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

trustees were now alive there was no transfer, but only successive entries of their names on the bank's books.]

That did not discharge from liability as a partner, and it was not for the bank to insist on a transfer being executed. The whole construction of the contract of copartnery was against the theory that a trustee could escape by simple resignation.

The circumstances under which the resignation took place were such as to preclude its having any effect. The directors could take no action after the declaration of insolvency.

At advising—

Lord President—In this case of Alexander Mitchell the entry in the register stands as follows:—"Alexander Mitchell, residing at Auchinclutha, Hamilton; Mrs Katherine M'Lannahan or Waters, widow of the deceased Andrew Waters, who resided at Belville, Edinburgh; and James Maclaine Waters, residing at Belville aforesaid, John Perks M'Lannahan Waters, George Thomas Brown Waters, and Mary M'Kinlay Waters, children of the deceased, and all residing at Belville, original and assumed executors of the deceased, confirmed as such, conform to confirmation in their favour by the Commissariat of Edinburgh, dated 12th July 1875." And this entry in the register stands down to this moment undisturbed and unrecalled. But the petitioner Alexander Mitchell became desirous of resigning his office as trustee, and he proceeded, under the Trust Act, 24 and 25 Vict. cap. 84, to make a minute in the sederunt book of the trust on 16th October 1878, by which he resigned, in terms of the statute, his office of trustee and executor, and all the other trustees, including among them the beneficiaries, signed this minute in token of their acquiescence in the resignation. He thereafter, on 17th October, the following day, caused to be delivered to the secretary of the City of Glasgow Bank a certified copy of the minute of resignation, and requested that in pursuance thereof his name should be removed from the stock ledger or register of members of the said bank, and it is made a matter of admission that it was the practice of the bank on receiving notice of the resignation of a trustee or executor to make an entry to that effect by a note in the stock ledger at the place where the name of the person resigning was entered. But the directors declined either to make the alteration upon the register, which was the first proposal made by the petitioner, or to make a note on the register of the resignation which had been intimated.

I am desirous in this case of not expressing any opinion as to what might be the effect of a resignation by a trustee or executor, and the intimation of that resignation to the bank directors, and the entry upon the register of such a kind as is mentioned in that admission which I have just read, where the bank is carrying on a business, and nothing has occurred in the nature of an advance towards liquidation; but in the present case the circumstances are very different from these. I need not recapitulate them, because I have already had occasion to express my views on them in the case of *Nelson Mitchell*, which we have disposed of, and it appears to me, in accordance with the judgment we pronounced in *Nelson Mitchell's* case, that it was impossible for the directors to go upon the admission of the beneficiaries made on the 17th October. I take it for granted, in disposing of this petition, that, if the resignation and its intimation had been made while the bank was in a state of solvency and carrying on business, this notice upon the register, which is said to have been made in practice, would have been sufficient to discharge this petitioner of liability; but it is just because that might have been its effect, and is, as contended by the petitioner, to be its effect, that I think it was altogether out of the question for the directors to take that step.

It is to be observed that it is not the mere intimation of the resignation that is subsequent to the declaration of insolvency, but it is the resignation itself; and I think no effect can be given to what is done by a partner of this company after the declaration of insolvency to free himself from his liabilities. That is the simple ground on which I proceed in refusing this petition.

Lord Deas—I am entirely of the same opinion. The doors of the bank were shut on the 2d October, and on 5th October there was a declaration by the directors to which allusion has been made, and which, as we have already held in *Nelson Mitchell's* case, prevented anything being done after that. The principle upon which we proceeded in that case applies to the case of resignation. Not only was the register allowed to stand as it was down to 17th October, but until 17th October there was no resignation. I cannot see how it is possible, consistent with the judgment we have pronounced in the other case, to say that resignation is to take effect, and that the petitioner's name can be removed from the register.

Lord Mure—I think this case is substantially ruled by the decision in *Nelson Mitchell's* case. We have held in that case that, at all events after the 5th of October, when intimation was made that the company of which this gentleman is a shareholder was utterly insolvent, the register of shareholders could not be altered by the directors, and it was impossible for the petitioner here by executing a resignation to have himself put in a better position than he stood in at that date. When the circular was issued he stood registered and liable as a trustee.

It is admitted that his resignation was accepted by his co-trustees, and is a good one; but then his resignation was effected at a time when no act of his could take him out of the position he then stood in, and he, having been a shareholder of the company, was bound to have known that on the 5th of October the company was insolvent, and unable to carry on its business any longer.

I think it right to say that I desire to reserve my opinion as to what may be the decision in any case that may come before the Court wherein a trustee has resigned and his resignation has been accepted by his co-trustees at an earlier date in October than that at which the bank was known to be insolvent. It is said by the parties that no note of the managers of the bank is necessary if the resignation of a trustee is a good one and other parties are left to represent the trust-estate. I give no opinion on that point either.

Lord Shand—In the case of *Nelson Mitchell* I

have already had occasion to explain the grounds on which it appears to me that the directors of the bank were entitled and indeed bound to decline to register transfers after the 2d October, and at all events after the 5th October. I think they were bound to hold the register closed so far as they were concerned at least by the 5th October, and that in any application to rectify the register now under the 35th clause of the Act of 1862 the question must be determined on the footing that the register was closed by that date, and that the rights of all parties depend on what had occurred prior to that date. The proposal of the petitioner to give effect to a resignation which occurred about a fortnight afterwards, and in respect of that resignation to have the register opened for the purpose of enabling him to be relieved of all liability to creditors of the bank, is clearly inadmissible, and must be rejected.

The Court therefore refused the petition, with expenses.

Counsel for Petitioner—M'Laren—Balfour—Pearson. Agents—Campbell & Smith, S.S.C.
Counsel for Liquidators — Kinnear — Asher—Lorimer. Agents—Davidson & Syme, W.S.

Saturday, December 21.

FIRST DIVISION.

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

Public Company—Winding-up—Action of Reduction of Transfer of Shares, and for Damages on Ground of Fraud—Motion to Stay Enforcement of Calls on Shares Pending Decision of Action.

An action having been brought by a shareholder against the directors of the City of Glasgow Bank subsequently to the commencement of the liquidation proceedings for reduction of a transfer of shares on the ground of fraud, and for damages, the Court, being moved by him to stay proceedings which it was in the power of the liquidators to take upon non-payment of a call made upon the shares, refused the motion, holding (1) that the case of *Oakes* v. *Turquand,* July 1867, L.R. (H. of L.) 2 Eng. and Ir. Apps. 325, ruled that the reduction could have no such effect; and (2) that the conclusion for damages could not be pleaded where the interest involved was that of creditors.

Counsel for Petitioner—Rhind. Agent—William Officer, S.S.C.

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

CITY OF GLASGOW BANK LIQUIDATION—(*TAIT'S CASE*)—TAIT AND OTHERS (HOUSTON'S TRUSTEES) *v.* THE LIQUIDATORS.

Public Company—Winding-up—List of Contributories—Provision for Repayment by Liquidators in event of Removal of Name from List by House of Lords if Appeal Sustained.

It having been brought under the notice of the Court that difficulty might arise as to the repayment of calls if there were a reversal by the House of Lords of decisions which the Court had given adversely to parties petitioning for removal from the list of contributories, the Court, in the view that it would be for the advantage of the liquidators, and at any rate useful for their guidance as well as beneficial to the petitioners, pronounced the following general order:—"On application of several contributories for an order on the liquidators that the call already made should not be enforced in the meantime against them, on the ground that they might have duly applied to have their names removed from the list of contributories, and that their application cannot be finally disposed of before the said call becomes payable, and that they are apprehensive that if they should pay the said call, and afterwards succeed in obtaining a judgment of the Court or of the House of Lords directing their names to be removed from the list of contributories, they might not be able to obtain repetition of the amount of the calls so paid—the Court order and declare that the liquidators in enforcing payment of calls in such cases are under an obligation to repay, in whole or in part, the amount recovered from any contributory who thereafter obtains a judgment ordering his name to be removed from the list of contributories, or directing such variations of the list as will limit or postpone his liability for such calls."

Counsel for Petitioners—M'Laren.

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

Saturday, November 27.

SECOND DIVISION.

[Lord Young, Ordinary.

CASSIE AND OTHERS *v.* THE GENERAL ASSEMBLY, AND PRESBYTERY OF DEER, ETC.

Church—Stat. 37 and 38 Vict. c. 82 (Church Patronage (Scotland) Act 1874)—Jurisdiction—Jus devolutum—Powers of Church Courts under Patronage Act.

The operation and effect of the 3d section of the Church Patronage (Scotland) Act 1874, which enacts that the Courts of the Church are to have a right "to decide finally and conclusively upon the appointment, admission, and settlement of a minister," is to exclude the jurisdiction of