse, whose *jus mariti* and right of administration are hereby expressly excluded;” and the capital on the dissolution of the marriage to go to her, her heirs and assignees, she having power to test.

The petition related to £505 stock of the City of Glasgow Bank which at the date of the liquidation stood in the name of Mrs Carmichael. The names of both spouses were placed on the list of

contributories, and the object of the petition was to have that of Mrs Carmichael removed. The general features of the case and the arguments were similar to those in the case of *Steedman*, reported immediately above.

The following joint minute of admissions explains the peculiarities:—“(1) That on or about 23d November 1857 there were transferred to the female petitioner, exclusive of the *jus mariti* of the other petitioner, fifteen shares of the capital stock of the City of Glasgow Bank, of £10 each, fully paid up; and on or about 31st March 1859 there was transferred to her a second lot of fifteen shares of the said capital stock—also exclusive of her husband's *jus mariti*. That these transfers were accepted by the female petitioner with consent of her husband, and were signed by them both. (2) That on or about 10th July 1858 there were transferred to Mrs Carmichael fifteen shares of the said capital stock, fully paid up, the transfer of which was also accepted by her with consent of her said husband, and was signed by them both. That in this transfer her husband's *jus mariti* was not excluded. That in the year 1864 the City of Glasgow Bank sent out circulars to its shareholders inviting them to accept allotments of new stock; that such a letter was sent to Mrs Carmichael, and that the letter accepting £100 of new stock, No. 12 of process, which is signed by the male petitioner ‘Jane Anne Carmichael, p. J. Carmichael, 1 Granby Terrace,’ was thereupon sent to the head office of the bank; that her husband's *jus mariti* was not excluded as regards the £100 of stock so allotted and accepted. (3) That the said stock was purchased by, and the price thereof paid out of, funds belonging to the said John Carmichael, being savings laid past from his business, which he intended by taking the transfer in his wife's name to settle as a provision on her; that the warrants for the dividends accruing on said stock were signed by him as for his wife, and the dividends received and applied by him to his own uses. That it was the custom of the bank when stock was held as in the present case, to pay dividends on the receipt of either husband or wife; and the officials were also in the habit of paying dividends on the receipt of the shareholder's agent, where such agent was known to them. (4) That at the dates the said stock was acquired the bank knew that the female petitioner was a married woman, but they were not informed and were not aware that the cash paid therefor belonged to her husband, or that the dividends falling due thereon were retained by him.”

The original entry in stock ledger No. 4 of these various parcels of stock was headed—“Mrs Jane Anne Brown or Carmichael, spouse of John Carmichael, commission agent, residing at No. 415 St Vincent Street, Glasgow, excluding the *jus mariti* of her said husband.” But in ledger No. 5 it became—“Mrs Jane Anne Brown or Carmichael, spouse of John Carmichael, commission agent, and residing at No. 10 Hillhead Gardens, Glasgow,” and this last form of entry was continued into the ledger which was current when the bank failed.

On the 23d October 1878, after the liquidation had commenced, Mr Carmichael executed a revocation in these terms:—“I, John Carmichael, commission agent in Glasgow, considering that in the year 1860 I made a gift to my wife Mrs