LORD ORMIDALE—I think that the Lord Ordinary's interlocutor is well founded.

The only question which occasioned me difficulty was with regard to the island, but as to that there is now no dispute. The Lord Ordinary has found that the solum of the island belongs to the defenders, and that has now been conceded in argument. I take it that that is rather in favour of the pursuer on the second point.

Undoubtedly the Duke of Roxburgh has a full right of salmon-fishing in the Tweed *ex adverso* of his lands, and it would be anomalous if his right should be of a different nature for this small distance to what it is over the rest. He has fished here with rod and line from time immemorial. It is true the island was used for this purpose, but that can make no difference. All that could be said against his right at this spot was that he did not there exercise his right to the same extent as the other riparian proprietor, who made use of cairn nets.

The Duke, however, could not have fished by means of cairn nets, because that could only be done on his side from the island, and they could not be erected there, both because it was apt to be overflowed, and because the solum of that island did not belong to him. We have it in evidence that he made use of the island for rod and line fishing, and that, I think, was the only manner in which that piece of water could be fished from his side.

We now come to the cauld, which, according to the second conclusion of the summons, the pursuer holds that the defenders had no right to erect. I concur in that view. Whatever may be the rights of the defenders in the solum up to the *medium filum* on their side, they have certainly no right to alter the flow of the water in the channel.

It is not necessary for a riparian proprietor in the position of the pursuer to show that such an erection or operation as this had done damage to him, or even that damage was imminent; all that is necessary is, that there is a reasonable apprehension of risk of injury. That is certainly the case here. The result of the erection of this cauld will be to cause a change in the state of the river, to which the pursuer is not bound to submit. We are therefore entitled to hold that the erection is illegal, and must be removed.

LORD GIFFORD—I am of the same opinion. I have come to substantially the same conclusion as the Lord Ordinary, and on the same grounds, so I do not consider it necessary to go into the details of the evidence.

There are two questions raised. The first is, whether the pursuer is entitled to fish in the channel between the south bank and the island? Both parties to the case have express grants of salmon-fishing, and their rights extend over a long stretch of water *ex adverso* of their respective properties. It is said, however, that the *Duke of Roxburgh's* right for a distance of about one-eighth of a mile is not full. I agree with the Lord Ordinary that in a question as to salmon-fishings in a river we must not look to every part of the river. It may be that the general use is by net and coble; but if we find that for a short distance the fishing was not conducted by net and coble, but by rod and line, still I hold that to be sufficient possession. The least possession would, in my opinion, retain the right of salmon-fishing in such a state of the title. Here, I think, we have possession by rod and line of such an open description as so to preserve it; moreover, it seems clear that it was impossible to fish from the south side of this channel except by rod and line.

The second point is—Have the defenders the exclusive right of using the solum of the channel in the way they have done by erecting this cauld?

I think it is of great importance that the cauld is constructed in the *alveus* of the stream for the purpose of affecting the fishing, and not with a view to any other operation. Whenever we find that such an operation is carried out for the purpose of actually interfering with a common subject so as to affect the common interest, the case is very different from such cases as *Bicket* v. *Morris* and *Colquhoun's Trs.* v *Orr Ewing*. Even if such an operation did the pursuer good instead of hurting him, I think he would be entitled to object. Here I think it does injure him—at least it will most benefit the defenders; and any such operation, before it can be looked upon favourably, must at least conduce equally to the benefit of both the parties interested.

The Court adhered.

Counsel for Pursuer (Respondent)—Balfour—Pearson. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Defenders (Reclaimers)—Kinnear—J. P. B. Robertson. Agents—C. & A. S. Douglas, W.S.

Thursday, February 20.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(ROBERT WEIR'S CASE)—WEIR (DODDS' TRUSTEE) v. THE LIQUIDATORS.

Public Company—Winding-up—Trustee—Presumed Acceptance of Office without Previous Consent.

By antenuptial contract of marriage, dated 1st June 1874, between John Dodds and Miss Margaret Bordue, Robert Weir was, along with four others, nominated a trustee, and amongst other funds thereby specially assigned to the trustees was £200 of City of Glasgow Bank stock then standing in the name of Margaret Stenhouse Bordue in the books of the bank. She executed a transfer, which bore that she thereby transferred the same to and in favour of the five trustees "and to their assigns and successors whomsoever;" and further, that the five trustees (naming them) accepted of the transfer on the terms and conditions therein mentioned. The transfer was not signed by Weir, only by the other four trustees; and a letter or mandate which was handed to the bank requesting them to issue the dividend warrants in name of, and to transmit them to, Mrs Dodds, was also signed by the same four only. At the time when the marriage-contract and the transfer were executed, Weir was in Spain, having gone there early in 1874, and not having returned till the end of June of the same year. Up to the date of the

marriage he had never given his consent to becoming a trustee, or to having stock of any kind transferred to his name. Shortly after the marriage he was made aware by one of the trustees that he had been nominated a trustee under the marriage-contract. A few weeks afterwards, on 27th August 1874, he signed a dividend warrant in respect of certain Clydesdale Bank stock, being part of Mrs Dodds' trust estate, adding to his signature the word "trustee." On 29th December 1874, in obedience to a circular sent by their law-agent, he attended a meeting of the trustees, and the minute of that meeting bore that the trustees formally accepted office, and further that a schedule of the stocks belonging to the trust estate, among which was the £200 stock of the City of Glasgow Bank, had been laid before them. The minute was signed by Weir some time after the meeting was held. Weir, whose name appeared on the register of the bank, was at the failure of the bank put upon the list of contributories.

In the above circumstances the Court *refused* a petition at his instance for removal from the list, on the ground that by his actings subsequent to the marriage he had clearly accepted the post of trustee, and that he must be presumed to have known that the names of the trustees would appear upon the register as holders of the various stocks in question, and must have agreed thereto.

Counsel for Petitioner—R. Johnstone. Agents—Gibson & Strathern, W.S.

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

Friday, February 21.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(DONALD M'LEAN'S CASE) — M'LEAN (LINDSAY'S CURATOR BONIS) *v.* THE LIQUIDATORS.

Public Company—Winding-up—Register—Liability of Curator bonis *Selling Part of Ward's Stock, and subsequently Drawing Dividends.*

A *curator bonis* of a lunatic was obliged to sell a part of certain bank stock standing in his ward's name to enable him to pay off debts. In order that a transfer might be prepared, the *curator bonis* on the application of the bank sent the act and warrant appointing him curator to the bank, who returned it to him next day. Sometime after the keeper of the stock ledger made the following addition to the entry of stock belonging to the ward:—"By interim act and decree of the Lords of Council and Session, dated 3d, and extracted 29th March 1877, Donald M'Lean, road contractor, Tarland, Aberdeenshire, is appointed *curator bonis* to the above-named John Lindsay, at present an inmate of the Royal Lunatic Asylum, Aberdeen, May 1877." On the subsequent failure of the bank the *curator bonis* was put on the list of contributories. In these circumstances the Court *held* that the above entry being wholly unauthorised could have no legal effect in transferring the property to the curator, but merely entitled him to deal with the stock, and that therefore his name was never on the register, and must be removed from the list of contributories.

Observed by Lord Shand that the result might have been different if the curator had written to the bank, enclosing his title, and requesting them to transfer the stock to his own name individually, and his request had in terms been complied with.

The petitioner Donald M'Lean was on March 29th, 1877, appointed *curator bonis* to John Lindsay, his brother-in-law, at that time and also when this petition was presented an inmate of the Royal Lunatic Asylum, Aberdeen. At that date £220 stock of the City of Glasgow Bank stood registered in the bank books in the name of John Lindsay; but shortly thereafter it was found necessary, in order to provide funds for Lindsay's support, to dispose of a portion of the bank stock, and accordingly £100 of it having been sold, the transfer, dated 28th April 1877, was duly recorded in the books of the bank. There was thus left of the stock £120 belonging to the estate. It was entered in the stock ledger of the bank as follows:—

"John Lindsay, Schoolhouse, Tarland, Aberdeen. 1875.
"June 2. By stock p. ledger 5/285, £220. 1877.
"April 28. To do. to George Murray, £100—£120."

No transfer in favour of the petitioner, either as an individual or as *curator bonis* foresaid, was ever executed, and the stock continued to stand, and still remained at the date when the bank became insolvent, in the ward's name, there being a memorandum added to the entries in the stock ledger in the following terms:—"By interim act and decree of the Lords of Council and Session, dated 3d, and extracted 29th March 1877, Donald M'Lean, road contractor, Tarland, Aberdeenshire, is appointed *curator bonis* to the above-named John Lindsay, at present an inmate of the Royal Lunatic Asylum, Aberdeen, May 1877." This memorandum was entered in the stock ledger without the knowledge or authority of the petitioner, and its existence was unknown to him until he obtained an excerpt from it subsequently to the failure of the bank. In the annual lists of shareholders issued by the bank for the years 1877 and 1878 the stock was entered as held by John Lindsay, there being no mention of the petitioner, and nothing was ever published or circulated or exhibited either in terms of the articles of copartnery of the bank or the Companies Act 1862 to inform the petitioner or the public that the stock stood in his name as a shareholder.

At a meeting held by the liquidators of the bank on November 7th, 1878, to settle the list of contributories, the name of the petitioner was included in the list. Under these circumstances he presented the present petition for removal from the list.

A minute of admissions was adjusted between the parties, the purport of which sufficiently appears from the opinions delivered below.

Petitioner's authority — *Maconochie, Petitioner,*