course, the argument involves the proposition that by registration under the Acts a material change is brought about in the relative obligations of the partners to contribute to payment of the debts of the company—that change being not a limitation of liability which would affect all the partners equally, but that in place of personal liability on the partners to contribute rateably for payment of the debts of the Company, one set of partners would become entitled to the privilege of being representatives of a trust-estate only, while the others would have their obligations and liabilities increased to a corresponding extent. The same argument would, I think, have been equally available in the case of *Lumsden*, for although the registration was only for the purpose of winding-up, substantially the same provisions in regard to the measure of contributions by the members to meet losses occurred in the Act of 1856 as in the Act of 1862. Apart from this, however, it must be observed that the only provisions of the Act of 1862 which relate to representative as distinguished from individual liability (being sections 76, 77, and 78, and section 99) refer to the cases of the death or bankruptcy of a partner, or the marriage of a female partner, and in the last of these cases the liability of the husband is practically that of an individual partner, and unlimited. From these sections, therefore, the petitioners' argument derives no aid. The effect of registration and incorporation, having regard to section 196 of the Act of 1862, is to make the provisions of the existing contract of copartnery of the company the test of each partner's liability after registration and incorporation, just as before. The really material change is, that all the partners, in the event of insolvency resulting in a winding-up, get this benefit from the clause of incorporation and the provisions of the statute relating to winding-up, that they are not liable to the direct diligence of creditors, but have the company wound up by liquidators, to whom they must pay their rateable contributions, and who have power not only to satisfy the debts due to creditors, but to adjust the rights of the contributories *inter se*. This change affects only the mode of recovering and distributing the assets of the company and the contributions of the partners. I am of opinion, therefore, that registration and incorporation under the Act of 1862 having made no change on the measure of liability of the partners of the company, the petitioners' argument on this head is not well founded.

It has been further maintained that an important ground of judgment in the case of *Lumsden* was found in the fact that in the deed of accession to which *Brown's* trustees then became parties they bound themselves, "their heirs, executors and successors,"—words which usually denote personal or individual engagements,—while here these words do not occur. It is true that the use of these words is noticed in some of the opinions in this Court and in the House of Lords, but equally so that the true ground of judgment is not so much the use of such words of obligation as the nature and incidents of a contract of copartnery for trading purposes, and the obligations which naturally arise between partners in such a contract. The petitioners were not allottees of stock, and so had not to sign any deed of accession to the contract of copartnery. They signed a transfer of stock in their favour, and had this deed registered, with the effect of making them partners in the same way as if they had signed the original contract of copartnery of the bank. This seems to me to be the result of the contract, and particularly of the provisions of articles 4th, 5th, 6th, and of articles 33d, 38th, and 40th, as to which I have also to observe that they are almost identical with the stipulations of the contract of the Western Bank, which were thought material to the judgment in the case of *Lumsden*.

I have only further to notice, that reliance was placed on the fact that the petitioners' character as trustees was mentioned not only in the transfer in their favour, and in the bank register, but also in the dividend warrants; and that in the return to the registrar under the Act, and the published lists of shareholders, the petitioners' individual names even did not appear. But all of these facts occurred also in the case of *Lumsden*. It is clear that the returns to the registrar and the published lists were not in terms of the statutes; but this circumstance can have no effect in a question like the present, and enough has been already said as to the only effect which can be given to the description of the parties as trustees. On the whole, I am of opinion that the petitioners are liable as partners of the bank personally, and not in a representative character only, and that accordingly their names must remain on the register, and their petition be refused.

The Court therefore refused the petition, with expenses.

Counsel for Petitioners—Dean of Faculty (Fraser)—Maclaren—Moncreiff. Agents—Boyd, Macdonald, & Co., S.S.C.

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

Saturday, December 21.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*NELSON MITCHELL'S CASE*)—NELSON MITCHELL, PETITIONER *v.* LIQUIDATORS.

Public Company—Sale of Bank Stock—Leeman's Act (30 *Vict. cap.* 29)—*Registering Sale after Stoppage of Company—Companies Act* 1862, *sec.* 35.

A sale of bank stock was made upon a Stock Exchange on 28th and 30th September. Entries were made at the time in the respective "transaction books" of the two brokers, specifying the quantity and nature of the stock, the settling-day (October 16), and the name of the broker whose book it was not, and who thereupon initialed the entry. The name of the seller was verbally mentioned on 10th October by his law-agent and broker to the purchaser's broker, and the name of the purchaser, which was the bank itself, was given to the seller's broker by letter on the following day. On the 15th the bank, at whose

office such documents were made out, was required by the seller's broker to execute a transfer. The directors refused to do so, the bank having stopped payment on October 2d, and no business having been after that date transacted nor changes made on the register of members. On the 22d a winding-up resolution was passed, following upon a notice of motion to that effect issued to the shareholders by circular on the 5th.

In a petition at the instance of the seller to have his name removed from the list of contributories in respect that the bank was the real proprietor of the stock:

Held (1) that under the second alternative of the 1st section of Leeman's Act (30 Vict. cap. 29) the sale was a nullity, as "the contract" (which the Court found to be contained in the transaction books of the brokers) did not "set forth the person or persons in whose name or names" the stock stood as registered proprietor at the date of the sale; and (2) that in the circumstances the directors were neither bound nor entitled to make the required alteration upon the register, and there was thus no ground for the contention that there had been "default" or "unnecessary delay," under section 35 of the Companies Act 1862, in respect of their neglect to do so.

In this petition the petitioner Mr Nelson Mitchell prayed to have his name removed from the list of contributories of the City of Glasgow Bank under the following circumstances: — On 28th September 1878 Black & Robson, stockbrokers in Glasgow, acting for the petitioner, sold to A. Reid & Co., stockbrokers in Glasgow, and A. Sutherland, stockbroker there, a partner of that firm, £1000 of City of Glasgow Bank Stock, which belonged to the petitioner, at £236 per £100, for "settlement" upon 16th October inst., and on the 30th September (Monday), Black & Robson sold to A. Reid & Co. and A. Sutherland an additional £500 of the same stock at £237 per £100, and a further £1000 at £236 per £100, also for settlement on 16th October, making a total price of £5905. In making the purchases A. Reid & Co. and A. Sutherland acted as brokers for and under the authority of the bank. On 15th October Black & Robson, as brokers for the petitioner, according to the usual practice handed to the City of Glasgow Bank the certificates of the stock in Nelson Mitchell's name, with a request that the Bank or its directors would prepare a transfer of the stock in favour of the Bank, which the directors declined to do, by letter of same date, from their secretary, in the following terms:—

"*City of Glasgow Bank,*
Glasgow, 15th Oct. 1878.

"Messrs Black & Robson,
14 Princes Square, Glasgow.

"Gentlemen,—In reply to your letter of this date requesting transfers of Bank stock, I am instructed to say that in the present state of the Bank's affairs my directors do not feel warranted to prepare or register any of the Bank's stock.

"I return the nine certificates received from you, and I am, gentlemen, your obedient servant,

"C. S. Leresche, *Secy.*"

The petitioner therefore executed a unilateral deed of transfer of the stock in favour of the bank, dated 16th October 1878, and tendered the same to A. Reid & Co. and A. Sutherland, demanding at the same time payment of the price. This was refused. The petitioner then made notarial intimation to the bank of the deed, and produced and exhibited it to the bank, requiring them to pay the price, and to register the transfer in their books, so that his name might be taken off the register of shareholders.

The bank stopped payment on 2d October, some days subsequent to the sales of stock in question, and this petition was presented to the Court on 19th October, three days before the resolution to wind up the affairs of the Bank.

In a minute of admissions between the petitioners and the liquidators of the Bank, who lodged answers opposing the prayer of the petition, the following facts, in addition to the statements in the petition mentioned above, were, *inter alia*, admitted:—That after 2d October, when the bank stopped, it no longer received money on deposit, discounted bills, nor issued bank drafts or notes, nor transacted other banking business, although it continued to receive payment of bills held by it and debts due to it. No change in the register of members of the bank was made after its stoppage. That the manner of conducting business in the Glasgow Stock Exchange is as follows — On the members being assembled the secretary reads down the printed list of stocks, and on each stock being read out any member wishing to buy or sell it signifies his desire to do so. If one wishes to *sell* he calls out his price, and if another wishes to offer the price so asked he does so by the use of such words as "I take," or the like. In like manner, if one wishes to *buy*, upon the name of the stock being read out he calls out the price he is willing to offer, and if another wishes to sell at that price he signifies the same by the use of such words as "I take," or the like. In either case the secretary takes a note of the price in his book. The broker of each party thereafter makes an entry in his Stock Exchange Transaction-Book, the one as having sold the particular lot of stock, and the other as having bought it; and usually, before they leave the Exchange, each initials the book of the other. In each month there are two settling days, one near the middle and the other about the end of the month; and before each settling day there is what is called "name day." This is usually the day immediately before "settling day." Upon "name day" the purchasing broker hands to the selling broker a ticket containing the name and designation of the person for whom the stock was purchased, and on "settling day," or down to "buying-in day" for that account, which is a day eight or ten days after "settling day," the purchasing broker is by the rules of the Glasgow Stock Exchange held bound to pay the price on receiving from the selling broker a transfer signed by the seller in favour of the person named and designed in the ticket, together with a certificate of the shares or stock. In those cases where, by the regulations of the company, the transfer has to be prepared in the office of the company itself, as was the case with the City of Glasgow Bank, it is the duty of the selling broker, on getting the name of the purchaser, to order the transfer. When he receives it, he gets it signed by his employer the seller, and then hands it to the purchasing broker in exchange for the price. In such cases the settlement of the transaction

usually takes place a day or two after the regular settling day. Until the delivery of the ticket by the purchasing broker to the selling broker on "name day," the name of the purchaser is not divulged to the seller, and until delivery of the signed transfer by the selling broker to the purchasing broker the name of the seller is not usually divulged to the purchaser. This was the case in respect to bank shares as well as other shares up to the date of the stoppage of the City of Glasgow Bank. The sales of stock referred to in this petition were carried through in accordance with what is above stated, except that the seller's name in this case was verbally mentioned by the seller's law-agent and his broker to the purchasers' broker on 10th or 11th October, and the purchaser's name was given to the seller's brokers on 11th October by letter of that date."

The questions raised by the petition were—(1) Whether there was any valid contract for the purchase and sale of the stock in question in terms of the Act 30 Vict. cap. 29 quoted below; and (2) assuming that the contract was valid, whether the position of the Bank when the demand to complete the transfer was made was such as to entitle the directors to refuse to do so.

Argued for petitioners — (1) The statute 30 Vict. cap. 29 was really a penal statute, and as such must be construed very strictly. On a sound construction of the first section of the Act, such contracts as that in the present case need not be in writing, and the Act only applied to such contracts as were in writing. The first section was in the following terms — "All contracts, agreements, and tokens of sale and purchase, which shall, from and after the first day of July 1867, be made or entered into for the sale or transfer, or purporting to be for the sale or transfer of any share or shares, or of any stock or other interest in any joint-stock banking company in the United Kingdom of Great Britain and Ireland, constituted under or regulated by the provisions of any Act of Parliament, royal charter, or letters patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest, by the respective numbers by which the same are distinguished, at the making of such contract, agreement, or token, on the register or books of such banking company as aforesaid, or, where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall, at the time of making such contract, stand as the registered proprietor thereof in the books of such banking company; and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token, any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand as aforesaid, shall be guilty of a misdemeanour, and be punished accordingly, and if in Scotland shall be guilty of an offence punishable by fine or imprisonment."

A nominate contract such as that in the present case really was might by the law of Scotland be competently made by parole, and this was so made—Stair iv, 43-4; Erskine iv, 2, 20; Dickson on Evidence, vol. i, p. 368, and cases quoted therein. In England such contracts were valid—*Humble* v. *Mitchell*, Nov. 27, 1839, 11 Ad. and Ellis 205; *Duncuft* v. *Albrecht*, June 9, 1841, 12 Simon 189; *Boldy* v. *Bell*, 3 Scott Com. Ben. 284. Even admitting such a contract could not be made by parole, this contract might still be valid as being constituted by writing, and it was sufficient for the purposes of the above-mentioned Act if the rules of the Stock Exchange were taken into consideration, for in the brokers' advices to their clients the names of the buyers and sellers were mentioned; and that these advices were really the evidence of the contract was shown by the factthat it was these documents which were required by the Legislature to be stamped—33 and 34 Vict. cap. 97, sec. 69, and 41 Vict. cap. 15, sec. 26. Further, by the contract of copartnery of this bank it was essential to a sale of stock that it should be intimated to the bank, under article 34 of the contract of copartnery, and on 11th October the sale was brought under the notice of the directors, and a disclosure of the names of the buyers and sellers was then made, and so the contract was completed.

(2) Assuming the contract to be valid, there had here been "default or unnecessary delay" in completing the transfer, within the meaning of the Companies Act of 1862, sec. 35 —*Ward* v. *Henry*, March 21, 1867, L.R. 2 Ch. 431; *ex parte Ward*, April 30, 1868, 3 L.R., Exch. 180; *ex parte Shand*, April 16, 1877, 2 L.R., Q.B. 463; Lindley on Partnership (4th ed.) i, 171. The point of time at which transfers and registration of transfers must cease was the date of the resolution to wind up (sec. 131 of the Companies Act 1862) and the petitioner had done everything in his power to complete the transfer before that date; but further, the bank was "in delay" on the 17th October, and also on the 18th, the date of the above-mentioned notarial instrument—*Nation's* case, Dec. 10, 1866, 3 L.R., Eq. 77; *Shepherd's* case, 1866, 2 L.R., Eq. 564, 2 Ch. 16; *Hill's* case, 4 L.R., Chan. 769; *Lowe's* case, Jan. 27, 1870, 9 L.R., Eq. 589; Lindley on Partnership, vol ii, p. 1413. The resolution not to register any transfers was prior to the report of the investigators which shewed the hopeless state of the bank's affairs. On the question of the winding up being the date at which transfers should cease to be recognised—*Cf. Smith's* case (*Reese River Mining Company* v. *Smith*), 2 L.R., Chan. App. 604, and 4 L.R., Eng. and Ir. App. 64; *Black & Company's* case, Dec. 11, 1872, 8 L. R., Chan. App. 254.

Argued for the respondents—(1) If a contract was to be constituted by writing between two parties, the document ought to be communicated to both parties; but here this was not the case, as the document said to constitute a contract was not communicated to the bank or its broker but was simply a memorandum sent by the seller's broker to his principal. The verbal bargain between the two brokers could not complete the transaction, as by the Stock Exchange rules they were precluded from making their transactions without concluding them in writing. The only thing which could constitute a contract here were the two sale-notes which were engrossed and initialed in the brokers' books on the date when the transaction was said to be carried out. These notes were only stamped for the purpose of in-

suring that no stock exchange transaction should escape duty, and they were necessary documents between the sellers and buyers and their respective brokers. Moreover, they did not disclose what was essential under 30 Vict. cap. 29, to make a valid contract, for in them there was no mention of the numbers in the register of the bank of the stock sold nor of the name of the seller. Further, this was not, as argued by the petitioner, a transfer of moveables, but a transfer of incorporeal rights—*Clark* v. *Callander*, March 9, 1819, F.C. and June 16, 1819, 6 Paton's App. 422. (2) Assuming the contract to be good, the refusal of the directors to complete the transfer was justified by the ordinary rule of conduct for persons who saw that their affairs were in so hopeless a state that bankruptcy was inevitable (2 Bell's Comm. 7th ed. 226), viz., not to do anything which might give a preference to any person whatever—*Oakes* v. *Turquand*, 1867, 2 L.R., Eng. and Ir. App. 325. As to sec. 131 of the statute, which fixed the date at which business should be held to stop as the date of the resolution to wind up, it was quite possible that there might be an earlier date at which, by resolution of the company, business might *de facto* be stopped, and there was nothing in the statute to show that such a stoppage of business should not have the same effect as the statutory stoppage referred to in the section quoted.

At advising—

Lord President—The petitioner Mr Nelson Mitchell claims to have his name taken off the list of contributories on the ground that before the resolution for voluntary winding-up he had sold his shares, and that the transfer to the purchaser ought to have been registered in due course before that time by the directors of the company. In the month of September last Mr Mitchell held £2500 of the stock of the company, and having resolved to sell the whole of that stock, he instructed certain brokers in Glasgow, Messrs Black & Robson, to sell it for him, and they accordingly effected the sale on the 28th and 30th September, for settlement on 16th October. The sale was made on the Stock Exchange in the usual way. The brokers on that Stock Exchange keep what they call a "transaction book," and the seller's brokers, Messrs Black & Robson, entered the sales which they made in their transaction book, giving the dates, quantity of stock sold, the nature of the stock—being the City of Glasgow Bank stock—the settling day, the name of the purchasers' brokers, and the rate of price per £100 of stock. Then in the transaction book of the purchasers' brokers there were precisely corresponding entries; and according to the practice of the Stock Exchange, before the brokers left the Stock Exchange for the day the seller's brokers obtained the initials of the purchasers' brokers' accredited clerk to each entry of sale in their transaction book; and in like manner the purchasers' brokers obtained the initials of one of the partners of Messrs Black & Robson to each entry in their transaction book referring to these sales. Now, it appears to me that this was the completion of the contract between the parties. It was a sale of a certain quantity of stock of the City of Glasgow Bank by the one broker to the other at certain rates per £100 of stock, and a personal contract of sale between these brokers was completed. The names of the principals were not then disclosed, and indeed were not disclosed, either the one or the other of them, until the 11th October. It is said in the eighteenth article of the minute of admissions that on the 10th October 1878 the person in whose name the stock stood was mentioned to the buyers' brokers by the seller's brokers—as I understand it—and on the following day the buyers' brokers wrote to the seller's brokers as follows:—"Glasgow, 11th October 1878. Dear Sirs,—(1) What we did in City Bank stock with you was on instructions and for behoof the bank itself. (2) We hold no written authority. (3) Our instructions were given verbally by Mr R. S. Stronach, the manager. (4) We intimated what was done by contract-note to Mr Stronach in the usual form. We requested the directors verbally on the 8th inst., and again by letter yesterday, to be furnished with means to take up the stock for the bank as early as possible, and we have received a verbal communication from the secretary this day 'that the board of directors have got an opinion that they cannot interfere.' We think it right to communicate this information to you at the earliest possible moment for your guidance." From that date, but not sooner, it was disclosed on both sides that Mr Mitchell was the principal in the sale, and that the bank itself was the true purchaser, represented by Messrs Reid & Company. Prior to this the brokers on either side had sent the usual advice-notes to their principals—the terms of which it is not very material to notice at present, but I may say in passing, with reference to a plea to be afterwards considered, that the advice-notes of the seller's brokers were duly stamped under the Statute 41 Vict. cap. 15, section 26.

The first plea to be considered is one stated on the part of the liquidators, the respondents in this petition, to the effect that this sale, concluded in the manner I have described, is null under the Act 30 Vict. cap. 29. That statute provides in its first section—"That all contracts, agreements, and tokens of sale and purchase which shall from and after 1st July 1867 be made or entered into for the sale or transfer or purporting to be for the sale or transfer of any share or shares, or of any stock or other interest in any joint-stock banking company in the United Kingdom of Great Britain and Ireland constituted under or regulated by the provisions of any Act of Parliament, royal charter, or letters-patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company as aforesaid, or, where there is no such register of shares or stock, by distinguishing numbers; then, unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company." Now, the City of Glasgow Bank being registered under the Statute of 1862, it is provided by the 191st section of that statute that it shall be deemed and taken to be a banking company constituted or established under

Act of Parliament, and therefore it falls within the provision of this Statute 30th Vict. cap. 29, because it answers the description that it is a "banking company constituted under or regulated by the provisions" of an Act of Parliament. It is not a banking company in which the shares or stock are distinguished by numbers on the register, and therefore the second alternative of the clause applies to it, and it is necessary in terms of this statute that every "contract agreement or other token" of sale and purchase "shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof;" and the question therefore comes to be, whether the contract, agreement, or other token of sale or purchase in this case complies with this condition of the statute. I think that the contract is expressed in the transaction books of the brokers, and that by means of the entries therein, and of the initials appended in each of these books by the brokers whose book it was not, the contract of sale is made complete between the brokers, and if they were duly authorised, as they were in this case, between their principals. Now, these writings certainly do not disclose, and still less do they in the words of the statute "set forth, the person or persons in whose name or names" the stock stood as registered proprietor at the date of the sale. And therefore it appears to me that the statute applies, and that we must deal with this sale as a nullity.

It has been contended that the entries in the transaction books, initialed as I have explained, are not the proper evidence of the contract, but that the contract is to be found in what is called the advice-notes sent by the seller's brokers to their principal, because it is said the Stamp Act 41 Vict. cap. 15, recognises that as being the true written contract. Now, in the first place, I do not see how it could benefit the petitioner to hold that that is so, because the advice-note does not set forth anything of the kind required by the statute; but to represent an advice-note as being a written contract of sale or as written evidence of a contract of sale appears to me to be utterly untenable. It can never make a contract. It is an intimation that a contract is already made. Nor can it be upheld that any provision of a revenue statute for the mere purpose of making the collection of the revenue more safe and effectual interferes with the common law of the country. It may be very convenient, and I have no doubt very useful, in the collection of the revenue derived from stamps, that the stamps should be put on the advice-notes. We can easily understand why the Legislature adopted that plan of making the stamp-duty effectual, because there must be many a sale of bank stock in which there is only one broker employed for both the seller and purchaser. If a broker has an order from one of his clients to sell a certain amount of bank stock, and an order from another client to purchase the same amount of bank stock, he does not require to exchange missives so to speak, with anybody. He has nothing to do but to make entry of the matter in his own book, and therefore there would be nothing upon which to affix the stamp unless for the provision of this Act 41 Vict. cap. 15—which quite accounts for the advice-note being selected as the document to be stamped. For I take it that in the exercise of the profession of a broker no man would think of omitting that most important step in such transactions as sending a note to his client of the sale or purchase effected. Therefore I can attach no importance to the argument derived from the Act 41 Vict. cap. 15, and I am of opinion accordingly that Leeman's Act applies to the sale which was here made, and that the contract of sale is null and void.

But it is not desirable to rest the judgment of the Court on that ground alone, because there is another and most material question to be considered—whether the ground on which this petitioner demands that his name should be removed from the list of contributories is well founded in itself, even assuming the contract of sale to be valid. The question is, whether the transfer following upon this contract of sale ought in due course to have been registered. Now, the transfer was ordered by the seller's brokers on the 15th October, by which I mean that they gave notice to the directors of the bank that he desired a transfer to be prepared—the arrangement under the contract of copartnery being that such transfers are prepared by the directors of the bank. The first question that arises is whether there was time in the ordinary course of business to complete and register that transfer before the resolution for the voluntary winding up was passed. The state of the facts in regard to that is ascertained by the minute of admissions, "The directors' weekly meeting was on each Thursday, when stock was put under offer, and proposals for transfers were submitted for the approval of the directors. Thereafter the transfers were prepared by the bank officials, sent for signature to the sellers, by whom they were forwarded to the buyers for signature, and were thereafter registered in the books of the bank. The 17th of October was a Thursday, and in ordinary course the transfer in this case would not have been issued before the 19th, or a day or two thereafter, nor registered for a day or two after issue; but it might have been issued on the 18th, and the seller being in Glasgow, it might have been executed and registered on that or the following day if the bank officials had exercised unusual despatch." I shall only say, in regard to this statement of facts, that if this had been a transaction between the petitioner and some third party outside the partnership altogether of this banking company, it might have been a very narrow case, and it is not perhaps necessary that we should decide whether in such a case a transfer ought to have been completed, and that the directors would have been failing in their duty under the 35th section of the Act if they had not completed and registered the transfer. I think it is not necessary to give an opinion on that point, because this is not a case of a sale by a partner of his shares to a third party outside the company, but it is a sale to the company itself. The directors of the company were under ordinary circumstances undoubtedly quite entitled to purchase the stock of their own bank, and they had been in the course of doing so apparently for some time to a large extent. This purchase was made by their brokers, not upon special instructions for that purpose, but upon general instructions apparently as to the purchase of such stock. Now, the sale was made, as we have seen, on the 28th and 30th of September, and the transfer was ordered as

it is called—that is to say, the directors were ordered to prepare a transfer—on the 15th October following, being the day before the settling-day. The question, I think, is, Whether the directors were bound to complete that transaction or were in the circumstances entitled to complete that transaction? We must consider what their position then was. The bank had stopped payment on the 2d of October, and closed its doors under circumstances which certainly led to the inference that it was insolvent. But what is more important, the directors issued a circular on the 5th of October in pursuance of a resolution come to by them on the 2d, when they resolved to ask the assistance of an accountant and a law agent, and when they further "resolved in terms of the contract of copartnery to call a special meeting of the shareholders on the earliest possible day for the purpose of submitting to them a balance of the books of the bank as at the 1st inst., and with this view to instruct Messrs Kerr, Anderson, Muir, & Main, C.A., and Messrs M'Gregor, Donald, & Co., writers, Glasgow, to examine the books, securities, &c., of the bank, and to make up a balance as at 1st inst." It was in pursuance of that resolution that they issued on the 5th of October their circular to the shareholders, and that circular stated that "an extraordinary general meeting would be held on the 22d for the purpose of passing an extraordinary resolution pursuant to sub-section 3 of section 129 of the Companies Act." And then they give the resolutions which are proposed to be submitted to the meeting, "That it has been proved to the satisfaction of this meeting that the City of Glasgow Bank cannot by reason of its liabilities continue its business, and that it is desirable to wind up the same, and that the City of Glasgow bank be wound up voluntarily." Now, whatever may be said of the effect of the stoppage on the 2d of October, it certainly was a most important fact in the history of these proceedings. I think, it cannot be disputed that this circular to the shareholders was a declaration of insolvency. The resolution proposed to be put to the meeting was that the bank by reason of its liabilities cannot continue its business. That means that it cannot meet its engagements, or in other words, that it is insolvent. Such is the effect, I think, of this proceeding upon the 5th of October. Then it will be observed further that on the 18th of October the accountants who had been employed to investigate the condition of the bank's affairs made their report. It is stated in the 5th article of the minute of admissions that the result of their investigation was communicated to the directors about three o'clock on the afternoon of the 18th of October 1878, and a printed copy of the report and balance-sheet was handed to the secretary about half-past seven in the evening, and the import of that report was to disclose that "the bank as a corporation was hopelessly insolvent."

Now it was in these circumstances that the directors, it is said, ought to have completed this contract of sale—carried it through to a completion—just as if it had been made while the bank was going on with its business in ordinary form. I am of opinion that if the directors had followed that course they would have committed, to use the mildest language, a grievous error, if not a gross fraud, for what was it that they were asked to do? I take that in the words of the petitioner himself. He says that after having in vain applied to the directors of the bank to prepare a transfer he "executed a unilateral deed of transfer of the said stock in favour of the said City of Glasgow Bank, dated the 16th of October 1878, and tendered the same to the said A. Reid & Co. and A. Sutherland, demanding at the same time payment of the price. This was refused. The petitioner has also, of this date, the 18th of October, made notarial intimation to the bank of the said deed of transfer, and has produced and exhibited the same to the said bank, requiring them to pay the price, and to register the transfer in their books so that the name of the petitioner Nelson Mitchell may be taken off the register of shareholders, and has protested that the bank shall be liable to make good any loss he may sustain from or by non-payment of the price and non-registration of the transfer, reserving to the petitioner his claims against all other parties in connection with the said sales, and all his other rights and remedies. The said bank still refuses to accept the said transfer or to register the same, and also refuses to pay the price."

The demand of the petitioner was therefore that the bank should pay the price, somewhere near £6000, for those shares, and accept the transfers, and register it all in common form. How were they to pay the price? In the first place, if they had money in their hands to enable them to do it, they were certainly not in a position after stopping, and after declared insolvency, to pay away that money. The most ordinary common rules of bankrupt law forbid the notion of such a thing. It would have been entirely dishonest. They would have been paying away to one of their shareholders the money which belonged to the creditors. Then, if they did not pay the price, they could not comply with the demand which the petitioner made upon them, for it is an essential item of his demand that they should not only accept the transfer, but should pay the price.

But even supposing that the petitioner's demand was limited, or that it may now be held as having been limited to the object of getting his name put off the register of shareholders whether he got his price paid then or not, what was to be the consequence of that? If his name was removed from the list of shareholders it must have been because he had effectually sold his shares and being removed from the register of shareholders, he would no longer have been a contributory in this liquidation, although he might be under the risk of becoming liable as a past contributory at some future time, but only in the event of its being satisfactorily made out that the present partners of the company are unable to discharge its debts; and until that could be ascertained, and the petitioner made liable in consequence of his having sold within the year, he would have been, in respect of the price of those shares, a creditor of the company. I do not pause to inquire, for there may be a question of some difficulty there, as to whether he could have ranked at once as a creditor of that company. I do not think that of any importance to the present question. But to some effect, undoubtedly, he would have been made a creditor of the company if his name had been removed from the register upon the footing that he had effectually sold his shares to the directors. Now, that again

was certainly a result which the directors were not entitled to bring about, because they could not do it without prejudicing, or at least running a very great risk of prejudicing, the rights of their creditors.

But it may be said further, and it seemed to be part of the argument of the petitioner, as I understood it, that even supposing he should have no claim for this price at all, the directors should have complied with his wish so far as to accept the transfer and register it, and so remove his name from the register of shareholders. That was all he wanted; he says it is all he wants now; he only wants to escape liability. Would that have been completing and giving effect to a contract of sale? Most certainly not. It would have converted the transaction between the directors and the petitioner into a transaction of a totally different kind—a transaction known in some companies but not competent in this—I mean, a surrender of shares. That is a thing perfectly well known in the law of joint-stock companies, and under some contracts such a proceeding is provided for. A party may, under certain conditions, surrender his shares, and the directors are empowered to accept of such surrender. But there is no provision of that kind in the Act of 1862, as regards unlimited companies at least, and there is certainly no provision for it in the contract of copartnery. And yet, so far as I can see, if in this last alternative of the petitioner's argument the directors had given effect to his demand to remove his name from the register, and so free him from the liabilities of a contributory without carrying out to completion the contract of sale, that would have been nothing else in practical effect than accepting a surrender of his shares, which they could not do, and which he could not competently ask them to have done.

I am therefore of opinion that the petitioner has entirely failed to make out his proposition, that he was entitled in the circumstances which occurred to have this transfer completed and registered, and consequently that upon that ground also he must continue a shareholder of this company and be made a contributory.

Lord Deas—The first question here is, Whether this contract is or is not null in consequence of its not containing the name of the registered holder of the shares which are said to have been sold? Now, the absence of the name of the registered holder is not the evil towards which the preamble of the statute is directed; but that is of no moment. The statute itself is quite express that the contract shall be null and void to all intents and purposes whatsoever, unless it contain the name and designation in writing of the registered holder of the stock, except in those cases —with which we have nothing to do here—where the shares are numbered in the register, and then the numbers will be sufficient. Now, I cannot read this first section of the Act 30 Vict. cap. 29 without being satisfied that it refers to written contracts. It is impossible to read it without seeing that it does refer to written contracts, and that if we do not find the name of the registered holder in the written contract here, it is plainly null. The name admittedly is not in either of the entries in the books to which your Lordship has referred.

It is said that the entries in the broker's transaction books are not the contract, but that the advice-notes are the contract, because it is upon them that the stamp is to be imposed. There is plausibility in saying that those advice-notes, as stamped, are part of the written contract, but that is the whole length to which the argument can be carried. A written contract may be in one or two documents, or in four or five; but supposing you take this as part of the written contract here, the objection still remains that the name of the registered holder is not there any more than in the entries in the brokers' books. In these circumstances, I can have no hesitation whatever in concurring with your Lordships that this contract is null under the statute.

The second question is, Whether at the time the transfer was presented to the directors for registration they were bound to receive it, and consequently to change the entry in the register? The date when that was done was the 15th of October. I really do not think it necessary to say more upon this point than that I entirely concur with your Lordship that, after the publication to the world of the insolvency of the bank upon the 5th of October it is out of the question to suppose that the directors were bound or were entitled to make any entry in the register which would change or affect the liabilities of partners. They had shut their doors and ceased to trade upon the 2d of October, and if we required to go back to that date, I think it would have been a very grave question whether that was not enough, and whether after that anything could be done to affect the rights and liabilities of partners. As that question is involved in some of the other cases before this Court, I shall refrain from giving any opinion upon it distinctly. I only say it is a grave question, but I really cannot entertain any doubt that after the publication of insolvency on the 5th of October, nothing could be done with the consent of the directors or without it that could change the liabilities of the partners. I think it would have been a fraud on the part of the directors to have been parties to such a thing, even assuming there had been no fraud before, and I do not think it takes away that objection to say there had been a fraud before on their own part in purchasing those shares under the circumstances in which they did it. Assuming that, I think they were not entitled to complete that fraud; they were bound to stop short; they would have committed a second fraud if they had agreed to this alteration of the register. There are a great many illustrations of the application of this law in cases of ordinary insolvency. In cases of declared insolvency a trader is not entitled to take in goods—he is bound to reject them—and there are many analogous cases on the same principle. It is not necessary to go into these, and I shall only say that I entirely agree with your Lordship that after the publication of insolvency, whatever may have been the case previously, it appears to me that the directors were neither bound nor entitled to make any alteration upon the register.

Lord Mure—By the Act 30 Vict. cap. 29, the Legislature provided for the prevention of the sale of bank stocks which the parties selling did not happen to possess; and the question which we have to decide is, Whether the words of that statute strike at the sale of the stock in

question? Now, it appears to me that the words are of a very broad and general description, and that all contracts or agreements or tokens of sale or purchase not made in the particular way which I shall immediately specify are declared to be null and void to all intents and purposes. Now, I cannot read that clause without coming to the conclusion that what the Legislature intended to do and did was to provide that the sale of bank stock in future, whatever may have been done before that, should not be effected except by writing; and accordingly in the argument certain documents were referred to on the part of the petitioner as showing that there was substantially a written transaction in the sale of these stocks. Now, the penalty which the Legislature attaches by that section is that of nullity, and it is declared to attach to all cases where these contracts or agreements or tokens do not set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as registered proprietor thereof in the books of such banking company. In the present case therefore we have only to inquire whether there is any name made known or disclosed by the document by which the transaction was effected. Now, as I read the documents, it is admitted that the seller's name was not mentioned to the buyer's broker at all till the 11th of October, and then only verbally, whereas the transaction took place in the end of the preceding month, and it is quite plain from the documents referred to that there was no mention of who the seller was till the application to the bank to have the transfer completed on 15th October. But I think with your Lordship that the agreement to buy was made long before that date, and that the only written document we have here by which the sale was effected was that in the transaction books of the brokers, and there is no mention there who the seller was. In these circumstances, I have no hesitation in concurring with your Lordship that the clause of the statute strikes at this sale, because this was really the sale, and the advice-notes were merely intimations of what had been done; and that being so, it was a complete nullity, and can stand to no effect or purpose.

Such being my view, it is unnecessary and I do not mean to go into any detail upon the other objection founded upon the alleged improper refusal of the bank to complete the transfer and to register it. I agree with your Lordship that it would have been a wrong act on the part of the bank in the circumstances in which it was placed, being notoriously insolvent, and having intimated to the public on 5th October that it was insolvent, to have taken any steps by which any alteration would be made upon the liabilities of the shareholders.

Lord Shand—The petitioner in order to succeed in this application to have his name removed from the register of the City of Glasgow Bank and from the list of contributories made up by the liquidators must make out two propositions—First, That before the stoppage of the bank he made a valid and effectual contract with the bank by which the bank purchased his stock, and came under an obligation enforceable in a court of law to complete the purchase by accepting a transfer and making payment of the price; and second, that default was made or unnecessary delay occurred on the part of the bank in removing his name from the register prior to the 22d of October last, when the resolution was passed that the bank should be wound up voluntarily. I am of opinion that the petitioner has failed to establish each of these propositions.

The first proposition involves the question whether the Statute of 1867, 30 Vict. cap. 29 (commonly known as Leeman's Act) applies to the contract of sale of the petitioner's stock in the bank set forth in the petition, and of which the particulars are more fully given in the joint minute of admissions by the parties. If it appear on the facts admitted that the contract or agreement of sale was in writing, it cannot be doubted that under the statute it was null and void if it did not set forth the name of the petitioner as the registered proprietor of the stock at the date of the sale.

The statute was passed for the purpose of preventing gambling in the stock of joint-stock banking companies. The preamble narrates that it is expedient to make provision for the prevention of contracts for the sale and purchase of shares and stock in joint-stock banking companies of which the sellers are not possessed or over which they have no control. To effect this purpose of preventing transactions by mere speculators who have no stock for sale, the statute makes all contracts of sale without distinction—contracts by the true owners of bank stock as well as contracts by speculators who have no stock at the time, but have it in view to purchase stock to meet their contracts—null and void unless the contract shall set forth in writing the numbers by which the stock or shares sold are designated on the company's register, or, where there is no such register of numbers (being the case with the City of Glasgow Bank), unless the contract shall set forth the person in whose name the shares or stock stand registered in the books of the company. To prevent the evil against which the Legislature thought it necessary to provide, *bona fide* sales are, as regards the requisites of the statute, placed on the same footing as sales by persons who do not at the time possess shares or stock. The fact therefore that the petitioner was truly the owner of the stock in question is of no avail in any question as to a contract of sale if the statute was not complied with.

The sales and purchases were made in the open market—in the Glasgow Stock Exchange—and through brokers employed by the petitioner on the one hand, and by the manager of the bank, with the authority of the directors, on the other. It is remarkable that notwithstanding the stringent provisions of the statute the practice in sales of bank stock has continued to be the same as in sales of other stock, as appears from the admissions by the parties, viz., that the name of the seller was not divulged till delivery of the signed transfer by the selling broker to the purchasing broker. One immediate effect of this decision will surely be to lead to a general compliance with those provisions of this important statute which are essential to make a contract which the law will sustain and enforce.

An argument was submitted by the petitioner that the contract in the present case was verbal and not written, and that the provisions of the statute applied to written contracts only. It was replied for the liquidators that a verbal contract

for a sale of shares in a joint-stock company was not effectual or binding; and that at all events as regards bank stock it was essential under the statute that the contract should be in writing, and should give the statutory particulars necessary to identify the particular stock sold as being the property or under the control of the seller. It is not necessary, in my opinion, for the purposes of this case to decide either of these questions. I may observe, however, that according to the law of this country a verbal contract of sale of corporeal moveables, however valuable, is valid and may be enforced at law, and that I have not heard any argument to satisfy me that a different rule would apply to such moveable estate as the shares of a joint-stock company. But, on the other hand, if it were necessary to the decision of this case I should be prepared to hold that under the Statute of 1867 a contract of sale of bank stock must be in writing to be effectual; for, as I read the statute, in order to make an effectual sale there must be writing in an agreement or contract identifying the stock or shares by its numbers on the bank register, or, where there are no such numbers, then by the name of the owner.

In this instance however there is in the words of the statute "a written contract, agreement, or token of sale," consisting of the memorandum of sale engrossed in the transaction book of the petitioner's brokers authenticated by the initials of the accredited clerk of the brokers who purchased on behalf of the bank, with the counterpart consisting of the memorandum of purchase in the transaction book of the bank's broker authenticated by the initials of the petitioner's brokers. When the secretary of the Stock Exchange, reading over the list of stocks, reached the stock of the bank, the broker of the petitioner—the seller—offered his stock for sale, and the broker of the bank accepted it. But this offer and acceptance was made and given on the understanding that in terms of the 57th rule of the Stock Exchange written memoranda setting forth the transactions should be then and there exchanged in the respective transaction books of the parties, for it was a direct provision of the rule that members should not enter into transactions either with or for each other unless such transactions were regularly entered through their respective transaction books. The rule and practice were complied with in this case, and it is not I think open to doubt that the entries in the respective transaction books thus made and authenticated at the time formed the written contract of sale to which both parties must appeal in any question as to its validity or terms, each party being bound by the act of his broker duly authorised. Having once fixed that the memoranda in the brokers' transaction books constitute the "contract, agreement, or token of sale," there is an end of all question. It is impossible to represent the contract as valid—for though it contains the essentials of a contract otherwise, it wants what is essential under the statute, the name of the petitioner, who was the registered proprietor of the stock in the books of the bank at the time of making the contract.

The writings produced which followed the entries in the transaction books had all reference not to the making of a contract, but to the implement of the contract made. The provisions of the Stamp Acts, 33 and 34 Vict. ch. 97, sec. 69, and 41 Vict. ch. 15, sec. 26, founded on by the petitioner with the view of showing that the brokers' advice-notes really make the agreement, cannot be held to have that effect. The provisions of the later of these statutes show clearly that the meaning applied in both statutes to the term "contract-note" is so applied solely for the purposes of the revenue in the recovery of stamp-duties on all transactions of purchase and sale of stock or securities. A stamp is to be affixed to each advice-note sent by a broker or agent to his principal. Such an advice-note sent by a broker to his own constituent or employer could not possibly of itself constitute a contract with a third party and accordingly an advice-note is expressly distinguished in the statute from the "memorandum or contract between brokers or agents for or in relation to the sale or purchase of any stock or marketable security," and though the advice-note is subject to duty it is declared that "no such memorandum or contract shall be chargeable with any stamp-duty."

For the reasons now stated, I am of opinion that the alleged contract on which the petitioner claims to have his name removed from the register and list of contributories is null and void, and that on this ground the petition must be refused.

But it will be proper to consider whether, even if the contract had been valid, the petitioner would have been entitled to have the petition granted on the ground of default or unnecessary delay on the part of the bank in removing his name from the register prior to the resolution to wind-up on 22d October last. This question raises a point of great general importance in this liquidation, the point, namely, at what date the register must be held to have been closed so far as the bank or its directors were concerned. In considering this question the case appears to present peculiarities which distinguish it from the cases which have occurred hitherto in England, and were cited in the course of the argument. One of these is that on the 2d October, twenty days before the meeting at which the resolution to wind-up voluntarily was passed, and sixteen days before the petitioner tendered a transfer for registration, the bank had stopped payment in consequence of insolvency, the directors being in the knowledge that the insolvency was irretrievable; while on 5th October the directors further convened an extraordinary meeting of the shareholders for the purpose of considering, and if thought fit passing, an extraordinary resolution to wind-up the bank and appoint liquidators. It may be convenient with reference to what follows to add here that on 11th October, when the first transfer was presented for registration after the stoppage, the directors resolved not to register any further transfers, and that on 16th October, in consequence of an application by a deputation of the Stock Exchange on the subject of registration of transfers of the bank's stock, the directors resolved and intimated that "in the present circumstances of the bank they were not warranted, and that it would be improper for them to execute or register any transfers or to take up any stock which brokers may have bought for the bank."

The other peculiarity in the case is the fact that the shares in question were bought by the bank under power to that effect which the directors had under their contract (a power which they had

evidently used in this and other cases for the purpose of keeping up the price of the stock in the market), and that the proposed transfer by the petitioner was one therefore in favour of the bank, and not in favour of a third party who would take the place of the petitioner on the register.

It appears to me that, even if these peculiarities did not exist, and the directors had not expressly resolved on the 11th or 16th October to hold the register as closed so far as they were concerned, the petitioner has failed to establish that default or unnecessary delay took place on the part of the directors in removing his name from the register prior to 22d October, when the resolution to wind-up was adopted. The petitioner's broker wrote to the bank on 15th October ordering transfers to be prepared. In ordinary course this application would have been laid before the directors on Thursday the 17th, and the transfer thereafter prepared by the bank officials would not have been issued before the 19th—"a day or two afterwards," and would not have been registered for a day or two after being so issued. A day or two after the 19th would carry one to the 22d, and as the transfer had thereafter to be executed by the petitioner and returned and registered, the resolution to wind-up would have intervened before the registration. In this state of the facts (appearing from articles 20 and 22 of the minute of admissions) I think the petitioner has failed to show that in ordinary course the transfer would have been recorded before the 22d October, when the resolution to wind-up was passed, and in that view he has failed to make out that unnecessary delay or default took place in removing his name from the register.

But apart from this, I am of opinion that in the special circumstances of the case the directors were not only warranted in declining to register any transfers after the 2d October, and at least after the 5th October, but that it was their duty to decline to do so. It is maintained that in respect of section 131st of the Companies Act of 1862 the register must remain open, and transfers must be received and registered till the commencement of a winding-up, either by resolution of the partners, or by order of the Court, but I cannot assent to this view. That section no doubt provides that from the date of commencement of the winding-up the register shall be closed, excepting as regards transfers made with the sanction of the liquidators. But this provision does not declare that the commencement of the winding-up shall be the earliest date at which the register shall be closed.

Section 131 in its terms seems to imply that when the company has in fact ceased to carry on its business except for winding-up, the register should not be altered unless with the consent of the liquidators, for it makes the act of closing the register contemporaneous with the ceasing to carry on business. If it were held that the power of making effectual transfers must subsist till the members of the company shall meet and resolve on a voluntary winding-up, or till the Court shall order a judicial winding-up, and that the directors could in no circumstances close the register till one or other of these events occur, the consequences might be very serious. In this country an order for a judicial winding-up can only be obtained from one of the Divisions of the Court, because the Court (sec. 81) is declared in the statute to mean one or other of the Divisions thereof. There is no power given to a single judge, as in England and Ireland, to grant such an order, otherwise this might be done in vacation. It follows on the petitioner's argument that even if a meeting were called by the directors or managers of the company, with a view to a resolution to wind-up voluntarily on the statement that the capital was gone, and overwhelming debts incurred, that during the interval which must occur before the meeting existing partners might effectually transfer their shares, putting men of straw on the register, and thus place themselves in the position of being liable only subsidiarily for the company's debts as past members, after the other partners' means were discussed and exhausted. This construction of the statute would also drive persons to resort to compulsory in place of voluntary winding-up, even during the sitting of the Court, in order to prevent the registration of transfers during the fortnight or other period which must elapse before an extraordinary meeting of the company can be held.

I do not think that it is a sound view of the statute that would lead to these results. The party complaining must show that the directors were in default in not recording the transfer that would have set him free. But it appears to me that if the directors in the fair and *bona fide* exercise of their powers under the company's contract, as managers of the company, and in circumstances which make this a reasonable act of management, resolve for a time not to record transfers which may seriously affect and alter the liability of the partners, the resolution will be effectual, and that the directors in declining to record transfers cannot be held to be in default within the meaning of section 35 of the statute. This seems to me to be substantially the view expressed by Lord Cairns in *Shepherd's* case, 2 Chancery Appeals 16.

In the present case every consideration to reason and good faith made it incumbent on the directors of the bank to close the register on the 2d, and at least on the 5th of October. On the former date they stopped business because of irretrievable insolvency; On the latter, they issued a circular calling the partners together to resolve on voluntarily winding-up as the company could not by reason of its liabilities continue its business. The resolution to stop business was not qualified in any way. It inferred the closing of the register in the view and intention of the directors, for they declined thereafter, rightly as I think, to give effect to any transfer altering or affecting the liability of the partners in a company which they knew was irretrievably insolvent.

In *Nation's* case (L.R. 3 Equity. 81), Lord Romilly said—"I fully admit—and in fact that was what I intended to decide in *Shepherd's* case—that if a company find they are in a situation in which they cannot go on—if they are of opinion after a proper investigation of the state of their affairs that it is necessary to wind-up, and that it is but fair to all the persons connected with the company that matters should remain in *statu quo*—then they may come to a resolution that they will allow no transfers to be registered after that date, but it is always subject to this, that those transfers which they ought to have registered pre-

viously to the date of the resolution cannot in any degree be affected by it, but all those which they were not bound to register before that time, those they are entitled to say shall not be registered after that time." I concur in these observations, and the view thus stated will receive effect in this case.

Even if the transfer in question were between third parties, I should be prepared to hold that there was no default on the part of the directors in declining to register it. But the point is even more clear in a question with a partner of the bank seeking to complete a transfer in favour of the bank itself. It is obvious that the result would be prejudicial not to the other partners only but to the creditors. They would thereby lose the obligations of a member liable immediately to contribute towards payment of their debts, and it is no answer to this to say a subsidiary liability as a past member would remain, for this could only be made effectual after the means of all the other contributories had been exhausted, and after the lapse it might be of years. The directors of the bank by their resolution to stop business became bound to give no preference, and to fulfil none of the bank's obligations in favour of any particular individual to the prejudice of creditors or partners of the company. It is conceded they would not have been warranted in paying the price of the petitioner's shares, for this would have been to the prejudice of the creditors generally. It follows that they would not have been warranted in granting a discharge or restriction of the petitioner's obligations as a partner liable at once to contribute to payment of the debts—a result which would have been brought about if they had acceded to his application to have the transfer recorded.

I am thus of opinion that there are two objections each of which is fatal to the application, and I agree with your Lordships in holding that the petition must be refused.

The Court therefore refused the petition, with expenses.

Counsel for Petitioner—Lord Advocate (Watson)—Balfour—Pearson. Agent—H. B. Dewar, S.S.C.

Counsel for Respondent—Kinnear—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Saturday, December 21.

FIRST DIVISION.

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

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

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

In a petition brought for removal of the name from the bank's register—*held* that in accordance with the judgment of the Court in *Nelson Mitchell's* case (*ante* p. 155), the directors of the bank were not entitled to make any change upon the register subsequently to the declaration of insolvency.

Opinion per Lord Shand that the right of a partner to be taken off the register came to an end on the 2d October when the bank closed.

This was a petition by an executor and trustee for removal of his name from the register. He asked alternatively that his name should be removed from the list of contributories, or that such a condition should be attached to his name that he was only to be liable to make the trust-estate forthcoming. Mr Mitchell had taken out confirmation as executor of Mr Waters the testator, and the confirmation, including the bank shares, had been transmitted with his authority for registration. He had executed a resignation of his trusteeship, signed by the other trustees and beneficiaries, on 16th October, and intimated it to the bank on the 17th.

Argued for the petitioner—A trustee could resign at common law without any formal transfer of his right to others—*Gordon's Trustees* v. *Eglinton*, July 17, 1851, 13 D. 1381. The second section of the Trust Act 1861 (24 and 25 Vic. cap. 84) contemplated by implication that by resignation a trustee was relieved of future liability. He was in the same position as a shareholder who had executed a transfer. Both got the benefit under the Companies Act 1862, sec. 38, of being put into the postponed list.

Argued for the liquidators—The present question was to be taken on the footing that an executor whose confirmation was registered was a partner of the bank with individual liability, otherwise the liquidators had no interest to oppose the petition. The petitioner stood upon the register in a double capacity. He was joint-owner with his co-trustees of the shares in the bank, and bound to make them forthcoming, but he was also a partner in a trading company. Even if the mere resignation was enough to rest a legal title to the estate in the remaining trustees as between them and the beneficiaries, it did not follow that it also annulled the relation of partnership.

The practice of the bank in accepting minutes of resignation and writing them on the margin of the stock ledger opposite the party's name was not commendable, and could not override the company's statutes.

[In answer to the Court, Mr M'Laren stated that in some cases in which none of the original