amination of the provisions of the Act of 1862, concurred in by the other learned Lords who dealt with the case, was to show that there was nothing in the Act of 1862 which precluded the application of the broad general principle laid down in the case of *Henderson*, and accordingly, in substance, the decision in the case of *Oakes* v. *Turquand* is an affirmation of the law laid down in the case of *Henderson*, applying that law to companies registered under the Act of 1862.

The only other observation I have to make is one upon the case of the *Reese River Company*, upon which the petitioner mainly relied. That was a company registered under the Act of 1862, and in that case no doubt the petitioner was held entitled to have his name struck off the register, because he had shown that his shares were bought in consequence of the fraud of the company, and because he proved that the company as it was carried out was not formed upon the same lines or basis which had been mentioned to him in the prospectus and communications to him. But the simple and conclusive answer to the case of the *Reese River Company* is this, that it was the case of a going company. I have assumed, in the view I have now stated, that if this petitioner had been fortunate enough to discover that he had been fraudulently dealt with by the bank—if he had discovered that while the bank was still carrying on its business, and had brought his action against a going company—he would have been entitled to the remedy he asks. But the turning point of this case is that it was not until after the stoppage of the bank—a stoppage caused by avowed insolvency—that he even made the discovery of the fraud or claimed his remedy. By that time the rights and interests of creditors had arisen directly; and the creditors of this insolvent company having relied upon him as a partner, he was too late in attempting to get rid of liability. Upon these grounds I concur with your Lordships in holding that this petition should be refused.

LORD PRESIDENT—I am authorised by Lord Mure to state that he concurs in this judgment.

The petition was therefore dismissed, with expenses.

Counsel for Petitioner — Scott — Mackintosh. Agents—Drummond & Reid, W.S.

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

Friday, January 31.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*THOMAS' CASE*) THOMAS AND SPOUSE *v.* THE LIQUIDATORS.

Husband and Wife—Reasonable Provision—Partnership—Liability of Husband and Wife where Stock stands in name of Wife, with consent of Husband, and derived from his Means.

A married woman succeeded to certain stock in a joint-stock bank of unlimited liability. The terms of the bequest did not exclude the *jus mariti* and right of administration of her husband, and no claim for a reasonable provision under section 16 of the Conjugal Rights (Scotland) Act 1861 in respect thereof, was made by the wife. She accepted the transfer of the stock, with consent of her husband. The entry in the register of members was in her name only, as was the stock certificate, and she received and signed the dividend-warrants. The dividends were, with the knowledge and approval of her husband, used in the ordinary household expenditure. There was no antenuptial or postnuptial contract.

Held that the husband only fell to be placed on the list of contributories, as (*a*) the wife was merely acting as agent for her husband in accepting the transfer and in drawing the dividends of what was in law his, and (*b*) assuming that the husband intended to make a reasonable provision for his wife by means of this stock, the effect of such a provision was merely to give her a right to the capital sum at the dissolution of the marriage, contingent upon her survivorship.

Observations upon the cases of *Galloway* v. *Craig*, June 22, 1860, 22 D. 1211, and July 17, 1861, 4 Macq. 267; and *Rust* v. *Smith*, Jan. 14, 1865, 3 Macph. 378.

This was a petition by the Rev. David Thomas and his wife to have their names removed from the list of contributories.

The deceased Matthew Blackwood, sen., grandfather of the petitioner Mrs Thomas, died on 28th April 1870, leaving certain trust-dispositions and deeds of settlement, and relative codicils, under one of which (dated 13th September 1867) his testamentary trustees were directed to dispone a share of the residue of his estate to his granddaughter, who had been married in 1866 to the other petitioner Mr Thomas. There was no exclusion of the *jus mariti* or right of administration. The total value of the share (which was moveable estate) was £1600. The trust-estate included £370 of the consolidated capital stock of the City of Glasgow Bank.

In October 1870 it was arranged between the trustees and the petitioners that this £370 stock should be transferred to Mrs Thomas, as being included *inter alia* in her share of residue. Accordingly a transfer was executed and recorded, in which the acceptance was as follows:—"And I, the said Mrs Agnes Blackwood or Thomas (with consent of my said husband, and for all his right

and interest in the premises), and I, the said David Thomas, as administrator-in-law, and as taking burden on me for my said wife, and we both, with joint consent and assent, do hereby accept of the said transfer on the terms and conditions above mentioned," &c. A discharge by the petitioners in favour of the trustees was at the same time granted.

Under the settlement of Mrs Thomas' uncle (Matthew Blackwood junior, who died on 13th May 1873), Mrs Thomas was entitled to a legacy, exclusive of the *jus mariti* and right of administration of Mr Thomas. The name of Mr Thomas never was upon the stock ledger, or the register of the bank. The entry in the stock ledger was "Mrs Agnes Blackwood or Thomas, wife of the Rev. David Thomas, minister of the U.P. Church, Lockerbie;" and the stock certificate bore "that Mrs Agnes Blackwood or Thomas, wife of the Rev. David Thomas, minister of the United Presbyterian Congregation, Lockerbie, has been entered in the books of this company as the holder of £370 consolidated stock."

The dividend warrants bore to be signed by Mrs Thomas, but in the case of three of them her signature was at her request adhibited by her husband. One of them was indorsed by Mr Thomas. He never in any character attended a meeting of the shareholders or partners of the bank. The dividends were received by Mrs Thomas, and were, with the knowledge and approval of her husband, used by her in the ordinary household expenditure of the petitioners. There was no antenuptial contract of marriage between the petitioners, and no provision was made in favour of Mrs Thomas by postnuptial contract.

Mrs Thomas pleaded that her personal obligation as a partner of the bank was null and void. Mr Thomas pleaded that he never agreed to become a shareholder, partner, or member of the bank within the meaning of the Companies Act 1862, sections 23 and 38, and both petitioners pleaded that they were not liable in law as contributories.

Argued for them—(1) Mrs Thomas had no separate estate at the time of the transfer, although she afterwards came to have one from an uncle. The case fell under the rule that a married woman could not undertake personal obligations; thus differing from *Biggart's*, *supra*, p. 226. (2) It would be contended by the liquidators that Mrs Thomas, if she had no separate estate, must be held to have been acting for her husband and to have bound him. Now, it was not disputed that in the general case, where a wife was trading in the knowledge of her husband, especially when the means traded with were originally his own, she would be held to have been acting for her husband if the public contracted with her in that capacity. But a wife might enter into a contract which would bind nobody; and in the present case it was clear from the terms of the transfer that the bank, in contracting with Mrs Thomas, contracted with her, not as agent for her husband, but as principal, whatever might be the value of that contract. The contract *ex figura verborum* bound the wife only, the husband being merely consenter. The bank could have objected, but they did not; and in a question with the shareholders the directors might have acted *ultra vires*. This result was somewhat anomalous; but the anomaly had already occurred in practice—*Rhodes*, May 26, 1859, 7, Weekly Reporter 510. But (3) alternatively, if only one of the petitioners was entitled to be liberated, then Mrs Thomas must alone remain on the list—(*a*) in respect of the provisions of the Conjugal Rights Act of 1861 (25 and 26 Vict. 86), section 16 of which enacted that a reasonable provision was to be made to a wife who succeeded to property *stante matrimonio*; and (*b*) on the ground that at common law the husband being at the time of Mr Blackwood's death in solvent circumstances, and having made no provision otherwise for his wife, was then entitled to make a reasonable provision for her. If the amount was no more than reasonable, creditors of her husband could not touch it —*Rust* v. *Smith*, January 14, 1865, 3 Macph. 378. The nature of the provision here was not against this, as the right of a married woman to carry on a trade the proceeds of which her husband and his creditors could not touch was recognised by the Married Women's Property (Scotland) Act 1877 (40 and 41 Vict. c. 29), section 3. Lastly (4) if Mr Thomas was found to be a contributory, then Mrs Thomas was not.

Argued for the liquidators—The money with which the shares were bought was the husband's, not the wife's; the case therefore was one of that class in which a wife, acting with her husband's knowledge, bound him and not herself. Here he expressly acknowledged and consented to the transfer. No doubt the words of the transfer were inartistically expressed; but knowledge and consent were clear. On the other question, these shares were not intended to be a provision for Mrs Thomas. It was not a habile mode of making such a provision. No prudent husband could have intended to subject his wife to the risks of a trading concern. Further, the petitioners had not brought themselves within section 16 of the Conjugal Rights (Scotland) Act. But assuming it to be a provision, the result was that Mr Thomas was sole shareholder. If Mrs Thomas survived she would then become the shareholder, but while the marriage subsisted her right to the fee was subject to this condition of survivorship, and she had no right to the dividends at all. It was plain therefore that the husband was true owner of these shares—*Kemp* v. *Napier*, February 1, 1842, 4 D. 558; *Craig* v. *Galloway*, June 22, 1860, 22 D. 1211—July 17, 1861, 4 Macq. 267; *Dunlop's Trustee* v. *Dunlop*, March 24, 1865, 3 Macph. 758; *Kerr's Trustees* v. *Justice*, November 7, 1866, 5 Macph. 4; *Miller* v. *Learmonth*, Nov. 21, 1871, 10 Macph. 107. Alternatively, if this was separate estate, the wife must remain on the list.

At advising—

LORD PRESIDENT—This petition relates to the ownership of a certain parcel of £370 of stock of the City of Glasgow Bank which the liquidators found to be registered in the name of the female petitioner Mrs Thomas. Not being aware of course whether this stock belonged to herself or her husband, they have put the names of both of them on the list of contributories, and the question now comes to be, whether the husband or the wife is really the owner? The registration was made in pursuance of a certain transfer executed in favour of Mrs Thomas by the trustees of her deceased grandfather Mr Matthew Blackwood, and that transfer bears that these trustees

for certain good and onerous causes and considerations transfer this £370 consolidated capital stock of the bank to Mrs Thomas, and she by acceptance thereof becomes in the usual way bound in the same manner as if she had subscribed the contract of copartnery. And then the transference proceeds as follows:—"And I, the said Mrs Agnes Blackwood or Thomas (with consent of my said husband, and for all his right and interest in the premises), and I, the said David Thomas, as administrator-in-law, and as taking burden on me for my said wife, and we both, with joint consent and assent, do hereby accept of the said transfer on the terms and conditions above mentioned."

Now the history of the matter is simple enough. It appears that Mr and Mrs Thomas were married in the year 1866, and that Mrs Thomas' grandfather died in the early part of 1870. Very soon afterwards—that is to say, in October 1870—there was an arrangement made between Mr and Mrs Thomas and the trustees of Mrs Thomas' grandfather as to the way in which her share of the residue of his estate should be made over to her. There was no antenuptial contract of marriage between the spouses, and in the grandfather's settlement there was no exclusion of the *jus mariti* or right of administration of Mrs Thomas' husband. The money, therefore, that came to Mrs Thomas from her grandfather necessarily fell under the *jus mariti* of Mr Thomas, and belonged to him. But he and his wife entered into an arrangement by which her share of the residue, which she valued at £1600, should be made over to her, not in money, but in the specific securities or investments in which it stood in the hands of the trustees, and among others there was this £370 stock of the City of Glasgow Bank, which in pursuance of that arrangement was made over to Mr Thomas by the deed of transfer to which I have just referred.

Now the question is as to the effect of this deed of transfer. But it is also important to keep in view that it is admitted by the parties that after Mrs Thomas was registered as holder of this stock the dividends paid in respect of the stock were received by Mrs Thomas, and were, with the knowledge and approval of her husband, used by her in the ordinary household expenditure of the petitioners. Now, it appears to me that the particular form in which Mrs Thomas' residuary bequest under her grandfather's settlement was made over to her does not in the least degree affect the substance of the question before us. For the reasons I have already stated, there can be no doubt at all that that residue belonged to Mr Thomas *jure mariti*, and it was only in consequence of his consent and authority that the residue was made over in the form in which it was. It seems to me that it would have been exactly the same thing for the purposes of the present question if Mr Thomas had first of all drawn from the testamentary trustees the £1600 to which his wife was entitled, and then had invested so much of it as was necessary in the purchase of £370 stock of this bank, and registered that in his wife's name. If that had been the *species facti*, I think the result would have been exactly the same in law. Now, if a husband authorises or allows his wife to use funds belonging to him for the purpose of a particular investment, or for the purpose of a particular adventure—a trading adventure or other— I hold that in such a proceeding the wife is acting merely as the agent of her husband, and that so acting she acts for her husband's behoof, and consequently binds not herself but her husband only. That, I apprehend, is the general rule of law applicable to such a case, and I should have had no hesitation in applying that rule of law here, without any further consideration of the matter, if it had not been for an argument presented to us by the petitioners.

It was contended that this £370 bank stock was put into the name of Mrs Thomas, although properly belonging to her husband, with the view of making a provision for Mrs Thomas, and that, that being the intention, the arrangement was not revocable; it was not to be considered in the light of a donation; and just as little was it to be considered that Mrs Thomas in allowing her name to be used in this way was acting as her husband's agent. Now, of course, the question in that state of the fact would be, in the first place, whether it was the intention of the parties to make a provision, and, secondly, if so, what would be the effect of that upon the stock as it stood during the subsistence of the marriage?

If it were necessary to consider whether this was really intended as a provision for Mrs Thomas, I confess I should have felt considerable hesitation in affirming that it was; but I do not think it necessary to dwell upon that, because I am quite prepared to assume that it was intended as a provision for Mrs Thomas. What was the effect of that in law? I think we have the general rule applicable to cases of that kind very satisfactorily and conclusively established by recent cases, and particularly by the cases of *Craig* v. *Galloway* and *Dunlop's Trustee* v. *Dunlop*, and the result of them is, I think, that no provision of that kind can have any immediate effect during the subsistence of the marriage. It cannot give to the wife the income of the fund. If the income of the fund during the subsistence of the marriage were given to her, it would not be a provision, but a donation. Then as regards the capital, the wife's power as regards the capital is just as completely in abeyance as is her right to the immediate profits. She could not sell the subject though it stands in her name; she could not burden it or intromit with it. In short, her right, in the event of its being considered as a provision, would be nothing more than this—a contingent right to the capital sum upon the dissolution of the marriage, but upon the condition of her survivorship. If she had not survived—if the marriage was dissolved by her death instead of the death of her husband—her right would be at an end, and would not pass to her executors. So that it is not a present right, but a contingent and future right merely, and the consequence is, that during the subsistence of the marriage the property of the fund remains with the husband,—no doubt subject to the right in favour of the wife; but, in truth, the wife has nothing more than a security that that sum shall, in the event of her surviving her husband, belong to her upon the dissolution of the marriage.

Now, that being so, it appears to me to follow of necessity that at present, while this marriage subsists, even assuming that this stock was intended to be settled as a provision upon Mrs Thomas, it belongs to her husband, and that he, and he alone, can be dealt with as a partner of the bank in respect of that stock. The stock

must be held, so far as present rights and liabilities are concerned, to have been acquired by his wife as his agent and for his behoof; and therefore I am for refusing the prayer of the petition so far as the husband is concerned.

LORD DEAS—I think it quite clear in this case that there are no grounds for putting both of these parties on the list of contributories; and I am very clear that the party to be put upon the list is not the wife but the husband. There was an important point raised, as your Lordship has said, whether this stock was not a provision made by the husband for the wife. It appeared to me throughout that that was the only question in the case, and I am not sure that I did not suggest the importance of taking that view. Now, if it had appeared to be the intention of the husband to give that stock as a provision to the wife, I think a very difficult question would have arisen. I am not prepared to say that that could not have been done. I think it could have been done with other sorts of property or other funds beyond all doubt. Where there is no antenuptial contract of marriage it is quite decided that the husband may make a reasonable provision for the wife, and that if he becomes bankrupt—if he is sequestrated under the bankruptcy law—that will not operate a revocation of that provision. In short, the provision is irrevocable at the instance of the husband unless it seems unreasonable. It would be very difficult to say that that power of the husband so to provide for the wife is limited to some particular kinds of property, and in no instance has that been so held. I do not think the circumstance of there being an income derived from that in the meantime would affect the matter. The income may belong to the husband, the fee may belong to the wife, and if the *jus mariti* is not excluded the income will go to him as part of the *jus mariti*, and that was the nature of the case which was referred to in the course of the argument, viz., *Rust* v. *Smith*, January 14, 1865, 3 Macph. 378. The subject of the provision executed in favour of the wife in that case was a house which had been purchased by the money of the husband. By a well-considered and unanimous judgment of this Division that was sustained as a good and valid provision. I remember that case very well, and though I delivered the opinion, it was the unanimous judgment of the Division. I am quite prepared to pronounce the same judgment again. Although the house was conveyed to the wife as a provision, the husband's *jus mariti* was not excluded in the meantime. So there is nothing inconsistent with the soundness of the judgment in the fact that there would be income during the life of the husband.

It has no doubt been held in this Court, in the case of *Craig* v. *Galloway*, that the effect of the life policy which was there in question was not operative in favour of the wife, because it was conveyed to her, her heirs, and assignees, and it was to be payable at her husband's death, whether before or after the death of Mrs Galloway; so, according to the terms of the policy, if she died, it would go to her heirs and executors—it would go to her whether she survived her husband or not. But all that was expressly reversed in the House of Lords by a very strong judgment, in which Lords Campbell, Brougham, Wensleydale, and Kingsdown concurred. All the grounds upon which the Second Division came to the conclusion against the wife were gone over and expressly repudiated in the House of Lords. In this case, therefore, if it be held to have been the intention to give this provision to the wife, the mere circumstance that there was income derivable from it, and that in certain events if she died before her husband it would become inoperative—considerations of that kind would not have prevented this capital from being a valid and irrevocable provision in favour of the wife. As I said before, it would have raised a very difficult question, whether, that being the general law with reference to a house, with reference to a sum of money, with reference to a policy of insurance, with reference to almost any kind of provision, a distinction could be taken in regard to stock in a trading company? I say that would have been a very delicate and fine distinction.

But I do not require to go into that question, because the ground of my opinion is twofold. In the first place, I do not think this was intended as a provision for the wife, and in considering whether it was intended as a provision for the wife or not it is a most important element to look at the nature of the subject made over to the wife. It is more difficult to make out an intention on the part of the husband to give stock of this kind to his wife as a provision than it would be to make it out in connection with any other kind of property. Upon the whole matter I think it could not be held to have been so. That is one ground upon which I go. The other ground is this, that according to the opinions in the House of Lords circumstances may occur during the lifetime of the parties which totally change the state of matters, and make that no provision for a wife at all which under other circumstances would have been a provision. That is expressly laid down in all the opinions to which I have referred, and that it might become revocable by the husband in certain events, although in certain other events it would not be revocable. Now, in this case events have occurred which seem to have put an end to it altogether, viz., the bankruptcy and hopeless insolvency of this bank. Suppose we held that this was intended to be a provision for the wife, all the circumstances have totally changed, and the provision is altogether gone. In place of being a source of provision for the wife, the question now is, whether the burden, not only of losing it, but of paying a great deal of money over and above, is to fall upon the wife? I do not hold that. I think the authorities come to this, that a change of circumstances of that kind which totally destroys the provision prevents it from being looked at in that character, although otherwise and in different circumstances it would have been a provision. It would have been a totally different question if the bank had continued solvent and the stock had continued to be a source of profit instead of being a source of loss.

I think that either of these two grounds is sufficient for the judgment which I think we should pronounce, viz., first, that this stock cannot be found to have been intended as a provision for the wife; and secondly, whatever it was, it cannot be converted into a source, not of provision, but of heavy loss to the wife, as it is substantially swept away. I therefore entirely concur in the result at which your Lordship has arrived.

Lord Shand—I am of the same opinion. The case is one in which at the time when the stock was purchased the husband and wife were living together in family. The funds which were used in the purchase of the stock, though no doubt they had come by succession to Mrs Thomas, fell under the *jus mariti* of the husband, and were therefore truly his property, and the case consequently is simply one of a purchase by the husband of bank stock with his own funds in the name of his wife. She was allowed to draw the dividends, but these again in the same way as the capital stock were his property; he might at any time have interposed and drawn these dividends himself. Not only were these dividends his, but it appears that in point of fact they were employed by the wife for ordinary family purposes, just as the other funds of the husband were. That being the state of the facts, I have no doubt that according to the ordinary rule of law which has been enforced in a number of cases, this must be regarded as a case in which the wife in anything that she did was the agent of the husband—the fund from which the stock was produced having been his and the dividends having been his. A number of cases have occurred in which a wife has been trading in her own name, but with the knowledge of her husband, and with funds which he was entitled to appropriate at any time. It has been held in these cases that the husband is truly the trader, and so, although this stock was in the wife's name, I think the husband was truly the owner of it, was truly the trader, and must therefore be put upon the register.

It was maintained, as your Lordships have noticed, that a specialty exists here which takes the case out of the ordinary rule of law—that specialty being that this purchase was truly a provision by the husband of reasonable amount *stante matrimonio*, and which was effectual in favour of the wife. The argument, as I understood it, was presented in this way—that taking it to be such a provision, this portion of the husband's estate was practically set aside for the wife's separate use, and so the decision of this case was ruled by the case of *Biggart*, in which we held that an estate belonging to a wife and set aside for her separate use, employed in the purchase of stock, infers liability against the wife's separate means, and not against the husband.

I think that argument cannot receive effect here. In the first place, this is not a purchase with a wife's separate estate, but a purchase with the husband's own estate, and it is quite settled, particularly on the authority of the cases of *Kemp* v. *Napier*, *Galloway* v. *Craig*, and *Dunlop* v. *Johnston*, in which the whole subject has been fully discussed, that while a husband by setting aside a particular sum for his wife, may make an effectual provision which shall have effect after his own death, that does not apply to the fruits or interest of the fund, nor to the fee of the fund so set aside, except in the single case of his wife surviving. If it were necessary to decide in this case that this stock must be regarded as a provision in favour of the wife, I should have some difficulty in doing so, because I think it is against the notion or intention of the husband to make a provision of this kind when the subject of it is a share in a bank or trading company, with all the risks and responsibilities which attend a partnership of that kind. But I do not think it necessary to express or to form any final opinion upon that point, for assuming it to be taken as a provision—as intended by the husband to be a provision—the utmost consequence of that is that the wife would have a right to the stock in one event, and in one event only, viz., if she survived her husband. During the marriage the stock remains the husband's property. He has a right to draw the income of it. It is his exclusively, if his wife predecease him. He might be controlled in disposing of it, and must retain it as a *quasi* trustee for the event of his wife surviving him, but that is the single interest which the wife has in the matter. That follows, I think, clearly from the cases to which I have referred. *Kemp* v. *Napier* is a very striking illustration of it, for in that case the Court had to do with two funds. The husband granted his wife an annuity of £200 a-year during his life, and a fund of £500 after his death. It was held after his insolvency that the annuity of £200 during his life was a donation, and was recalled by the bankruptcy, while the provision to take effect after death was held to be good. So in *Dunlop* v. *Johnston* it was held that the capital sum there referred to must be held to be a provision in favour of the wife which might have effect after the husband's death, but the income of that fund was expressly held to belong to the husband. The case of *Galloway* v. *Craig* is peculiar in this respect, that the subject was a policy of insurance—a subject which yielded no income, and which represented simply a capital sum, and therefore in sustaining that as a good provision the Court were merely following the rule laid down in the other cases. The case of *Rust* v. *Smith*, to which Lord Deas has referred, follows the same line. It was held there that the provision of a house made *stante matrimonio*, and not being in excess of what was reasonable at the time it was granted, was a good provision to the wife; and, as Lord Deas has explained, the Court gave no decision as to the wife's right to the rent during her husband's life.

The result is, that with reference to the argument that this is a provision in favour of the wife, the purchase was made with the husband's funds; the income of the property belongs to the husband; the fee of it belongs to him, subject only to this, that the wife will have a right in the property if she survives. This I cannot think in the least makes the stock the separate estate of the wife, and if it be not made separate estate of the wife then the case does not fall within the rule laid down in *Biggart*.

It is said that the bank recognised the wife as proprietor of the stock by a number of actings, and I think that is quite true upon the evidence we have; but I agree with the observation made by your Lordship in the chair, that the only result of that would be—the bank being in ignorance whether this lady had separate estate or not—that if they found that in fact this was a dealing with separate estate, and that the lady had separate estate, they would be bound to look to that separate estate. If, however, they found, as was the fact in this case, that there was no separate estate, but that the wife truly acted for her husband and as her husband's agent, she cannot be a shareholder, and he must be held to be so.

Lord Deas—With reference to the case of *Rust*, I wish to say that that was an action of declarator at the instance of a trustee to have it found and declared that the house was the property of the husband. There was no other conclusion come to, and that was a conclusion which was negatived—it was not the property of the husband. The *jus mariti* was not excluded from the rents; it had nothing whatever to do with the rents.

Lord President—I wish to add a word of explanation with reference to the case *Craig* v. *Galloway*, which I think is apt to be misunderstood. The principles of law applicable to this class of cases were not in dispute at all, and the principles were laid down in the Second Division of this Court and in the House of Lords in almost identical words. But the point of difference between the Second Division and the House of Lords was as to whether it could be said to be the intention of the parties to make that policy of insurance a provision so as to take it out of the law of donation. The great difficulty which the Court here had in arriving at that conclusion arose from the circumstance that the policy was made payable to her, her heirs, executors, and assignees, and we came to the conclusion that, as it would be payable to her executors in the event of her predeceasing, it was something a great deal more than a provision which could only be payable in the event of her surviving her husband. The way in which the House of Lords got the better of that, and construed the intention of the parties, was this, that they held that the parties intended that this taking of the policy in the wife's name should have no more effect than to secure the payment of the sum therein contained to her in the event of her survivance, and that it had no other effect whatever.

Lord Deas—I should like to say that I entirely agree with your Lordship in the view you have stated about that opinion of the House of Lords. There is no difference of opinion, so far as I understand, upon the one case more than upon the other. The only reason I referred to that was in respect of my observations, and the ground of my opinion, that the effect of this provision becoming no provision at all was a thing we were entitled to take in view. It was for that purpose I referred to the case of *Craig* v. *Galloway* in the House of Lords, and that does not infer any difference between my opinion and your Lordship's as to the principles of law applicable to that class of cases.

The Court directed the liquidators to remove the name of Mrs Thomas from the list of contributories, but refused the petition so far as David Thomas was concerned.

Counsel for Petitioners — M'Laren — Black. Agents—Mason & Smith, S.S.C.

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

*Friday, January 31.**

FIRST DIVISION.

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

Public Company—Transfer of Shares—Entry on the Transfer Register where new Trustees Assumed—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *sec.* 25.

Trustees whose names were entered on the register of a joint-stock bank, registered but not formed under the Companies Act 1862, executed a deed of assumption of new trustees, which they intimated to the bank. The bank official made an entry of the terms of the deed in the stock ledger, following the previous entry, and giving the names and designations of the new trustees.

Held, that they thereby duly became shareholders of the bank, and *objections* that the deed of assumption should have been entered in the transfer register, and that there was a want of compliance with the provisions of section 25 of the Companies Act 1862, *repelled.*

Mr John Bell, one of the petitioners in this case, was the only surviving original trustee of the late Mr James Lang, who died in the year 1850. The other petitioners were trustees who were assumed by deed of assumption dated 18th May 1865. This deed was subsequently cancelled and another executed in 1871, but it was under the trust-deed that the new trustees acted. At his death Mr Lang was possessed of forty shares in the City of Glasgow Bank, and the original trustees purchased on 11th December 1851, with trust funds, fifty-five additional shares, making a total estimated in stock of £855.

It was ultimately not seriously disputed that all the trustees—original and assumed—had agreed to become members of the bank in their capacity of trustees; but it was contended, by the assumed trustees at least, that this agreement had never been duly carried into effect by formal and proper registration in terms of the Act of 1862 and the contract of copartnery of the bank.

Section 25 of the Companies Act of 1862 provided that—"Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—"(1) The names and addresses and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid, or agreed to be considered as paid, on the shares of each member; (2) the date at which the name of any person was entered in the register as a member; (3) the date at which any person ceased to be a member."

Section 196 provided that—"When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnery," &c., "shall be deemed to be conditions

* Decided January 22d 1879.