"if." The answer is, that "loading berth" cannot be substituted for "dock," and so I think there is no ground for holding that the case of *Tapscott* countenances the decision of the Lord Ordinary.

The LORD PRESIDENT was absent.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for the pursuer Francesco Dall' Orso and mandatories against Lord Craighill's interlocutor, dated 12th July 1875, Recal the said interlocutor: Find that the ten working days stipulated by the charter-party for loading the vessel in dispute commenced on Saturday the 17th day of April 1875, and expired on the 29th of that month and year: Find that the vessel was not loaded between these dates, and that demurrage became due from and after the last of these dates: Find it admitted at the bar that the demurrage (if due at all) amounts to the sum libelled, with interest: Therefore decern against the defenders in terms of the conclusion of the libel: Find the pursuer entitled to expenses; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer—Dean of Faculty (Watson),—Trayner—Maclean. Agents—P. S. Beveridge, S.S.C.

Counsel for Defenders — Balfour — Young. Agents—Drummond & Reid, W.S.

Thursday, February 3.

SECOND DIVISION.

[Lord Young.

MORRISON *v.* HARRISON AND THE FORTH AND CLYDE JUNCTION RAILWAY COMPANY.

Companies Clauses Consolidation (Scotland) Act, 1845 *—Trustee in Bankruptcy—Intimation of Assignation—Partnership.*

A executed a transfer of a number of shares in a railway company in favour of B. More than a year afterwards A was sequestrated. After the sequestration had taken place, a memorial of the transfer was sent by B to the secretary of the company, and entered in the register of transfers. In an action brought at the instance of the trustee on A's sequestrated estate, for the purpose of having the deed of transfer reduced and the shares entered in his own name — *held* (1) that the act of sequestration, although it might be equivalent to an intimated assignation to these shares in favour of the trustee, had not the effect of rendering him a partner in the company until he complied with the statutory provisions for completing a transfer; and (2) that as B had complied with these provisions and was entered in the register of shareholders, his right could not now be cut down by the trustee.

The pursuer in this action was Mr James Maidment Morrison, trustee on the sequestrated estate of George Merret, railway contractor, who was sequestrated in the year 1856. A considerable part of the bankrupt's estate consisted of shares in the Forth and Clyde Junction Railway. In June 1855, being more than twelve months previous to the sequestration, the bankrupt handed over fifty of these shares to Thomas Harrison, the defender, and he afterwards signed a transfer of them to him. This transfer was not delivered to the secretary of the defenders, the Forth and Clyde Junction Railway Company, in terms of "the Companies Clauses Consolidation (Scotland) Act, 1845," nor was any intimation of it made to the Railway Company previous to the bankruptcy of Mr Merrett, nor until 17th September 1857. At the date of the sequestration the shares stood in the register of the Company in the bankrupt's name. On the 17th September 1857 the transfer was received by the secretary, and on the 28th of the same month a memorial thereof was entered in the register of transfers of said Company.

The trustee brought the present action, in the first place, to have this memorial of the deed of transfer reduced, and then to have it declared that he had a right to the shares, and that the Company were bound to enter him as the owner of these shares in their register. He pleaded that he was entitled to decree on the ground that the transfer to the defender had not been delivered or intimated to the Company, or the memorial entered in their register of transfers until after Mr Merrett's sequestration.

The defender Mr Harrison maintained that as he had acquired right to these shares prior to the cedent's bankruptcy, he was empowered to complete his title by enrolment in the register of transfers. Appearance was entered for the Company, but they took no part in the question of the ownership of the shares. Upon 18th November 1875, Lord Young pronounced the following interlocutor: — "The Lord Ordinary having heard counsel for the pursuer, and considered the record and productions, sustains the defences and assoilzies the defenders from the conclusions of the summons, and decerns: Finds the pursuer liable in expenses, and remits the accounts when lodged to the Auditor to tax and report."

The pursuer reclaimed.

Argued for him—In virtue of the 102d section of the Bankruptcy (Scotland) Act, 1856, the position of the pursuer with regard to these shares was that of an assignee, of whose assignation intimation has been made, and he was therefore entitled to cut out a prior assignee whose right was not intimated. The intimation to the Company of the transfer to Mr Harrison was made after the sequestration, and therefore subsequent to the completion of the pursuer's right. The bankrupt could not be divested of these shares at the time of his sequestration, because his transfer to Mr Harrison was still unintimated. The fact that the trustee has never complied with the formalities relating to transfers provided by the statute was immaterial. The Act was not a code of transfer, and did not exclude other means of legally vesting shares. These statutory provi-

sions were merely for the convenience of the companies.

Argued for the defender Harrison—The intervening bankruptcy could not put the trustee in a better position than that of a transferee who had made intimation or notification of the transfer in his favour. But that was not enough to render him a partner, and give him a right to these shares, for the Act had made special provisions for the completion of a transfer and the constitution of partnership. Mr Harrison having completed his right by having the transfer to him entered in the register, could not now be cut out by the trustee, who had never yet done this.

Authorities—2 Bell's Com. 16 and 18; Bankruptcy Scotland Act (1856); the Companies' Clauses Consolidation (Scotland) Act, 1845, § 16; *Eadie* v. *Mackinlay*, 7 Feb. 1865; *Hill* v. *Lindsay*, Feb. 7, 1846, 8 D. 472; *Redfearn* v. *Sommervails*, 1 June 1813, 5 Pat. Ap. 707; *Connal & Co.* v. *Daunt & Co.'s Inspectors and Others*, July 18, 1868, 40 S. J. 624; *Wertherly* v. *Turnbull*, June 3, 1824, 3 Sh. 92; *East Lothian Bank* v. *Turnbull*, June 3, 1824, 3 Sh. 95; *Turnbull* v. *Allan & Son*, March 1, 1833, 11 Shaw, 487; *Thomson* v. *Fuliarton*, Dec. 23, 1842, 5 D. 379; *Copeland* v. *North Eastern Railway Co.*, April 26, 1856, 6 Ellis & Blackburn, 277; *The Queen* v. *General Cemetery Co.*, May 1856, 6 Ellis & Blackburn, 415.

At advising—

Lord Justice-Clerk—I have no difficulty in adhering to the judgment of the Lord Ordinary.

I do not know that I quite concur in all that has been said in the course of the argument as to the code of procedure laid down in the statute and the consequence of any deviation from that code. No doubt the statute lays down in a clear manner the course to be pursued in a transfer of shares, but I doubt if that excludes any other mode of transfer habile to the law.

But there are certain additional proceedings necessary before a party can be put upon the register. The first question in this case is whether there has been a valid transference from the bankrupt to the trustee. But granting that there has, the case of the trustee is not advanced one bit. He says that he holds an assignation to these shares, which has been intimated. But the question is, is he a partner? The right to become a partner is surrounded by conditions imposed by statute, and which the secretary of the company is bound to observe. Intimation must be given to him, and an entry of the transfer made in the register of the Company, which is followed by all the consequences of partnership.

It is clear, then, that a mere intimated assignation is not in itself sufficient to make the assignee a partner. Therefore I am of opinion that Mr Harrison, who went to the register and had his transfer entered, has the right to these shares, and that the trustee has none, and never can have, since he cannot now disturb that acquired by the registered transferee. The trustee never was a partner, because he never took the proper steps to make himself one.

Lord Neaves—I concur, and upon the same grounds.

I think it is plain that mere assignation is not the proper mode of completing a right of this kind at all. Assignation is the transmission of a *jus crediti* in its original conception—a mandate from the cedent. The purpose of the intimation of an assignation is twofold—first, to prevent the debtor from paying to his original creditor; and second, to show that the assignee is in future to be the sole creditor. These principles are not applicable to the transfer of a bilateral right like partnership. The position of a partner is not conferred by the mere appointment of the trustee in a sequestration; indeed, that position may often not be a proper thing for him to undertake. In short, the transmission of a share in a company is a thing *sui generis*, not to be governed by the same principles which regulate the transmission of a unilateral debt.

Lord Ormidale—My Lords, I am of the same opinion, and I would just make the observation that I consider the case one of great importance and of general application, and of special application to one very important kind of property in companies possessing transferable shares.

It is remarkable, if this question was raised that it has never yet been determined either in England or Scotland. I do not say that this is the case, but it may be so. And if so, I account for it in this way—that individuals having property of this description have seen so plainly that there is only one way of having that property transferred—that no practical difficulty has really ever been felt.

And I account in this way for the silence maintained by the trustee for these last twenty years, during which Mr Harrison has been dealt with as the owner of these shares, and has, I suppose, been drawing the dividends. I am quite clearly of opinion, on the grounds stated by your Lordship, that Mr Harrison has the only completed right to the shares. He had a formal deed of transfer, although it was not registered at the date of the sequestration. Then there arose that race between him and the trustee which often does arise in similar cases, where the party holding his security, if first infeft, cuts out the trustee. Now, I apprehend that Mr Harrison did proceed to present his transfer, that it was received, and that he became a shareholder. But it is said, on the other hand, that the act of sequestration operated as an intimation of the transfer of these shares to the trustee. Assuming that it did, what then? The trustee is, at least, in no better position than an assignee after intimation. But this is not sufficient to give him the character of a shareholder. If it was, it would create an unmanageable state of things. Companies would require to keep a register of intimations. In short, it would give rise to a variety of irregular and difficult questions, and cause perfect confusion. But the Companies Clauses Act has regulated the whole proceedings necessary to render a transfer of shares valid and complete. And the trustee has not conformed to the regulations laid down.

It is quite possible that the trustee might have had a right to compel the bankrupt to grant a transfer of these shares to him. But the bankrupt in this case would, as an honest man, have said:—"I have already transferred these shares to another. Your course is to go to the register with your decree in the sequestration, and get entered." This the trustee never did.

Lord Gifford—The true criterion with reference to the right of property in these shares is the being received as a shareholder. In that view I cannot hold that the fact of intimation is any criterion, and if so, then the whole argument for the reclaimer is displaced. The Bankruptcy Statute makes the act of sequestration, as regards the right of the trustee in the effects of the bankrupt, equivalent to delivery, possession, and intimation. Here we have not a case of delivery or of possession, but it is said that the act of sequestration operated as intimation of a transfer to the trustee. Now, even at common law, I should doubt whether intimation alone, though it may be effectual for some purposes, would complete the trustee's right. The matter is, however, rendered clear when we turn to the Companies Statutes. Until registration no one incurs the liabilities of a shareholder, nor is entitled to share in the benefits of the company. The trustee has chosen to lie out and remain unregistered for twenty years, during which the responsibilities have rested on Mr Harrison. And then, after perhaps the value of these shares has risen, he seeks to come in and cut out the man who has borne the heat of the day. Such a proceeding would be very inequitable.

The Court adhered with additional expenses, which were awarded both to Mr Harrison and to the Railway Company.

Counsel for Pursuer—Balfour—Keir. Agents—H. & A. Inglis, W.S.

Counsel for Defender (Harrison)—Dean of Faculty and M'Laren. Agents—Millar, Allardice, Robson, & Innes, W.S.

Counsel for the Railway Company—R. V. Campbell. Agents—A. J. & J. Dickson, W.S.

Friday, February 4.

FIRST DIVISION.

[Sheriff of Argyll.

CALEDONIAN CANAL *v.* M'TAVISH (AS REPRESENTING THE PAROCHIAL BOARD OF THE PARISH OF NORTH KNAPDALE).

Sheriff — Jurisdiction — Assessments — Poor-Law Amendment Act, 1845 (8 & 9 *Vict. c.* 83)

Held that in an action in the ordinary Sheriff-court for recovery of assessments for poor-rates, the Sheriff is entitled to entertain a defence on the merits, and that his duties are not merely ministerial.

The Parochial Board of North Knapdale laid certain assessments for poor-rates on the Commissioners of the Caledonian Canal for that portion of the Crinan Canal belonging to the Commissioners which lay in the parish of North Knapdale. The Commissioners at first refused to pay, on the ground that the canal was Crown property, and not liable in parochial assessments; but on that being decided against them in 1872, they still maintained their refusal, on the ground that if all deductions were made to which they were entitled there remained no assessable value. In January 1874 the Parochial Board raised an ordinary action in the Sheriff-court of Argyllshire, concluding for payment of the assessment from 1865 to 1873 inclusive, to which the Commissioners stated the above defence on the merits, and also stated as a preliminary plea that the Sheriff had no jurisdiction to try the question.

On 29th April 1875 the Sheriff-Substitute pronounced an interlocutor, in which he found "that as regards the conclusions for poor-rates the Sheriff's duties are only ministerial, and that the defender's pleas as to the assessments being imposed on too large a valuation cannot therefore be entertained in the Sheriff-court;" and decerned for the assessment.

This was appealed to the Sheriff, who adhered.

The Commissioners appealed to the Court of Session.

Argued for them—Before the Poor-Law Amendment Act, 1845, the Sheriff always acted ministerially in matters connected with the Poor-Law. The heritors and kirk-session who previous to that Act imposed the assessment were a quasi-judicial body, but the Parochial Board, substituted for the kirk-session by that Act, was no longer a quasi-judicial body, and if the Sheriff acted ministerially he only did so when acting in the way specified in section 88 of the Act. If section 88 was a code of procedure beyond which it was incompetent to go, then the action here was incompetent from the beginning; if section 88 was not a code, then they not having availed themselves of that section, but having raised an ordinary action, were liable to be met by ordinary defences.

Argued for the Parochial Board—It was quite clear that before 1845 (1) an ordinary action was competent, and (2) the Sheriff could not get behind the poor-roll, but must pronounce decree. By Act 1845 the Parochial Board came into the places of the heritors and kirk-session. The heritors and kirk-session were not a court, but if they were, so was the Parochial Board—*vide* sections 32, 33, 34, 38 of the Act. Jurisdiction must not be raised by implication; in reference to this matter there was none given to the Sheriff in section 88, while in another matter in section 73 it was expressly given him. The proper remedy for the Commissioners if they wanted to get to the merits was suspension.

Appellant's authorities—The various Poor-Law proclamations to be found in Appendix to Dunlop on the Poor-Laws; Poor-Law Amendment Act, 1845 (9 and 10 Vict. cap. 83, sec. 88); 52 Geo. III, cap. 95, sec. 13.

Respondents' authorities—*Calder* v. *Trotter*, 8th June 1833, 11 S. 694; *Pollok* v. *Robertson*, 12th November 1833, 12 S. 14.

At advising—

Lord Deas—The Parochial Board of North Knapdale raised an action against the Commissioners of the Caledonian Canal in January 1874, concluding, *inter alia*, for assessments which they had laid on them for relief of the poor from Whitsunday 1865 to Whitsunday 1873 inclusive. A record was made up in this action, and certain pleas, both preliminary and on the