accepting trustee and executor under the trust-deed of a deceased party. Part of the estate consisted of City of Glasgow Bank stock. The trust-deed and the deed of assumption were accordingly presented by C to the bank officials for the purpose of registration in their books, but the transfer clerk replied that that could not be done unless the stock certificate were produced. It was not produced, C on inquiry having discovered that the certificate had been pledged for advances which he declined to redeem, and having intimated so to the bank, the deed of assumption was left in the hands of the bank, and a docquet was afterwards added by them to the former entry in the stock ledger, to the effect that C had been "assumed as a trustee." His name was never put upon the register or published in the list of shareholders. The dividends continued to be issued in the name of S, the executor, but were uplifted by C, not, it was proved, as one of two joint-owners of the shares, but as the mandatory of S, under which title also he signed the receipts. On the liquidation of the bank C's name was put upon the list of contributories by the liquidators as "trustee of C." In these circumstances the Court *held* that C's name must be removed from the list, as there was no evidence that he had intended to have himself registered along with S.

Observed (*per* Lord Deas and Lord Shand) that, even conceding the deed of appointment to have been irregular, still if it had been registered in the bank's books at C's request he must have remained subject to the responsibilities of a partner.

Counsel for Petitioners — Dean of Faculty (Fraser)—Vary Campbell. Agents—Mitchell & Baxter, W.S.

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

Thursday, January 23.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(SINCLAIR'S CASE) SINCLAIR (STOTT'S TRUSTEE) v. THE LIQUIDATORS.

Trust—Resignation of Trustee—Trusts Act 1867 (30 *and* 31 *Vict. c.* 97), *sec.* 10—*Liability of Trustee as Partner of Public Company where Resignation not intimated.*

A trustee who was registered as partner of a joint-stock bank communicated to his co-trustees his desire to resign, and through the agent to the trust executed and recorded a minute of resignation in terms of section 10 of the Trusts (Scotland) Act 1867. The minute was intimated neither to his co-trustees as required by the Act, nor was the bank in any way made aware of the resignation.

Upon the liquidation of the company, *held* (distinguishing the case from *Oswald's case* (the deceased trustee) *supra*, p. 221), that as intimation to the bank was essential in order to complete the resignation, the name of the trustee fell to be placed upon the list of contributories.

Question—(1) Whether in the above circumstances the petitioner had effectually resigned as in a question with his co-trustees? and (2) Whether the resignation had the effect of transferring the title to the trust funds to the remaining trustees without the necessity of a conveyance applicable to the particular property in question?

The petitioner in this case was one of the trustees under the trust-disposition and settlement of the late Joseph Hood Stott, who was at the time of his death possessed of stock in the City of Glasgow Bank to the amount of £200. The trustees were also nominated executors, and were duly confirmed as such. The stock of the bank belonging to the truster was thereafter transferred to them in the books of the bank, and their names entered in the register of members as holders thereof.

On the 20th February 1878 the petitioner intimated to the agent of the trustees a request to be relieved of his office of trustee. His letter was on the 22d brought under notice at a meeting of trustees, which directed the agent "to prepare a formal minute of resignation by Mr Sinclair, and get the same signed and recorded in the Books of Council and Session, and engross it in the sederunt book of the trust." A minute of resignation was accordingly prepared by the agent and signed by Mr Sinclair, and on 7th March 1878 was recorded in the Books of Council and Session.

Section 10 of the Trusts (Scotland) Act 1867 provided that a trustee resigning by minute of resignation should after registering the minute in the Books of Council and Session "be bound to intimate the same to his co-trustee or trustees, and the resignation shall be held to take effect from and after the expiry of one calendar month from the date of such intimation, or the last date thereof, if more than one, if the trustee or trustees to whom such intimation is given is within Scotland, or otherwise within three months after that date; and in case after inquiry the residence of any trustee to whom intimation should be given under this provision cannot be found, such intimation shall be given edictally in usual form, and the resignation shall be held in that case to take effect from and after the expiry of six months." The intimation here required was never made to Mr Sinclair's co-trustees, and it was further admitted that his "resignation was never intimated to the bank, nor was the minute of resignation nor any transfer of the stock to the remaining trustees ever produced or intimated to the bank. No change in the entry in the stock ledger was asked or proposed by the petitioner or the other trustees in consequence of the petitioner's resignation till the present petition was presented after the winding-up began."

His co-trustees as well as the liquidators lodged answers.

Mr Sinclair now applied to have his name removed from the list of contributories to the bank.

Argued for the petitioner—There evidently was a *bona fide* intention on the part of the petitioner to resign, and on the part of his co-trustees to accept his resignation. The dates showed that it

had no connection with the failure of the bank. The minute of resignation was no doubt not intimated to the other trustees in terms of the Act; but as regarded them the resignation was in fact completed although the formalities might not have been strictly complied with. They were all fully aware of what was being done. The bank, on the other hand, could not found on the omission of such requirements as section 10 imposed. Thus, in *The General Floating Dock Company*, January 26, 1867, 2 Weekly Notes 27, it was held by Lord Romilly, Master of the Rolls, that "where there has been a *bona fide* transfer of shares, but there was some defect in the formalities of the transfer, it was the duty of the liquidators not to interpose, but to leave the question to the parties." It might be said that the transfer, however good as between the trustees, had not been intimated to the bank, and could therefore receive no effect in a question with the company. But assuming intimation to the co-trustees, then the title was transferred to them, and the company were bound to give effect to such a transfer. Intimation to the bank was a formality which might be made even after the liquidation had commenced, and by such a petition as the present. In the case of the dead trustee it was held that intimation to the bank was unnecessary—*Oswald*, *ante*, p. 221. The principle of that case applied here, assuming the transference to be complete as between the trustees.

Authorities—*Hill* v. *Mitchell*, December 9, 1846, 9 D. 239; *Gilmore* v. *Mure*, February 7, 1852, 14 D. 454; *Maxwell's Trustees* v. *Maxwell*, November 4, 1874, 2 R. 71; *Knight's* case, January 15, 1867, L.R. 2 Ch. App. 321.

The respondents were not called on.

At advising—

Lord President—The petitioner was one of six trustees and executors nominated in the settlement of the late Mr Joseph Stott. They were all confirmed executors, and as such they were duly entered as partners of this City of Glasgow Bank in respect of £200 stock of the bank which had been left by Mr Stott, and which they in that manner took up. Now, it is not disputed in this case that these gentlemen were all registered quite regularly as partners of the bank in respect of this stock, and not at all disputed in the argument that they would have been liable as partners, and that the remaining trustees other than the petitioner do remain liable as partners in respect of these shares. But the petitioner says he stands in this position, that he resigned his office of trustee and executor early in the year 1878, and therefore that he is entitled to be struck off the list of contributories, reserving of course any liability that may attach to him as a past member of the company.

Now, this conclusion depends for its validity upon what was done by the petitioner in the way of divesting himself of his character of trustee and executor jointly with the others. It appears that he gave notice to his co-trustees that he wished to resign, by letter of 20th February, and desired to be told by them in what manner this should be done. The other trustees held a meeting, and they instructed their law-agent to prepare a formal resignation for the petitioner, thus showing that they were quite willing to accept of his resignation, provided it was done in a proper and formal manner. In obedience to these instructions, the law-agent prepared what is called a minute of resignation for Mr Sinclair, the petitioner, which is quite in terms of the 10th section of the Trusts Act of 1867, and that minute of resignation was also duly recorded in terms of the statute. But it was not intimated after that either to the petitioner's co-trustees or to the bank. Now, the question comes to be, whether in these circumstances the petitioner has established a right to be struck off the list of contributories upon the footing that he ought after this resignation to have been removed from the register of shareholders.

Whether this is a good and effectual resignation in a question with the petitioner's co-trustees it is not necessary, I think, in the present case to determine. I entertain the greatest doubt whether it is, because the petitioner availed himself of the provision of the Statute of 1867 by executing and recording in the Books of Council and Session a minute of resignation in the form prescribed by that statute, and it is made a condition of the right to resign in that form that a certain intimation, very carefully prescribed in the 10th section of the statute, shall be made to all the co-trustees. But it is not of much consequence to consider that question here, because whatever this resignation may be as regards its validity in a question with the petitioner's co-trustees, the only important question here is, Whether it is effectual in a question with the bank and its liquidators? Now, the petitioner and his co-trustees stood registered as the joint-proprietors of these shares, and no doubt the occurrence of the death of any one of these joint-proprietors would have had the immediate effect of vesting the entire property of the shares in the surviving trustees. Whether the same effect would be operated by a resignation under the Trusts Act of 1867 I think is a very serious question, and that question I think it quite unnecessary to dispose of at present. I think it may very well be contended that the intention of that Act is to enable a trustee to resign his office and to be out of the trust altogether, and that the effect of it is to leave the trust-estate entirely in the hands of the remaining trustees. But, on the other hand, I think it may—at least with equal force—be contended that the Trusts Act gives no countenance to the idea that a mere resignation will transfer the title from what was in this case six trustees to five trustees, but that that would require to be done by some conveyance applicable to the kind of property in question. However, as I said before, it is not necessary to decide that question here either. I shall assume that this resignation is in law to have the effect of a transfer of these shares made by the whole six trustees, including the petitioner, to the remaining five trustees.

Be it so, then can that be of any effect in the way of displacing the petitioner's name from the register of shareholders of this company until the resignation which is supposed to operate this transfer of title is intimated to the bank? So long as the bank remain in entire ignorance of what has happened they cannot possibly give any effect to it, and the case is entirely different from that of a deceasing trustee, because after a man is dead he is no longer capable of remaining a shareholder of a bank. His representatives may be made liable in respect of what he has done in

his time while he was a partner of the bank, but he himself can never be liable for acts that are done after his decease either in a trust or in a company. But the present petitioner is not so disqualified by death. He is a living man, capable of sustaining a trust title, and capable also of sustaining the character and liabilities and rights of a partner of a company, and therefore it seems to me that intimation of this resignation, whatever may be its legal effect otherwise, would be absolutely indispensable in order to entitle the bank to remove the name of the petitioner from the register of shareholders. Now, it is admitted that there never was any intimation of any kind made to the bank. To be sure, Mr Mure said that intimation was made by the presentation of this petition. Well, that is a rather strange way of describing the presentation of a petition to strike a man's name off the register of shareholders after the bank is in liquidation. It is an intimation of his great desire to escape from the position which he occupied down to the date of the liquidation, but I do not know that it is intimation of much more, and the only question which it can raise is, Whether at that date—on the 23d October—he was in a position to say that his name ought to have been removed from the register of shareholders—whether he had ground in law for asking for a rectification of that register before the liquidation commenced, or whether he has a right now of the same kind to have his name removed from the list of contributories? I confess I do not entertain the least doubt about this. I cannot imagine that the resignation of one of a body of trustees who are joint-owners of shares in a company of this kind can have the slightest effect upon the liability of the party resigning until that is intimated to the bank and given effect to by them, or at least intimated to the bank in such a way that the bank were bound to give effect to it, and the absence of that in the present case is, I think, fatal to the case of the petitioner.

Lord Deas—I think it is very difficult to say that there was here an effectual resignation, but I agree with your Lordship that it is not in the least necessary to determine that question, because although there had been, or we were to hold that there was, an effectual resignation, it is quite apparent here that this petitioner cannot have his name taken off the roll when it is admitted that he made no intimation to the bank, and no attempt to get his name off the roll, not only until after the bank was avowedly and irretrievably insolvent, but until after the liquidation had actually been begun. This is a case—the first one we have had of the kind, I think—in which the petitioner did not make any intimation or attempt to be taken off the register until the liquidation had actually begun. So that in that respect it comes under the very words of the Companies Act of 1862, which says that nothing shall be done after that time to relieve a party who is on the roll. The case is a very clear one, and I do not think it necessary to say anything more about it.

Lord Shand—I assume for the purposes of this case that the minute of resignation by the petitioner was effectual as a resignation of office in February or in March 1878, and that the resignation being in law effectual was equivalent to a transfer in favour of the petitioner's co-trustees duly accepted by them. The question, however, remains, assuming the resignation to be effectual, and that it was equivalent to a transfer, whether it can receive any effect in a question with the bank, to which no notice was given? In determining that question it appears to me that the petitioner is certainly in no better position than a transferror in the case of a transfer between third parties—as, for instance, between a seller and a buyer of stock, who had not only arranged a contract of sale but had executed as between themselves a transfer and an acceptance, which however they had kept in their own hands, not transmitting the deed to the bank. In that case, if the shareholders of the bank resolve upon voluntary liquidation, I take it to be clear, upon the principles which have been decided in many cases that the failure to give notice of the transfer is fatal, and that it is too late to ask that the transfer shall receive effect by registration after the liquidation has begun, at least without the sanction of the liquidators under section 131 of the statute. Accordingly, with your Lordships I hold that, assuming this resignation to be equivalent to a transfer, the absence of notice before the stoppage of the bank prevents its receiving effect. The case is clearly distinguishable from *Oswald's* case, *ante*, p. 221, in which the effect of the death of a trustee was determined. In that case it was held that death was a public fact of which the bank must be held to have received intimation—that the fact of death was equivalent to notice of death. Here what is wanted is notice. Until notice the bank was not bound, and probably not entitled, to take the name of the petitioner off the register. It is admitted that in point of fact no notice was given, and as in that essential element there is a distinction between the case of death and resignation, so I think there must be a difference in the result. And accordingly I agree with your Lordships that this petition must be refused.

Lord Mure was absent.

The Court refused the petition, and found the liquidators entitled to expenses.

Counsel for Petitioner—M'Laren—A. Mure. Agent—G. M. Wood, S.S.C.

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