The ground of the application comes really to be reduced to the extremely narrow one, as I must call it, that Mr Ker had some notion that the stock was merely entered in the general name of marriage-contract trustees, without any individual or personal name being registered, or at least without his name being registered. But, in the first place, supposing it was quite clear that this was so, I should entirely doubt whether that would be enough to relieve this gentleman. But then, as Lord Deas has remarked, we are here dealing with one who held the position of agent of the bank, and who must be held to have known both its practice and its contract, and he says—"I knew that the bank kept a list of the persons to whom the stock belonged, and that the dividends were paid to the persons to whom the stock belonged." Knowing that the stock must be conveyed to the trustees to be held by them for a period of time, it was matter of direct inference that for purposes of administration it must be transferred to the names of the trustees. The only way in which that could be avoided, as he as a man of business must be held to have known, would be by some special arrangement under which the stock should be transferred to other names than his own if that were desired to be done, and his co-trustees would agree to the arrangement. Accordingly, even if we had not the transfer of the railway stock, which Mr Ker accepted in the full knowledge, to be inferred from the acceptance, that to be made effectual as a transfer the names of the trustees must be on the register, I think it is enough that he knew that the title to this stock had been transferred to the trustees, and I am of opinion therefore, looking to the fact that he acted upon this knowledge, himself signing one of the dividend warrants recognising his right as a trustee to the profits of the bank, that he cannot be relieved.

As to the argument founded upon the alleged resignation by Mr Ker of his office of trustee, and what followed upon that, it must be observed that it only occurred in 1868, the letter of declinature having been dated on the 4th of April of that year. The first observation I make is, that I do not think he had the power by a document of this kind of resigning a trust in which he was already acting. That must be done in a different way by a proper formal resignation. In the next place, however, it appears that the true effect of that resignation was to enable him, not to resign the office of an acting trustee under the *inter vivos* trust which was then in existence, but to "decline" to take the position of a trustee on an executry estate, which was a different matter, and that was given effect to. And in addition to that, it must be noticed that even if there had been a good resignation here the case so far as founded upon this is ruled by the case we had yesterday (*Sinclair's* case, *ante*, p. 235), in which a notice was not given to the bank, and in which therefore the resignation was held to be ineffectual.

The mandate of August 1870 by Welsh, Neilson, and Hall, as accepting trustees, authorising payment of dividends was also founded upon. But that was a perfectly good mandate, signed by three trustees as an authority for the payment of future dividends. I cannot see that it could be held as notice to the bank that one of the trustees had ceased to act.

On the whole, I am of opinion that the 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—Shaw. Agents—Duncan & Black, W.S.

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

Friday, February 7.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*MACDONALD HUME'S CASE*) J. H. A. MACDONALD AND OTHERS (MACDONALD HUME'S EXECUTORS) *v.* THE LIQUIDATORS.

Public Company — Winding-up — Transference of Shares—Act 25 and 26 Vict. cap. 89 (Companies Act 1862), secs. 23, 24, 35—Personal Liability of Executors where Confirmation had been Transmitted to the Bank Company, but no Entry was made on the Register prior to Resolution to Wind-up.

The executors-nominate under a trust-disposition and settlement, part of the funds included in which consisted of stock in a bank of unlimited liability, sent the confirmation to the bank through their law agent, who was one of their number, and at the same time requested that the stock should be transferred to their names. In return they received from the secretary of the bank the usual stock certificate bearing that the entry had been made in the books of the company. A fortnight afterwards the bank stopped payment, being irretrievably insolvent. It appeared that the names of the executors, although inserted in certain subordinate books, had not at the date of the stoppage been entered in the register of members, but had been subsequently engrossed there by the transfer clerk at his own hand, and after the directors had refused to register transfers. And in certain other respects in the execution of the transfer the terms of the bank's contract of copartnery had been departed from.

In a petition by the executors for removal of their names from the register of members, and for rectification of the list of contributories to the effect of deleting their names from the "first part," and inserting them in the "second part" as being representatives of others—*held* (1) that the entry of their names in the register of members after the stoppage of the bank was unwarrantable, and could have no legal effect; and (2), the case of executors therein differing from that of transferees or allotees, that they had never come under any obligation or agreement which could be enforced either under sec. 35 of the Companies Act 1862 or under the bank's contract of copartnery, to the effect of placing them in the list of contributories.

Held by Lord Shand that a general authority by an executor to the law agent of the

trust "to do what was necessary" was insufficient, in the absence of any act indicating knowledge and approval, as authority to make him a partner in a bank liable as an individual.

Mr Macdonald Hume died on the 7th July 1878. By his trust-disposition and settlement, he nominated the petitioners—Mr J. H. A. Macdonald, advocate; Mr R. B. Ranken, W.S.; and Mr David Dickson, W.S.—to be his executors. They entered upon office, gave up an inventory of the moveable estate, in which there was included £400 City of Glasgow Bank stock, and were confirmed as executors conform to testament-testamentar in their favour by the Commissary of Mid-Lothian, dated 10th September 1878. Thereafter the following correspondence took place:—

"17 *St Andrew Square*,
"*Edinburgh*, 17*th Septr.* 1878.

"C. S. Leresche, Esq., Secretary,
"City of Glasgow Bank, Glasgow,

"Dear Sir,—We send you testament-testamentar in favour of the late M. N. Macdonald Hume, Esq., 15 Abercromby Place, Edinr., dated 10th current, and certificate of £400 of your bank's stock in his name. We suppose that you will issue a new certificate in favour of the executors, to whose name please transfer the stock. If you require any further document from us or payment of any fee, be good enough to let us know. . . . . —Yours, &c.,

"T. & R. B. Ranken."

"*P.S.*—We enclose the dividend warrant for £24, payable 1st ultimo, which the bank here handed to us to-day."

"*City of Glasgow Bank*,
"*Glasgow*, 19*th Septr.* 1878.

"Dear Sirs,—We had yours of 17th inst. sending test.-testr. in favour of the executors of the late M. N. Macdonald Hume, and certificate for £400 of this bank's stock in his name. The stock has now been transferred to the exrs.' names, and we enclose a certificate in their favour, and return the test.-testr.

"We also return herewith the dividend warrant for £24 in favour of the deceased which accompanied your letter, having endorsed the same in favour of the executors. It will be necessary to get the warrant signed by all the executors before presenting it for payment. . . . —Yours truly,

For the City of Glasgow Bank,
C. S. Leresche, *Secretary*.

"Messrs T. & R. B. Ranken, W.S.,
"11 St Andrew Square, Edinr."

Certificate, No. 40/71. "*City of Glasgow Bank*,
"*Glasgow*, 19*th Sept.* 1878.

"These certify that the executors of the late Matthew Norman Macdonald Hume, sometime residing at No. 15 Abercromby Place, Edinburgh, have been entered in the books of this company as the holder of four hundred pounds consolidated stock. John Turnbull, *p. Manager*.

"James Brown, *p. Accountant*.

(*Written on the Back.*)

"John Hay Athol Macdonald, advocate, Edinburgh (son of the deceased); Robert Burt Ranken, Writer to the Signet, Edinburgh; and David Scott Dickson, Writer to the Signet, Edinburgh, the surviving executors of the deceased Matthew Norman Macdonald Hume (within designed), confirmed as such, conform to testament-testamentar by the Sheriff of Mid-Lothian and Haddington, dated 10th September 1878. J. T."

"C. S. Leresche, Esq., Secretary,
"City of Glasgow Bank, Glasgow,

"17 *St Andrew Square*,
"*Edinr.*, 20*th Septr.* 1878.
Macdonald Hume's Exy.

"Dear Sir,—We have received your letter of yesterday with the confirmation, new certificate for £400 stock in name of the executors, and dividend warrant for £24, made payable to them.

"We enclose P.O. order for 4/3, being your fee for transferring the stock.—Yours, &c.,

"T. & R. B. Ranken."

The various facts relating to the failure of the bank will be found in *Tennent's* case, *supra* p. 238. It was further admitted that on and after October 11th the directors refused to register transfers of stock.

By the 38th article of the contract of copartnery of the bank it was provided as follows:—"The said deed of transference" (being the deed required by the preceding section to be prepared by the company in the case of shares transferred, sold, or conveyed *inter vivos*), "as also every assignment of shares in security or *mortis causa*, and confirmations thereof by right of succession, shall after being completed be recorded in a book to be kept for that purpose, and such deeds, transference, assignments, and confirmations shall be delivered or returned to those in right of the same after having marked thereon a certificate of the registration thereof; and it is hereby declared that the production of such writings to the said manager or ordinary directors for the purpose of registration shall *ipso facto* infer the acceptance of the capital stock therein specified, and the liabilities of the parties having right to the same as partners of the company," &c.

By the 39th article it was provided that—"The name, designation, and place of abode of every partner, together with the number of shares held by him or her, shall from time to time be entered in a book to be kept for that purpose, to be called the 'stock ledger,'" &c.

By the 40th article it was provided that—"The person or persons, companies, or corporations, whose names shall at any time stand in the said stock ledger containing the list of partners of the company, whether as original or assumed partners, shall be deemed and taken to be the proprietors of the several shares standing in the said ledger in their respective names," &c.

By section 23 of the Companies Act of 1862 it was provided that—" . . . and every other person who has agreed to become a member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company."

By section 24 it was provided that—"Any transfer of the share or other interest of a deceased member of a company under this Act made by his personal representative shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer."

On a proof it appeared—(1) That the confirmation had never been produced to the manager or ordinary directors in terms of article 38 of the contract; and (2) that the registration in the stock ledger (register of members) did not take

place until after the bank had closed its doors, when it was effected by the transfer clerk (who had been absent on his holiday) as a part of his ordinary business without special instructions from anybody.

In these circumstances, the petitioners contended that their names had been improperly entered in the register of members, and that consequently they were not liable as contributories except in their capacity of executors.

Argued for them—It was not now disputed that at the date when the bank stopped payment the names of the petitioners were not upon the register. It was impossible therefore to suggest that third parties dealing with the bank had relied upon their credit. The only person relied upon was the deceased Mr Macdonald Hume. The question therefore was—By what authority was his name taken off and the names of his executors put on? It would be said that before the stoppage there had been a completed agreement between the petitioners and the bank. That assumed that the petitioners intended to become partners. Now, under the trust-disposition and settlement the petitioners were appointed trustees and executors; but there was no provision in the deed which required that the trustees should hold their stock for any time however short. It could not be imagined therefore that they intended so to hold it, and thus become partners. And the notice given to the bank made this plain. It was not intimation of the trust-deed, but of their confirmation as executors—of an office, that was, in which one of the duties was immediate realisation. (2) It would be said that the petitioners were within article 38 of the contract of copartnery. It was true that the confirmation had been sent to the bank. But it was by no means plain what the effect of article 38 was. Executors under section 24 of the Companies Act of 1862 need not become shareholders. Article 38 did not appear to contemplate this alternative. But were executors to be held to know and to be bound by the provisions of a contract which seemed to repeal an Act of Parliament? It rather appeared that sending the confirmation to the bank was nothing more than an intimation of the executor's title. But admitting the other construction, it was in evidence that the confirmation had never in fact been produced to the directors or the manager either before or after the stoppage. The liquidators would say that it was not the practice so to produce confirmations. That might be the case; and after the registration it was probably of little moment whether this preliminary had been gone through or not. Here, however, there had been no registration; and it would be an extraordinary interpretation to hold, when a certain formality was made a condition of liability, that liability equally resulted whether that condition was fulfilled or not. On the contrary, these conditions were all the more important in a case like the present, where the parties were bound without signing anything. If formalities were omitted, the transferee could not be held a shareholder—*Armstrong's* case, 1 De Gex and Smale, 565; *Gouthwaite's* case, 3 Mac. and Gord. 187. See also *Heiton* v. *Waverley Hydropathic Company*, June 6, 1877, 4 R. 830. The liquidators therefore could take no benefit from article 38. Nor (3) could they do so from the mere fact of the entry in the stock ledger. The names were there, and that laid the *onus* on the petitioners in the first instance; but the moment it appeared that the entry was made irregularly the burden was shifted. It would be said that this, too, was simply a matter of internal administration with which the bank alone was concerned; but as both the Act of 1862, section 23, and the contract of the company, article 40, made entry in this register a test of membership, it was idle to treat it as a mere matter of book-keeping. And the liquidators did not so treat it when doing so would be unfavourable to themselves—*Nelson Mitchell, supra*, p. 155, and *Alexander Mitchell, supra*, p. 165. The entry must therefore be held as if it never had been made. (4) But were the petitioners within section 35 of the Act of 1862, which authorised the Court to rectify the register of members? It had already been argued that they did not agree to become members, but assuming that they had agreed, could the company enforce that agreement? There had been no case of the sort—no case, that was, in which a transferee had been put on the register at the instance of the liquidators unless where the company was transferor. The liquidators could also enforce an agreement with an original allottee—*Nation's* case, L.R. 3 Eq. 77; *Fyfe's* case, L.R. 4 Ch. Ap. 768; *Hill's* case, *ib.* 769 *n*; *Lowe's* case, 9 Eq. 589; *Sichell's* case, 3 Ch. Ap. 119; *Fearnside's* case, 1 Ch. Ap. 231; *Sidney's* case, L.R. 13 Eq. 228; *Adam's* case, 13 Eq. 474.

II. In the event of the petitioners being found personally responsible, they contended that they were liable only *pro rata*. Mr Bell said—"Where parties are bound simply, the obligation is to be held only *pro rata*, each being liable for his own share, not *in solidum* for the whole." There were no words specifying the nature of the obligation here, and therefore that rule applied. See also Stair, i. 17, 20, and iii. 5, 14; Erskine, iii. 3, 74; Bell's Prin. secs. 51 and 53. The consent of all was no doubt necessary to any act of administration, but that did not touch the question of the nature of their liability.

A separate argument on the question of authority was maintained for one of the petitioners, Mr Dickson.

Argued for the liquidators—What was the effect of the 38th article of the contract of copartnery? It might be contended in the first place that it left no option to executors to become or not to become partners, thus virtually abrogating section 24 of the Act of 1862—section 196 of the Act seemed to sanction that. But that question did not arise here, for it was plain from the correspondence that the petitioners did intend to become partners. Messrs Ranken requested that the stock should be "transferred" to the names of the executors, and that a certificate should be issued in their favour; and such a certificate was sent before the bank closed its doors. That was more than mere intimation of the title. Now, whatever might be the case in regard to those who proposed to proceed under section 24 of the Companies Act, and who, as they did not intend to become members of the company, might fairly be held not bound to know the terms of its contract, it was not doubtful that those who, like the present petitioners, did intend to become shareholders, must be held to know them—in particular, to know that sending a confirmation to the bank had *ipso facto* the effect of making them members. It was true

the words were "production to the manager or ordinary directors," and that that had not been done in this case. But it was not the practice so to produce confirmations—the directors had no power to reject them. The secretary was in this matter the same as the manager and directors. And if the person sending the confirmation intended to become a partner and get a certificate bearing that he had been so entered in the company's books, he could not complain that certain formalities meant only for the protection of the bank had been omitted. He had got all that he wanted. He must show prejudice from non-compliance—*Turnbull* v. *Allan*, 1 March 1833, 11 S. 487; *aff.* 8 April 1834, 1 W. and S. 281. Under art. 38 of the contract the petitioners must be held to be members of the company. (2) If that argument was unsound, they came under section 23 of the Companies Act, for they had agreed to become members, and their names were entered on the register of members. It was said that the entry on the register was null, having been made after the bank had closed its doors. But (*a*) it was *de facto* there. That threw the *onus* on the petitioners. And (*b*) it was rightly there, for it was a merely ministerial and clerical act on the part of the clerk which he was bound to perform. (3) Even if the entry had not been made, the Court under section 35 were bound to rectify the register of members to the effect of including the petitioners' names. They had agreed to become members, and equity looked upon that as done which ought to have been done—*Nation's* case, *supra*; *Fyfe's* case, *supra*; *Hill's* case, *supra*. Not to give effect to hat agreement would be to alter the rights of parties after insolvency, which the Court had already decided to be impossible—*Nelson Mitchell*, *supra*, 155, and *Alexander Mitchell*, *supra*, 165. Other authorities—*Smith* v. *Reese River Company*, L.R., 2 Ch. App. 604, 4 Eng. and Ir. App. (H. of L.) 64; *Graffons Executors*, 1 De Gex, Mac. N. and Gord. 576; *Bargate* v. *Shortridge*, 5 L.R. (H. of L.) 297; *Yelland's* case, 5 De Gex and Smale 395; *East Lothian Banking Company* v. *Turnbull*, June 3, 1824, 3 S. (68) 95; *Gibson Craig* v. *Aitken*, Feb. 3, 10 D. 576.

II. As to the question of joint and several liability, that could never be decided without a reference to the subject-matter of the obligation. Here there was nothing more or less than a case of partnership in which the liability must necessarily be *in solidum*. Assuming the case to be one similar in principle to that of trustees, see *Commercial Bank* v. *Sprot*, May 27, 1841, 3 D. 939.

At advising—

Lord President — The petitioners are the executors of the late Mr Macdonald Hume, who died on the 7th July 1878 leaving a considerable personal estate, including £400 stock of the City of Glasgow Bank. The title of the executors was completed in the usual way by confirmation, and in the inventory of the estate the City of Glasgow Bank stock is stated as of the value of £944, besides a dividend of £24 declared before the date of the death. On the 17th September Messrs Ranken, the law agents of the executors, wrote to the secretary of the Bank enclosing the confirmation and the certificate held by the deceased for the stock. After mentioning these documents, the letter proceeds—"We suppose that you will issue a new certificate in favour of the executors, to whose names please transfer the stock." On the 19th September the secretary replied, returning the confirmation, and stating, "The stock has now been transferred to the executors' names, and we enclose a certificate in their favour." A new certificate in favour of the executors accompanied the secretary's letter, and bore that the executors had been "entered in the books of the company as the holders of £400 consolidated stock." This statement and the corresponding statement in the secretary's letter were not consistent with fact, if their meaning was intended to be that the executors' names were entered in the register of shareholders. Their names were not then, nor for some time afterwards, entered in the stock ledger, which is the register of shareholders of this bank. Nothing further occurred before the stoppage of the bank. The petitioners do not appear to have drawn the dividend payable on the 1st August, though it had been endorsed to them. But this is of little consequence; for the dividend having been declared at the general meeting of the company on 3d July 1878, four days before Mr Macdonald Hume's death, belonged to the executry estate, and was payable to the executors as such without their becoming members of the company.

Now, it appears that when the confirmation was sent to the secretary of the bank it was handed by the secretary to a clerk named Brown, along with Messrs Ranken's letter and the old certificate, without any special instructions. These documents were not laid before the manager or ordinary directors of the bank, but a note or abstract of the confirmation was entered by Brown in a book called the register of transfers, which is an entirely different book from the stock ledger or register of shareholders, in which last book no entry was then made. But Brown wrote out the new stock certificate in favour of the petitioners, already quoted, and sent it to Messrs Ranken along with the confirmation and the letter of 19th September, which, though signed by the secretary, was composed and written by Brown alone. The reason why no entry of the names of the petitioners was made in the stock ledger was that John Wardrop, the only person charged with the duty of making entries in that book, was absent and did not return till the 2d October, the day the bank stopped payment. He then found the entries in the stock ledger greatly in arrear, and instead of applying for instructions to the manager or directors, he proceeded, just as if the bank were transacting business as usual, to make all entries in the stock ledger which might or ought to have been made during the period of his absence. As regards the case of the petitioners, the fair result of his evidence is that their names were not entered in the stock ledger till about the 18th of October, or shortly before that date, and certainly not earlier than the 11th. By this time the insolvency of the bank had not only been published to the whole world, but it was notoriously of the most disastrous and overwhelming character. On the 11th of October the directors resolved by a formal minute not to receive or register any transfer of the bank's stock, and being urged to reconsider the matter, they consulted counsel, and in conformity with the advice they received

they repeated their resolution in a minute of the 16th. The last meeting of directors was held on the 18th, after which they took no further charge of the business of the bank. On the following day, the 19th, the directors and the manager were apprehended on a criminal charge.

In these circumstances the petitioners maintain (1) that the entry of their names in the register of shareholders on or shortly before the 18th of October was an unwarrantable and improper act, which cannot be allowed to have any legal effect, and that the case must be dealt with on the same footing as if they had never been entered in the register; (2) that if their names are held not to be on the register when the liquidation commenced, they have never come under any obligation or agreement to become shareholders which the liquidators are entitled to enforce by including them in the list of contributories.

The questions thus raised are not without difficulty and importance. Their solution, I think, will be found by ascertaining precisely the position of executors obtaining right to shares of a joint-stock company by succession, which they are bound to administer for the benefit of all who are interested in the personal estate of the deceased, whether as executors or legatees.

A purchaser of shares having accepted a transfer, has thereby agreed with the transferror that he shall, in his place, become a member of the company. And the transferror is, by force of this contract, entitled to have his own name taken off the register, and the transferee's put on. In that case the officials of the company have merely a ministerial duty to perform in registering the transferee, and they do not by the neglect of that duty affect the rights of the parties who have the only true interest. An allottee of shares, whether of original shares or of shares under a new issue, has by applying for and accepting the shares, even if he does not sign the memorandum of association or the contract of partnership, contracted with the company to become a member, and the company has thereby a direct right and interest to put his name on the register.

When the company is authorised to traffic in its own shares, a purchaser of shares from the company is in the same position as any other transferee, except that his obligation to submit to be put on the register arises from a contract not with a third party but with the company. In this case also the company has a direct right and interest to put the name of the purchaser on the register.

But persons in the position of the petitioners who succeed to shares belonging to a deceased member of the company, and who are entitled and bound to administer them as part of the executry estate, are in a very different position. They are under no obligation to anyone to become members of the company, and to allow their names to be put on the register. They owe no such duty either to the deceased or to his legatees, for they can under the 24th section of the Act of 1862 realise and dispose of these shares as part of the executry estate without the necessity of having them transferred to their own names. They may no doubt follow the latter course, and if they give authority for transferring shares into their names, and their names are in due course put on the register, they will become partners of the company. But this consequence will not follow from any antecedent obligation or agreement to become members, but only from their own voluntary act in giving a mandate to the company to transfer the shares from the name of the deceased to those of his executors. But no one has either title or interest to insist that the mandate shall be acted on and the registration completed except the executors themselves. The company, the shareholders, and the creditors of the company, are all equally without such title and interest. They have the estate of the deceased member bound for all his liabilities to the company, and they have no means of knowing except accidentally whether the liability of that estate or the personal liabilities of the executors would in the event of insolvency be the more valuable. It seems to me to follow that before the registration of the executors as partners this voluntary and gratuitous mandate may at any moment be recalled.

Now, in the present case the registration of the petitioners was not completed till on or shortly before the 18th October, and it was then done by a clerk acting without any authority from the directors or manager, after the stoppage of the bank, after a plain declaration of insolvency by the directors, published to all the world, after the directors had resolved that they would no longer be warranted in registering any transfers. It is impossible to doubt that if the clerk had in these circumstances applied for instructions he would have been directed entirely to suspend the operation of entering new names on the register of shareholders. I think therefore that the entry of the names of the petitioners in the stock ledger of the bank was an unauthorised and improper proceeding which can receive no effect, and that the case of the petitioners must be dealt with precisely as if that entry had not been made.

The question remains—What is in law the effect of the possession by the bank at the commencement of the liquidation of the mandate by the petitioners not followed by actual registration of the petitioners as shareholders? Had it not been for the unwarrantable entry of 18th October we should have had this question raised in a different form, not by a petition of the executors for rectification of the register, but by a motion or proposal in some form by the liquidators to put on the list of contributories names which are not on the register of shareholders. But to justify such a proposal the liquidators must show, in the first place, that they have a title and interest to insist that these names shall be included; and, in the second place, that the parties whose names are to be included did in some way undertake an obligation or enter into an agreement to become members of the company. The liquidators represent the company, the contributories as a body, and the creditors of the company. The creditors, however, cannot have any legitimate interest in this matter. The mere delivery by the petitioners to the bank of a voluntary and gratuitous mandate or authority to register the executors in place of the defunct created no *jus quæsitum* to the creditors, for the mandate was subject to recall, and besides names which are not on the register cannot, even by the remotest implication, be held to have influenced any creditor in his dealings with the company. The contributories, again, cannot, so far as I can see, have in this question any

interest separable from the company. And the company not having completed the registration of the executors so as to make them partners while the company was solvent, cannot be allowed now to act on their voluntary and gratuitous mandate with the sole object of involving them in liability. Assuming, then, that the petitioners are in the same position as if the entry made about the 18th of October had not been made, and their names were not on the register of shareholders, the liquidators have, in my opinion, neither title nor legitimate interest to insist on placing them on the list of contributories.

But further, I am not prepared to assent to a proposal that a person whose name is not on the register shall be placed on the list of contributories unless he has in some definite and known way agreed to become a member of the company. Now, a mere authorisation of the company or its officials to enter him on the register, not in pursuance of any antecedent or contemporary obligation or agreement, but as a purely voluntary and gratuitous act on his part cannot in itself constitute an agreement to become a member.

A special argument, however, was founded by the liquidators on the 38th article of the bank's contract of copartnery, which declares "that the production of titles to shares, including confirmations of executors of deceased shareholders, to the said manager or ordinary directors for the purpose of registration, shall *ipso facto* infer the acceptance of the capital stock therein specified, and the liabilities of the parties having right to the same as partners of the company; but it is hereby declared that no purchaser or other assignee of or successor to shares so acquired shall be recognised as a partner until the writing constituting his title is recorded in the books of the company in manner above specified." It is maintained that when Messrs Ranken, as agents for the executors, sent with their letter of the 17th September the confirmation of the executors to the secretary of the bank they put the executors in the position contemplated by the 38th article, and that the executors thereby became *ipso facto* members of the company. But assuming, which is doubtful, that this provision of the contract could be literally enforced against persons in the situation of the petitioners, it falls at least to be construed strictly *contra preferentem;* and in my opinion it would be a very judaical construction which should give it the effect of subjecting a person to all the liabilities of a partner in consequence of the production of a title to shares though he should never afterwards be registered as a member of the company. But the fair and obvious meaning of the clause is, that when, in consequence of the production of a title by any person, the company registers him as a shareholder, he shall not thereafter be entitled to say that he gave no authority for such registration. But further, the condition of the liability was not in this case fulfilled, for the confirmation of the executors was never produced either to the manager or to the ordinary directors. Equivalents cannot be admitted as a fulfilment of a condition involving such abnormal liability.

For these reasons, I am of opinion that the names of the petitioners ought to be removed from the register of shareholders, and from the first part of the list of contributories, and entered in the second part of the list as those of representatives of a deceased member, bound in a due course of administration to account for the deceased's estate.

The petitioner Dickson contends on special grounds applicable to his individual case that never having authorised the agents of the executors or anyone else to enter his name as a partner of the company he cannot be liable as such, even though his name had been duly and timeously entered in the register of shareholders. In consequence of the opinion I have formed on the grounds of non-liability common to all the petitioners I have not found it necessary to deal with Mr Dickson's case separately.

Lord Deas—It appeared to me very early in the discussion upon this case that it stood in a peculiar position, differing from any we have yet had in this liquidation. I am confirmed in that impression, but I have come very slowly to a satisfactory opinion as to what is the legitimate conclusion to be drawn from the circumstances as affecting the rights and liabilities of the parties.

The late Mr Macdonald Hume died on the 7th of July 1878 leaving a trust-disposition and settlement whereby he conveyed all his means and estate, heritable and moveable, except his house in Abercromby Place and share of the gardens, to trustees, namely, his son John Hay Athol Macdonald, Esq., advocate, and two other professional gentlemen, Mr Ranken and Mr Dickson, both Writers to the Signet, for purposes which it is unnecessary to notice further than to say that they were for immediate distribution, and the estate was to be immediately realised so far as necessary for that distribution. As usual in such deeds of settlement, the testator appointed his trustees to be his executors. They all promptly accepted of that office. His house in Abercromby Place and share of the gardens had been conveyed by a separate disposition to his son J. H. A. Macdonald, who was at the same time to be entitled under the settlement to receive from the executors one-third of the residuary estate as a member of the testator's family. Mr Ranken and Mr Dickson were to have no benefit or interest in the estate.

Mr Macdonald Hume stood registered at his death in the stock book of the City of Glasgow Bank as proprietor of £400 stock of that bank. On 10th September 1878 the petitioners, in their character of executors, obtained confirmation of the moveable estate, and in that confirmation they included the £400 City of Glasgow Bank stock, and a dividend of £24, which had been declared at a general meeting of shareholders in the lifetime of the deceased, although not payable till after his death. Having extracted their confirmation, the petitioners might under section 24 of the Act of 1862, and probably also at common law, have sold and transferred the stock without being registered as holders in the stock book of the bank, but in the ordinary course of practice buyers expect sellers to be registered, so as to give a title recognised by the bank, who might otherwise have a lien over the stock, and accordingly the petitioners, through Mr Ranken as agent, on 17th September 1878, sent to the bank the certificate of registration in favour of the deceased, along with the extract confirmation, or testament-testamentar as we call it, in order that the stock might be transferred to them as executors. Upon 19th September the secretary re-

turned the documents sent to him, and the warrant for the £24 dividend, which by that time had become due, with an endorsation on the back of it by the cashier in favour of the executors, explaining at the same time that the warrant would require to be endorsed by all of them before it could be paid. The secretary's letter further bore that the stock had been transferred to the executors, and a certificate was enclosed, signed "John Turnbull *per manager*," and "James Brown *per accountant*," bearing that the executors have been entered in the books of this company as the holders of £400 consolidated stock.

It appears that the petitioners endorsed their signatures on the back of the dividend warrant, but the dividend has not been drawn. It also appears that in point of fact, at the date of this letter, the names of the executors and their title by confirmation had been noted, by a junior clerk in the bank office, in the scroll transfer book of the bank, and in the transfer book itself, with the name of the deceased as the transferror, but there had not at that time been any entry to a similar or to any effect either in the stock journal or stock ledger, which last is proved to have formed the register of shareholders of the bank, and indeed was necessarily so under article 39 of the contract; nor was any such entry made either in the stock journal or stock ledger till on or about the 18th of October 1878, when the entries which now appear there were made by the transfer clerk, Mr Wardrop, of his own motive, without any of the documents having, so far as appears, been at any time laid before the manager or ordinary directors, in terms of the provisions of article 38 of the contract, which I shall hereafter refer to in connection with article 39. In the meantime the bank had closed its doors on the 2d of October 1878. It never resumed business; and it is admitted that from and after that date its insolvency was notorious throughout the United Kingdom. On the same date, the directors ordered a special meeting of the shareholders to be called for the earliest possible day, and remitted to certain accountants named to examine the books and securities of the bank, and make a balance as at 1st October, to be submitted to that meeting. On 5th October the directors, by advertisement in the newspapers and circular letters addressed to each of the registered shareholders, convened a general meeting for the 22d of that month, to consider, and if thought fit to pass, a resolution that the bank, by reason of its liabilities, could not continue its business, and that it should be wound up voluntarily. On the 11th October, being the first occasion of a transfer being sent in for registration after the stoppage, the directors instructed the secretary to reply to that and all similar applications that the directors did not feel at liberty to prepare or register any transfer of the bank's stock. The report with the balance-sheet which the directors had ordered was received by them from the accountants under the remit on the 18th October, and copies of it were on the same date posted to the petitioners and to all the shareholders of the bank. From that report it appears that, as at the 1st of October, there was a balance of upwards of five millions sterling required to be made up by the shareholders after exhausting the whole capital and rest of the bank. One of the circular letters calling the meeting of 22d October was addressed to the late Mr Macdonald Hume, and sent to the house in Abercromby Place in which he had resided. No copy of that circular was addressed or sent to the petitioners or their agent. The directors held no meeting, and took no charge of the business of the bank after the 18th of October. At the general meeting of the shareholders, convened for and held on the 22d of that month, voluntary liquidation was resolved on and liquidators were appointed. Subsequently, as we all know, the winding-up was placed under the supervision of the Court. On 7th November 1878 the liquidators placed the names of the petitioners, describing them as Mr Macdonald Hume's executors, on the list of contributories in their own right, declining to give effect to the written objections lodged by the petitioners, who now, consequently, apply to have their names taken off that list and transferred to the list of contributories as being representatives of others.

In this state of matters, the first important observation to be made is that the petitioners were not on the register on the 5th of October 1878, from and after which date, if not from and after the 2d of that month, the directors according to the judgments we have already pronounced in this liquidation, had no power to place any name or names on the register. There is now an entry there of the names of the petitioners as executors, bearing date 19th September 1878. It is proved that this is not a true date, and that the entry was certainly not there on or before the 5th of October. Mr Wardrop, the clerk who made that entry, depones—"I do not recollect if I had posted anything into the stock ledger before the report of the committee of investigation." That report, as I have said, was furnished to the directors and posted to all the shareholders on the 18th of October. Mr Wardrop further says—"I do not know on what date I entered the names of Mr Macdonald Hume's executors in the stock ledger. (Q) May it have been about the 18th of October?—(A) Yes; it may have been about the 18th." Now, the date of 17th September being thus proved not to be a true date, and it not being proved that the entry was made even so early as the 18th, but only that it may have been made on or about the 18th of October, the result is that we have no positive evidence that it was made before the meeting of the 22d of October, when, beyond all doubt, the liquidation had begun. The result of this is, that even if we were wrong in carrying back the objection to all such entries to the 5th of October, this entry would still be too late to receive effect. Mr Wardrop is further asked, "Had you any instructions from the directors or any of the officials of the bank to make entries in the stock ledger after the bank had stopped?" and his answer is, "No." I need hardly say that if the directors could not with effect have made the entry of the date it was actually made, still less could a clerk in the office of his own motive do so. The name of the petitioners must therefore, I think, be held as not yet on the register. I regard the entry as a mere nullity, and I shall assume it to be so throughout the rest of my opinion.

If the petitioners' names are to be placed on the register at all, it must be by an order of the Court, under section 35 of the Act of 1862, upon a petition presented for rectification of the register. The parties mentioned in that section who may present such a petition are—(1) the person or

member aggrieved; (2) any member of the company; (3) the company itself. We have here no petition before us for rectification of the register, and I fail to perceive that in this case there are any parties who have a title and interest to insist in such a petition. If the petitioners' names were to be placed on the register, the name of their author, Mr Macdonald Hume, must, I presume, be taken off. I do not see how any of the three classes of parties mentioned in section 35 of the statute can complain of this not being done, or insist on its being now done. Neither the company nor its creditors, could, I think, interpose to that effect; and the liquidators at the best can have no other or higher rights than the company or its creditors.

This brings me to observe that, apart from the subscription to the memorandum of association, which is not in question here, two things are required by the 23d section of the Act of 1862 to make any one a member of the company—(1) He must have agreed to become a member, and (2) his name must be entered in the register of members. The petitioners had certainly proposed to become members. I doubt if they could be said to have agreed to become members. The application was rather of the nature of a mandate than of an agreement, and if so, it might be withdrawn at any time before being implemented. But take it in the least favourable view for the petitioners, and call it an agreement, still it was an agreement which did not make the petitioners members or partners of the company to all effects, if registration did not duly follow upon it; and it was in that event—as I shall immediately explain—an agreement which the bank and its managers or directors had in the actual circumstances no title or interest to enforce. I do not overlook the fact that while section 19 of the Act of 1856 bore that every person who has accepted any share in a registered company, and whose name is entered in the register of shareholders, and no other person, except a subscriber to the memorandum of association, shall be deemed a shareholder, the words "and no other person" are not retained in section 23 of the Act of 1862. This omission or variation was intended, I take it, to leave open cases in which persons, although not yet registered, were in such a position that they might be compelled to register—for instance, cases of sellers and buyers, the bargain between whom necessarily implies an individual right to insist that the transference shall be completed, so that the seller may remain under no liability attaching to the shares; and that the buyer, on the other hand, shall be in full title to draw his dividend or to transfer the shares to others if he pleases. Cases where the bank itself was either seller or buyer would of course be in the same category in those respects with cases of other sellers and buyers. The same rule would apply to cases where the bank had made an allotment of additional shares to a shareholder who was bound to accept of them. In all such cases the parties whose names are to go upon the register have virtually undertaken to relieve the parties with whom they have transacted of all their liabilities as members; and, as in a question with these parties, may be said to be already members, so that registration, to make them likewise members in questions with all the world, is a duty to be instantly performed as a matter of course, and, if unduly delayed from any cause, may be afterwards directed by the Court, whether liquidation has begun or not, by rectification of the register under section 35 of the statute.

But, so far as the statute is concerned, the relative position of the petitioners and the liquidators here is not such as to call for or admit of rectification of the register under section 35. There is no party who has either title or interest to insist that registration which was not made when the bank was a going concern shall be made now to the effect of taking the name of Mr Macdonald Hume off the register and putting the names of the petitioners there in place of it, as individual members and partners, who are to stand on the first part of the list of contributories in their own right. The liquidators, as representing the bank, have no title or interest to insist on that being done, and as representing creditors they have no title, because, *ex hypothesi*, the names of the petitioners have never been on the register, the entry being a mere nullity, and to be dealt with as virtually no entry at all. The personal representatives of Mr Macdonald Hume,—the beneficiaries under his gratuitous trust-settlement—neither do nor can ask that to be done. The effect of his name remaining on the register is quite different from what it would have been if he had sold or agreed to sell the shares in his lifetime, or if the petitioners had sold them or agreed to sell them after his death. There had been no undertaking for onerous causes by the petitioners to be registered, and consequently there is no one *in titulo* under the statute to ask that they shall be registered.

So much for the statute. The question is at first sight less clear with reference to article 38 of the contract. It is said the petitioners produced a *mortis causa* trust disposition and confirmation in their favour, in terms of that article, for the purpose of registration, and that this production *ipso facto* inferred acceptance of the capital stock therein specified, and the liabilities of partners applicable to that stock. But, in the first place, the production was not made in terms of that article. The writings were not produced to the manager or ordinary directors, who never saw them, so far as appears. That is not a mere technical objection. The production is, and must be intended to have been, equivalent to an application to the manager or ordinary directors to take the name of Mr Macdonald Hume off the register, and to put the names of the petitioners as members of the company in its place. That was not a change to be sanctioned at once as a mere matter of course. On the contrary, article 38 of the contract expressly provides that until after the steps there enumerated, the last of which was to be the recording of the deed and confirmation in a book to be kept for that purpose by the bank, no successor of a deceased partner should be recognised as a partner at all. In the second place, article 38 of the contract must be read along and in connection with article 39, as forming a code upon the subject-matter of these articles, and article 39 provides that the conclusive evidence of the partnership shall be the entry in the stock ledger, and as that entry was never in effect made at all I do not think it can be held that there was any completed mutual agreement between the petitioners and the manager or ordinary directors of the bank to take

the one name off the register and substitute the others. In the third place, and conclusively, whether we take the case under the statute or under the contract, or under both together, I am humbly of opinion that in the absence of registration of the petitioners in a character inferring personal liability on their part as shareholders prior to the hopeless and published insolvency of the bank the petitioners cannot be placed on the register or upon the list of contributories in a character inferring such personal liability, but only in their representative character as executors of the deceased, and liable as in the course of a due administration to the extent of the estate of the deceased whom they represent in this liquidation.

The result of my opinion is in accordance with the result arrived at by your Lordship, that we must grant the first and second portions of the prayer of the petitioners, and order and ordain accordingly.

Lord Mure—After full consideration of this important case I have come to the same conclusion with your Lordships. Since the discussion upon this subject I have had the advantage of perusing the opinion which your Lordship in the chair has now read. In these circumstances I do not think it necessary to say more than that I concur not only in the result of that opinion, but also in the very clear exposition which your Lordship has given of the rules by which this case, in my opinion, ought to be governed.

Lord Shand—It is unnecessary to recapitulate the facts which have been fully stated by your Lordship in the chair and Lord Deas, and which are in some respects very special and peculiar.

The first question for consideration is, what effect, if any, is to be given to the act of Wardrop, the transfer clerk, in entering the names of the petitioners on the bank's register on a date which, as the result of the proof, was, I think, between the 11th and the 18th of October. I agree with your Lordship in thinking that no effect can be given to this proceeding. It has been already decided in the cases of *Nelson Mitchell*, *ante*, p. 155, and *Hugh Tennent*, *ante*, p. 238, that on the stoppage of the bank on 2d October, from insolvency which was known to be irretrievable (and at all events after the notice of 5th October calling the shareholders together in respect of insolvency to resolve upon winding up), it became the duty of the directors to hold the register as closed so far as they were concerned, leaving the rights of parties to be determined on the facts as then existing, and on the books as they then stood. On the grounds fully stated in these cases I think the stoppage of the bank's business inferred the closing of the register. An act, even of the directors themselves, making or authorising an alteration of the register, or an addition to it, thereafter, could not, I think, affect the legal rights of parties—much less could an unauthorised act by a clerk have this effect. I am therefore of opinion that the present application must be disposed of on the footing that the petitioners' names, though entered in the transfer book, had not been entered in the bank's register when the liquidation began, and as if the liquidators were now seeking to have the register corrected by substituting the names of the petitioners for that of the late Mr Macdonald Hume, with the view of making the petitioners contributories as individuals.

Taking the case as presented in this way, the questions for determination are, whether the petitioners contracted or agreed to become shareholders of the company, and whether the company or the liquidators have in the circumstances a right and title to enforce the contract by having the petitioners' names put on the register and on the list of contributories.

It may be conceded that in the case of transfers between third parties, if the completed transfer had been sent to the Company for registration on the 17th of September, and a new certificate of ownership of the stock had been issued to the transferee, the circumstance that his name had only entered the transfer book, and had not been entered in the stock ledger at the commencement of the liquidation, would be of no avail to save the liability of the transferee. The Court, at the instance of the transferror, who has necessarily a title and interest to insist on the register being corrected, would order this to be done. The case of default or unnecessary delay on the part of the Company in such circumstances to complete the register is expressly provided for by the statute, and many cases have occurred in which the Court have ordered this to be done—as, for example, *Hill's* case and *Fyfe's* case, May 1867, L.R., 4 Chan. App. 768; *Weston's* case, in the same volume, p. 20; *Lowe's* case, 1870, L.R., 9 Equity, 589.

It may be further conceded that the same rule would be followed in a question between the liquidators as representing the company and any party who had contracted to purchase shares from the Company by applying for and obtaining an allocation of stock or accepting an offer of stock at a price agreed on (*ex parte Straffon's Executors*, 31st March 1852, 1 De Gex, M'Naughton and Gordon, 576; *Fernside and Deans'* case, and *Dobson's* case, 1865, L.R., 1 Chan. App. 231; *Jackson* v. *Turquand*, 1869, L.R., 4 E. and I. App. 305); while the same rule received effect from Lord Cairns in *Alexander's* case (1871), in the Albert Arbitration (15 Solicitors' Journal, 788). It is not quite clear that, even in this class of cases, if the Company had themselves been in default or guilty of any unnecessary delay in entering the name of the contracting party on the register, and if no acting of any kind as a partner had taken place, the Court would at the instance of the Company have ordered the register to be corrected. None of the cases which have hitherto occurred for decision have presented such peculiarities.

But the question in this case arises not upon any contract directly entered into between third parties, or on a sale of stock, or a contract with the company to take new stock from them. It was in the power of the executors to refrain from having the stock transferred to their own names, or to ask it to be transferred, as they thought fit; and in asking that it should be transferred from the name of the deceased to their own names they merely gave the company a mandate or authority to complete the registration—an act in which they and the estate they represented were the parties truly interested—without entering into any such contract as an allocation of new stock creates.

It is true that if the act of registration had been completed, and at least if registration had been completed, and thereafter an interval of time suffi-

cient to make any material change in the condition of the bank had elapsed before the bank stopped payment, the equities and rights of creditors now represented by the liquidators would have arisen to prevent the petitioners from annulling the registration, and substituting their representative for their personal liability. And the same result would have followed from the receipt of dividends or other acts by the petitioners as partners. But here there were no such acts, and it cannot be represented that creditors relied at all on the personal liability of the petitioners, for the petitioners' names were not on the register during even the fourteen days which elapsed after the confirmation was sent in and before the stoppage of the bank. The question is thus practically reduced to one between the company, or rather the liquidators as representing the company, and the petitioners. The case in this respect is the same as that of *Sichell*, 1867, L.R. 3 Chan. App. 119, in which Lord Cairns said—"In the present case the liquidator has no *locus standi* as representing the creditors. They have no privity with or knowledge of Sichell; the name of Sichell never has been on the register, or in any way held out to the creditors. It may or may not be for the good of the creditors, it may or may not be their wish to have the change made; but whether it be or be not to their advantage, or be or be not according to their wish, they, in my opinion, would have no equity whatever to say that the name of the previous holder should be taken off the register and the name of Sichell inserted."

If, then, the liquidators represent the company only, is there any effectual contract which they can enforce against the petitioners, to the effect of putting the petitioners' names on the register? In my opinion there are two sufficient answers to the argument that there is such a contract. In the first place, assuming that the company would have been entitled, after returning the new certificate of ownership and confirmation to Mr Ranken, to enter the petitioners' names on the register, even against the desire and request of the petitioners, yet the company were in default or had unnecessarily delayed making the entry till the failure of the bank; and in the absence of any claim by anyone representing the estate of the deceased to have the names of the petitioners substituted for that of Mr Macdonald Hume, the bank cannot now alter the register. It cannot be doubted that it was the duty of the directors to have the register, the entries in which are attended with such important results, kept up day by day, and not left to be posted up from other books after an interval of two or three weeks; and if the company has failed in this way to give a party the status or benefit of shareholder while the company is going on, it appears to me that the liquidators, as representing the company only, cannot be allowed to rectify the register on their own motion merely, pleading as the cause the failure of the company to do what ought to have been done. The case of *Sichell* is again directly in point. It is true that in that case the company had delayed the shareholder's registration, notwithstanding he had been pressing for it, and it would have been hard that, having been delayed in obtaining the rights of a member, he should have the obligations of a contributory; but the general principle on which the case was decided, and which I think applies to the present, is thus stated by Lord Cairns:—"It is sufficient in this case to decide—and I do not do more than decide—that a company after failure cannot come through its official liquidator and ask to remove one name which is on its register and substitute another, on the ground that the company ought to have done so before its failure, the person whose name is on the register not himself making any application." Here the name on the register is that of the deceased Mr Macdonald Hume. His representatives, having the beneficial interest in his estate, do not ask or desire that the names of the petitioners should be substituted. They have obviously no interest to make such application, because it is clear that, in any view, the estate of the deceased would be liable in relief to the petitioners, and the representatives of the deceased not making any application, the company cannot plead their own default or failure as a ground for now correcting the register.

Apart from this, however, and even if the company were not, under section 35 of the statute, pleading their own default, it appears to me that the petitioners did not make any contract with the company to become partners which the company can enforce against the desire of the petitioners by now putting the petitioners' names on the register. The transmission of the confirmation to the bank was entirely a voluntary act on the part of the petitioners—an act arising from no antecedent contract or obligation, nor even from any call on the part of the bank that they should make up a title in their own persons to the stock of the deceased. The transmission of the confirmation with Mr Ranken's letter was a mandate or authority to the bank to transfer the stock by making the proper entry in the stock ledger; but this authority was subject to the right of recall at any time before the registration was actually made. In the case of a going company I am of opinion this would be so. A person moving voluntarily towards the register is entitled to stop at any moment before his name is entered; and so, even after a decree of confirmation has been sent in with authority or a request to register it, until in point of fact the entry has been actually made on the statutory register the party is, I hold, entitled to withdraw his authority or request, and the company having no contract with him cannot prevent the withdrawal of the mandate or insist on executing the unfulfilled mandate by completing the registration for which they have no longer his authority. It can make no difference that a certificate of alleged registration has been issued if the certificate be untrue, and no entry in the statutory register has been in fact made. The petitioners were therefore, I think, entitled at any time before the actual registration to recall the authority given; and as, for the reasons already stated, I hold that the entry by the bank clerk must be disregarded, the petitioners are now entitled to say that their authority has been withdrawn, and that the liquidators are not entitled now to substitute their names for that of the late Mr Macdonald Hume.

It was maintained for the liquidators that by the provisions of section 38 of the company's contract the act of sending the confirmation to the bank created a contract with the bank by which the petitioners became irrevocably bound to become shareholders. The contract provides that the production of a transfer or confirmation

of shares to the manager or ordinary directors for the purpose of registration shall *ipso facto* infer the acceptance of the capital stock therein mentioned and the liabilities of a partner of the company. It may be doubted whether executors of a deceased shareholder must be held to have been acquainted with the particular terms of the contract in such a matter, and to be bound by such a stipulation as to the effect of merely sending the confirmation in for registration. But even if that be assumed, it would not affect my opinion. If such a stipulation is to be founded on as creating a contract, its terms must have been expressly complied with. It appears that ordinary transfers were brought before the manager and directors at the meetings of the board, but the practice in regard to confirmations was different. They were received and passed through the books of the bank without the intervention of any subordinate officials, and in this case the confirmation was not produced to the manager or directors, and was not seen by any of them.

But further, taking the provisions of the contract with reference to this subject as a whole, I think that the argument attributes greater force to section 38 than its language warrants, in saying that the mere act of presentment of the confirmation really creates partnership, or an agreement with the bank to become partners. The section proceeds thus:—"But it is hereby declared that no . . . . . successor to shares so acquired shall be recognised as a partner until the writing constituting his title is recorded in the books of the company in manner above specified." The true force of the section is, I think, that by presenting the transfer or confirmation the party authorises his name to be placed on the register, but it is only by the act of registration that, under sections 39 and 40 of the contract, which must be read with section 38, parties in the position of executors become partners, or can be precluded from withdrawing a mandate given to put them on the register.

A separate and independent argument was presented for Mr Dickson, for whom it was maintained that he had not given authority to make him a partner by placing his name on the register. There is room for a similar contention on the part of Mr Macdonald, but his counsel explained that he did not maintain that Mr Ranken had not authority for all he did.

Mr Dickson merely authorised Mr Ranken generally "to do what was necessary," meaning by this to make up a title to the estate of the deceased, heritable and moveable. He was not made aware that the deceased held bank stock. If it be necessary to decide the point thus raised, I shall only say that I am not prepared to hold that a general instruction and authority of the kind given by Mr Dickson was sufficient as authority to put his name on the register of the bank, and so to make him a partner, liable as an individual for the debts of the company. A title to the stock of a joint-stock company is properly made up by obtaining decree of confirmation. Such a decree gives a complete title for all purposes of administration, including, I am disposed to think, the right to draw dividends, unless the contract of the company provides otherwise; and a title so obtained is sufficient to enable executors under section 24 of the Act of 1862 to grant an effectual transfer of the stock to a purchaser, without themselves becoming members of the company. I am unable to hold, in the absence of any act indicating knowledge and approval on the part of an executor of his name having been put on the register of such a company—as, for example, receipt of dividends paid to him as partner—that a mere general authority or instruction to make up a title to the executry estate is sufficient as authority to make an executor a partner as an individual by putting his name on the register.

For these reasons, I concur in the judgment proposed by your Lordship.

The Court directed the liquidators to remove the names of the petitioners from the register of shareholders and from the first part of the list of contributories, and appointed their names to be entered on the second part of the said list of contributories, as executors of the late Mr Macdonald Hume, who was a member of the company to the extent of £400 consolidated stock.

Counsel for Petitioners (Macdonald and Ranken)—Lord Advocate (Watson)—M'Laren. Agents—Mackenzie & Kermack, W.S.

Counsel for Petitioner (Dickson)—J. P. B. Robertson. Agents—W. & J. Cook, W.S.

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

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*Friday, February 7.**

FIRST DIVISION.

[Lord Curriehill, Ordinary.

REFORMED PRESBYTERIAN CHURCH OF SCOTLAND *v.* THE FERGUSON BEQUEST FUND AND OTHERS.

Trust—Charitable and Educational Bequests—Object of Bequest, and Powers of Trustees—Church.

A truster directed his trustees to apply certain funds for the "maintenance and promotion of religious ordinances and education and missionary operations." This was to be done by the erection of churches and schools, and the payment of stipends and salaries to missionaries and teachers in connection with five distinct religious denominations in Scotland. The members of one of these churches, viz., "The Reformed Presbyterian Church," separated into two bodies, the larger body subsequently joining the Free Church, which was another of the five included in the bequest. The smaller body raised an action to have it declared that they, to the exclusion of all other denominations, constituted the church to which both bodies had originally belonged, and therefore were alone entitled to the benefits of the trust. *Held* that in the circumstances of the case the question fell to be decided by the intention of the truster, that that intention was to include in the scope of the bequest all churches which held certain theological tenets and adopted a certain simple form of public worship, and that therefore it was unnecessary to determine whether the larger or the smaller body truly held the original principles of the individual

* Decided January 7th 1879.