partners. This would be a strange result. Equally ingenious, and I rather think more cogent, reasons could be given for excluding strangers as sub-partners or as assignees than for excluding individual partners themselves.

The analogy from the rights of creditors affords a strong plea in support of the defence. A creditor of a partner cannot force himself into a partnership, because that would be a violation of the *delectus personæ*, which forms the essence of partnership in private companies. But the creditor can attach his debtor's share and interest in the firm provided he does not injure or affect the other partners, and where there is no clause making bankruptcy or insolvency a dissolution of the contract or a forfeiture, the creditors of a partner may arrange with their debtor that he shall continue a partner and carry on for their benefit so long as the partnership endures. The creditors will not be partners, but they will reap the whole benefits which accrue, and the other partners, apart from special stipulation, cannot object.

I think these views are sufficient for the decision of this case, and I concur in all the observations which your Lordships have made, but I desire also to rest my judgment on the special circumstances attending and characterising the agreement and assignation in the present case as being really a personal gift and provision made by the late James Reid to his nephew James Reid Stewart as a *persona predilecta* whom the granter wished and intended to favor, and in the advantage of which gift and favor the pursuer neither in law nor in equity is entitled to participate. The pursuer's interest in the copartnery is neither greater nor less than it would have been had the late James Reid instead of making over his separate share to the defender retained it to himself. It is no concern of the pursuer to whom the late Mr Reid chose to give what was his own property—his own share and interest in the Glasgow Iron Company.

The time that has elapsed, the transactions that have taken place, the division of profits which have been made, the use of the capital which has been had, make it impossible to go back now and effect a dissolution either as at 1863, the date of the agreement, or as at 1859, to which date the assignment drew back. Mr Reid's capital was allowed to remain in the concern only on the footing that the profits were to go to his nephew, he himself being contented with four per cent. interest. The pursuer was in no way prejudiced by this, and I think it would be unjust, now that Mr Reid is dead, to go back twenty-one years and redistribute in a different way the very large profits which no doubt partly by the use of Mr Reid's name and influence as well as from his capital have been realised and divided.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Balfour—Asher—Jameson. Agents—J. & J. Ross, W.S.

Counsel for Defender (Respondent)—Kinnear—Mackintosh. Agents—Hamilton, Kinnear, & Beatson, W.S.

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*Wednesday, June 4.**

FIRST DIVISION.

[Lord Young, Ordinary.

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

Public Company—Winding-up—Liability of One holding Stock as Trustee for a Bank.

A was prevailed upon by B, the manager of an incorporated bank, to allow certain stock of the bank to be purchased in his name and held by him as trustee for the bank. Shortly afterwards A requested B to remove his name from the register, so that it might not appear in the published list of shareholders. The name was therefore not published, but it was not removed from the register. The bank failed, and calls were made upon A in respect of the stock. In an action against the bank at A's instance to have it declared (1) that he was not a partner of the company, and that his name should be removed from the register; and (2) that the defenders were the true proprietors of the stock and bound to relieve him of all liability he had incurred in respect of it—*Held* that as the pursuer was the proprietor of the stock the action must be dismissed, but reserving to him any claim of relief he might thereafter be able to establish against the bank or its shareholders after its debts had been paid.

Mr John Hunter was at the date of the failure of the City of Glasgow Bank registered as owner of stock to the amount of £3600, the warrant being two transfers dated in the year 1877 and accepted by him. In January 1877 Mr Stronach, the manager of the bank, had asked Mr Hunter, who was employed in the bank, to allow some shares of the bank to be taken in his name. He agreed to this and the shares were bought in the open market in his name. About May or June of that same year Mr Hunter called on Mr Stronach and requested him to keep his name out of the printed list of shareholders, which was published annually in June, and to remove his name from the register. Mr Stronach promised that this should be done. His name did not appear in the published lists, but when the bank failed it was found that it stood still on the register. Mr Hunter received no dividend warrants or notices of any kind regarding the stock, and no money ever passed between him and the defenders. In these circumstances, he presented a petition to the Court of Session praying for a rectification of the list of contributories. He also brought an action of declarator before Lord Young, the conclusions of which were as follows:—"That the pursuer is not a member or partner of or shareholder in the defenders' company, and that the entry or entries on the defenders' register of members, whereby it is made to appear that the pursuer is proprietor of £3600 of the stock of the said City of Glasgow Bank, are erroneous and unauthorised, and altogether invalid and ineffectual against the pur-

* Decided February 28, 1879.

suer; and the defenders ought and should be decerned and ordained, by decree foresaid, forthwith to rectify the said register by deleting or removing therefrom the name of the pursuer, and by entering themselves as proprietors of the stock now standing in name of the pursuer in the said register, and in the other books of the defenders, or, at all events, by deleting or removing the pursuer's name from the said register; or otherwise it ought and should be found and declared, by decree foresaid, that the defenders are the proprietors of the £3600 of the stock of the said City of Glasgow Bank, of which the pursuer appears as registered proprietor in the said register of members, and that the said stock was entered and stands in the pursuer's name for behoof of the defenders: And it ought and should be found and declared, by decree foresaid, that the defenders are bound to free and relieve the pursuer of all liability he has incurred or may incur in respect of the said stock standing in his name, and that they are not entitled to make any calls upon him for payment of money in respect of the said stock, before or unless and until the whole members of the defenders' company, other than the pursuer, have been fully discussed." This summons was raised on Oct. 11, 1878, before the liquidators were appointed, but defences were thereafter lodged by them to the action.

The Lord Ordinary (YOUNG) having heard counsel, on Dec. 13, 1878 issued an interlocutor in which he assoilzied the defenders. He added this note—

"*Note*—The pursuer is registered as the proprietor of £3600 of the stock of the City of Glasgow Bank. He admits that he accepted transfers of this stock from the former proprietors, and authorised the registration thereof in his name, but alleges that he did so at the request of Mr Stronach, the manager of the bank, 'merely for the purpose of affording some temporary convenience to the bank,' who were the real purchasers and proprietors of the stock; and as such paid the price and drew, or were credited with, the dividends effeiring to it. He further alleges that some time prior to June 1877 he requested Mr Stronach to have his name removed from the register, so that it might not appear in the printed list of shareholders 'that would be published' in that month; that Mr Stronach agreed to this request; and that although the pursuer's name was continued on the register it was not inserted in the printed list.

"On these allegations the pursuer asks—1st, that his name shall be struck out of the register and that of the bank substituted as proprietors of the stock in question; 2d, for relief by the bank of all liability attaching to the said stock, and declarator that no calls shall be made on him in respect of it until all the partners other than himself have been discussed.

"The defenders maintain that the pursuer's allegations are irrelevant to support the action, having regard to the admitted and notorious facts that the bank is insolvent, has stopped payment, and is in the course of liquidation.

"It is clear that certain, and as it happens, very heavy liabilities to third parties attach *prima facie* to the pursuer as the registered proprietor of the stock in question. The pursuer urges that he consented to appear as proprietor of the stock, which really was not his, at the request of the bank's manager, made on their behalf and to serve their ends. The defenders deny that the manager had the authority of the directors, and if the fact were material, inquiry would be necessary. I think it is immaterial, for I am clearly of opinion that to take a transfer of stock bought by the bank, and their property, in name of the pursuer or any other, and register it in his name as if he were the purchaser and proprietor, if done with intent to deceive (and no other intent is suggested or occurs to my mind), was fraud. But this fraud is precisely what the pursuer alleges to have been committed with his assistance and participation, and whether the directors, as well as the manager, were also participant in it is plainly immaterial to the relief which he asks. The purpose and fraudulent character of the deceit are plain enough, although the pursuer may have given no thought to the matter at all. Such a thing is not done without a purpose; and as the very essence of the thing is to create a false appearance to others, and a belief in their minds contrary to the truth, the purpose of it would require some very exceptional explanation and justification to avoid the epithet fraudulent or deceitful. The consequences of the deceit in this, or similar instances of it, cannot of course be exactly, or even approximately, ascertained. It is sufficient that it was deceit (or fraud) practised for a purpose, and that it may, and probably did, effect that purpose to some extent more or less, so that it cannot certainly or probably be said that without it the shareholders and creditors of the bank would have been exactly as they are.

"The natural and no doubt intended effect of making it appear (falsely) that the pursuer was the purchaser and owner of the stock in question was—1st, to induce others to buy stock, or buy it more largely; and 2d, to produce just as much more confidence on the part of customers as might attach to the pursuer's credit. The case is not altered, but only strengthened, by the consideration that the truth, which the pursuer aided the manager (and possibly also the directors) to conceal, would or might have alarmed both shareholders and customers, and kept some people who are now in either category altogether out of it. These are no fanciful views of mere possibilities, but the results intended to be effected, and no doubt to some extent actually effected, by the fraud of which the pursuer was participant. When I say 'intended to be effected,' I do not mean to impute anything to he pursuer beyond thoughtlessly lending himself as an instrument to effect the designs of others, in which he had, I assume, no pecuniary interest. So much I cannot avoid imputing to him, and indeed it is only another and allowable way of stating what is his very ground of action. But so stated, the futility of it as a ground of action is manifest. He voluntarily, however gratuitously and foolishly, invited such credit to the bank as might attach to him as the registered owner of this stock, and now he seeks to escape the consequences, to the prejudice of those who accorded the credit (or may have done), on the allegation that he acted as he did at the request of the manager, and possibly also of the directors of the bank, to serve their ends and not his own.

The fraud was practised on those who were thereby induced to become shareholders or creditors of the bank, or to continue so, or to increase their shares or debts; and I can find in the pursuer's averments no ground whatever for relieving him of the consequences of his conduct.

"By the last conclusion of his summons the pursuer, conceding his liability to creditors, demands relief from the bank, consisting of all the shareholders except himself, and this apparently on the ground that the bank is bound by the act of the manager and directors. To this I cannot assent, for the act was a fraud on the bank, consisting of the general body of shareholders, who were not participant in it, including those who have become so since the date of it, and, so far as it answered its purpose, in consequence of it. If an agent, with the aid of a third party, practises a fraud on his principal, it is extravagant to contend that the third party has a right of relief against the principal, because he deceived him at his agent's request.

"I express no opinion unfavourable to the pursuer's honesty, and can well believe that his conduct was reprehensible only as being thoughtless. The consequences to him are grievous, and possibly ruinous; but he cannot have relief at the expense of those whom he aided, it may be thoughtlessly, to deceive. He may have such relief as he can obtain from those by whom he was induced to put himself in the position which he occupies, but under this action he can, in my opinion, take nothing."

The pursuer reclaimed.

The circumstances being the same in the petition and the action, the two were conjoined.

At advising—

Lord President—The petitioner Mr Hunter stands registered in the stock-ledger of the City of Glasgow Bank as the owner of £3600 stock, and the warrant for that registration was two transfers executed in the year 1877 by certain parties selling stock in the market, and duly accepted, and signed as accepted, by the petitioner. It is therefore clear that Mr Hunter is not only in form registered as a partner of the bank to the extent of £3600 stock, but that that was done upon his own motion and desire as a transferee of that stock. He now seeks to have his name removed from the register of shareholders, and also from the list of contributories, upon the ground that although he is *ex facie* owner of that stock, and a partner of the bank in respect of that stock, in point of fact he holds it as trustee for the bank itself. His averment upon that subject in his petition is that in the month of January 1877 Mr Stronach, who was then manager of the bank, asked the petitioner, with whom he was on terms of intimate friendship, if he would allow some shares of the bank to be put in his name for a short time. The petitioner, on account of his intimacy with Mr Stronach, and believing that what had been asked of him was merely for the purpose of affording some temporary convenience to the bank, who were authorised to buy and sell their own stock, agreed to do so. He then states that he signed the transfers which were granted by the parties from whom the bank bought the stock, that the bank paid the price of the stock, and drew all the dividends for it; and then he says further, that the annual balance of the bank was made about the month of June, and before that month, in the year 1877, he called on Mr Stronach, and stated to him that he did not wish his name to appear upon the printed list published in June 1877, and that it might not do so he requested that his name should be removed from the register of members. Mr Stronach on behalf of the bank undertook that this should be done, and the petitioner, knowing that this was one of the bank's own transactions, and that no money had passed between him and them, and that the City of Glasgow Bank had taken his name off the register of shareholders, did not suppose that anything more required to be done by him, and accepted the said undertaking by Mr Stronach as sufficient. Then he states further that his name did not appear in the published lists sent to the register of joint-stock companies and published in the newspapers.

The latter circumstance is of no consequence at all, as we have frequently found, to take off the effect of a partner's name appearing regularly and duly on the face of the register of shareholders; and as regards the averments of the petitioner, they appear to me to be entirely irrelevant. This gentleman having consented, as the representative of a latent trust, to become a partner of this bank to the extent of those shares of bank stock, cannot possibly escape from his liability in a question with the creditors by alleging any trust or any arrangement whatever with the bank or any of its officials. The parties for whom stock is held we decided only yesterday (*Gillespie* and *Paterson's* case, *ante*, p. 473), are not the parties liable as partners in respect of that stock. The parties who are liable are those in whose name the stock stands, whatever recourse they may have against the parties at whose instigation they had become partners, or for whose benefit they held the trust. The allegation that Stronach promised to have the petitioner's name removed from the register is obviously a thing that it is impossible to give any weight to. That promise never was fulfilled, and at the date of the bankruptcy of the bank this gentleman's name stood exactly as it had done from the commencement—published to the world as a partner of the bank—published, that is to say, in the stock ledger, which is the register of shareholders of this bank, and to which everyone can have access.

Therefore, in a question with the liquidators as representing creditors, it appears to me too clear for argument that Mr Hunter is liable as a partner of the bank to the extent of the shares which stood in his name. And that is sufficient to dispose of the petition.

But we have before us also an action which came into the rolls under a reclaiming note against Lord Young's interlocutor, who was Lord Ordinary in the cause; and that action raises a question of a somewhat different kind from that which has been raised and disposed of in the petition. Upon the same grounds which are stated in the petition, Mr Hunter concludes in this action for declarator "that the pursuer is not a member or partner of or shareholder in the defender's company, and the entry or entries on the defender's register of members, whereby it is made to appear that the pursuer is proprietor of £3600 of the stock of the said City of Glasgow Bank, are erroneous and unauthorised, and altogether invalid and ineffectual against the pursuer;

and the defenders ought and should be decerned and ordained to rectify the said register by removing his name therefrom."

Now, this summons was raised on the 11th of October 1878, after the bankruptcy, but before the liquidators were appointed, but the defences to the action are of course lodged by the liquidators in name of the bank, as representing the bank, its creditors, and shareholders. And it seems too clear to require anything to be stated, that the first conclusion of the summons cannot possibly be given effect to in a question with the liquidators, for the reasons I have already stated in disposing of Mr Hunter's petition; for this first conclusion or set of conclusions is nothing but a repetition of the demand made in the petition.

But then there is an alternative conclusion for declarator "that the defenders are the proprietors of the £3600 stock." That means, of course, that the bank is the proprietor of the stock of which the pursuer appears as the registered proprietor in the register of members. And the conclusion goes on—"and that the said stock was entered and stands in pursuer's name for behoof of the defenders; and it ought and should be found and declared that the defenders are bound to free and relieve the pursuer of all liability he has incurred or may incur in respect of the said stock standing in his name, and that they are not entitled to make any calls upon him for payment of money in respect of the said stock before or unless and until the whole members of the defenders' company other than the pursuer have been fully discussed."

Now, this must be taken to be a demand made, like the other, against the liquidators, that the liquidators as representing the bank are bound to free and relieve the pursuer of his liability, and that they are not entitled to make calls upon him until the whole of the other partners have been exhausted.

Now, it appears to me to be quite clear that that is a demand that cannot be made upon the liquidators. The creditors of the company have a direct and unqualified right as against the pursuer Mr Hunter—no doubt a right they must exercise and operate upon through the liquidators and in the liquidation in terms of the Statute of 1862; but previous to that statute it would have been a direct right of doing diligence against Mr Hunter and his estate, and it is only in consequence of the Act of 1862 that this requires to be made effectual through the liquidators. But the right remains the same. It is a right against Mr Hunter as a registered partner of this bank; and as such equally liable to the creditors with all the other registered partners.

Therefore, to ask that in a question with the creditors his liability shall be postponed till all the other members of the company have been fully discussed and exhausted appears to me to be entirely inconsistent with the right of the creditors as so defined; and therefore it is impossible as against the liquidators to entertain this second conclusion of the summons any more than he first.

It may so happen that hereafter Mr Hunter may have a right of action against the bank or its shareholders for relief of the obligation which he undertook, and for relief also of all the losses which he has in consequence sustained. That is a matter on which it would be quite improper to give any opinion at present; it will depend on a great variety of circumstances; but I would suggest that to obviate any possibility of mistake it might be quite right in our judgment in this action to reserve any such right as Mr Hunter may turn out to have in that respect, because I am not at all prepared to concur with the ground of judgment stated by the Lord Ordinary in his note, that Mr Hunter is barred by his own fraud from insisting in any claim of this kind. In this record there is nothing in the nature of an averment of fraud on the one side or the other. The circumstances under which Mr Hunter consented to hold these shares in trust for the bank are most imperfectly disclosed, and nobody can say whether there was fraud on one side or the other without a full investigation into the circumstances. Therefore I think Mr Hunter may or may not have such a right as I have just been stating, according to the circumstances of the case as they shall hereafter appear, and while I concur with the Lord Ordinary in sustaining the first plea of irrelevancy, I cannot agree with him in the reasons which he assigns for doing so, and therefore it is that I think Mr Hunter is quite entitled to have such a reservation as I have ventured to suggest.

Lord Deas—As regards Mr Hunter's petition, I am of opinion with your Lordship, and for the reasons stated by your Lordship, that we cannot grant the prayer of that petition. Then, as to the action, for the same reasons which your Lordship has stated, I think we cannot give effect to the first conclusion of Mr Hunter's summons. I also think it quite right to make the reservation which has been proposed. If we were to take any other course than that with reference to this action, I think it would be necessary to have an amendment of the record, and allow an opportunity of stating the grounds upon which it is alleged that Mr Hunter is barred by his own fraud from insisting in that action, in place of assuming the proof of all that is stated in the note of the Lord Ordinary. The Lord Ordinary holds that because it is averred on the part of Mr Hunter that he held those shares in trust for behoof of the bank, it follows upon his own showing that he held them for a fraudulent purpose and is guilty of fraud. Because they are not relevant, it follows that they are a confession of fraud. I do not remember of ever seeing that mode of convicting a party of fraud adopted before, and I cannot concur in it. I therefore lay out of view altogether all that is in the note of the Lord Ordinary about fraud, except in so far as (that is, if your Lordships thought it right to take the course) it suggests that there should be an amendment of this record and an inquiry into the facts. Beyond that I think we cannot in the meantime go, so far as the note is concerned. The only other course than that suggested by your Lordship would have been, as I have suggested, to allow the averments of fraud to be introduced into the record, and then to allow a proof of these averments. I by no means say that averments of that kind might not have been relevant. I do not think the mere fact that a man holds shares in a bank in trust for the bank makes him a party to fraud. It is conceivable that such a trust may have been a trust honestly held. It is also conceivable that it might be constituted and held for a fraudulent purpose, and

that the party who holds the shares in trust may be art and part in that fraud. Suppose, for instance, it were to be true that the bank or bank officers—the manager of the bank or the directors of the bank, I should rather say—were purchasing all the shares that came into the market for a fraudulent purpose of deceiving the shareholders and keeping up the price of the shares, and that this trust was created in order to conceal that fraudulent device, and that Mr Hunter knew that, and was art and part in that purpose, I am not prepared to say that that would not be a case of fraud against Mr Hunter. But that on his own showing he has been guilty of any fraud I cannot spell out of the mere fact that he states what the Lord Ordinary holds to be an irrelevant defence; but as I am of opinion that the reasons stated by your Lordship are of themselves sufficient to get rid of this action, as well as of the petition, without any inquiry of the kind mentioned, I think we are not called upon by amendment of the record to go into that; if there is anything in all that, and if that is thought necessary afterwards, it may remain under the reservation proposed, and with such a reservation there will be sufficient to authorise the proceedings without our coming to any decision on the point now.

Lord Mure—I have no difficulty in concurring in the course which your Lordships suggest. In regard to the petition, Mr Hunter admittedly stood on the register for these shares. With reference to the ordinary action, if the conclusions for relief had stood simply as a conclusion for relief directed against the shareholders, I assume that that might stand over for consideration hereafter; but then the alternative conclusion for relief also contains this very distinct statement, that it should be declared that the liquidators are not entitled to make calls on him for payment of money on such stock until all the other shareholders are exhausted. Now that introduces the same element precisely that is introduced in the petition. It is a claim to stop the proceedings of the liquidators in the recovery of what is necessary to enable them to pay the creditors; but as long as he stands on the register I do not think it is competent for Mr Hunter to obtain relief under the action, although he may have an action of relief afterwards, depending on the way in which the case is laid before the Court, and I think the reservation your Lordship has proposed will be sufficient to protect his rights in that matter. The Lord Ordinary has assoilzied the defenders from the conclusions of the action. Your Lordships propose instead to dismiss the action with the reservation, so that it would be open to try the question in a proper shape and with the proper conclusions applicable to it.

Lord Shand—I am of the same opinion. The petitioner and pursuer in question consented that his name should be put on the register of the bank for this stock. He did so by accepting the transfers which are stated on record, and his name was registered in March or April 1877, and he himself says that that was done with his consent—if such a statement were indeed necessary—in his condescendence, where it is stated that at the request of Mr Stronach, the manager of the bank, he agreed to allow his name to be put on the register. Accordingly, it is, I think, practically conceded by the petitioner that unless what occurred in the month of June following at an interview between him and Mr Stronach, taken with what followed upon that interview, can relieve him of his liability, he must be responsible to the creditors. His name was upon the register and open to all the creditors, and it must be assumed that they were entitled to deal with the bank on the footing that he was responsible for the liabilities of the bank, unless the special matters which are stated in the condescendence are sufficient to entitle him to be relieved of that liability. Accordingly, the whole case on this point is rested on the conversation with Mr Stronach in June 1877, and what is said to have followed on that. Now, what does that amount to? It is, in the first place, apparently what may be called a casual conversation, in which, upon the one hand, the petitioner says, that, being desirous that his name should not appear on the list of shareholders published in the newspapers every year, he requested that it should be removed from the register, and Mr Stronach at that interview agreed that that should be done. He adds, that he did not suppose that anything more required to be done by him, and he accepted this undertaking by Mr Stronach as sufficient to give him the full benefit of his averments. I think one must take along with that his subsequent statement, that following upon this conversation, the lists of partners which were published in June of each year 1877 and 1878 did not contain his name. He adds, that the pursuer was thus led by the defenders to believe that his name had been removed from the register in accordance with the undertaking given by the director and manager, and that he had no longer any connection whatever with the said bank.

Now, I agree with your Lordships in holding that in a question with creditors these averments are not relevant to relieve Mr Hunter of responsibility. His name was put upon the register in respect of a written undertaking on his part to become a partner, which was sent to the bank and registered with his consent. And I think it would be most dangerous to admit of the doctrine, that in a matter of this kind an important change such as is here suggested must take effect without any writing intervening to alter that state of circumstances. The matter stands upon mere conversation—conversation with one of the officials of the bank, which is not said to have been brought under the notice of the directors; and although that was followed by what I must call the suppression of Mr Hunter's name in these lists, it appears to me that that cannot relieve him of responsibility—that we cannot allow proof by parole of conversations of this kind to affect the liabilities of partners; and that if parties in such a position as Mr Hunter mean to effect a change on their liabilities, nothing short of writing of some sort which can show the nature of the arrangement, or at least prove the arrangement, could be received in a court of law.

I am therefore of opinion that, so far as the petition is concerned Mr Hunter must fail. I may say the same thing in regard to the action, for it appears to me that, as it has been drawn, it is fitted merely to interpose in a question with creditors. The first conclusion of the summons undoubtedly has reference to the same matter as

the petition; and I think if the subsequent conclusions be examined it will be found that they are substantially to the same effect. It is true there is a direct conclusion of declarator to have it declared that the stock was the property of the bank, but I read that as merely leading up to what follows, and what follows is a conclusion that the bank, now represented by the liquidators, are not entitled to make any calls on the pursuer for payment of money in respect of the said stock before or unless and until the whole members of the defenders' company other than the pursuer have been fully discussed. As I take it, that does not raise a question merely *inter socios*, because it is a proposal that the Court shall interpose between the liquidators, as representing the creditors, and the pursuer, and put the pursuer in the position that he shall not have to pay calls at all, leaving the others to make up his share of the liability. I think the liquidators representing the creditors have plain right and interest to resist that conclusion, and that, in the view I have now stated, it really does not raise any question properly *inter socios*—at least, properly and exclusively *inter socios*.

I agree, however, with your Lordship in thinking that, in case any misapprehension should result from so dealing with this action, there should be such a reservation in the judgment of the Court as your Lordship proposes. The question may arise whether this gentleman has a right to relief *inter socios*; but I think it cannot arise now, and it would be premature to raise it now. The Statute of 1862 provides that the debts of creditors shall be dealt with in the first place, and discharged; that after that has been done, and not until that has been done, the liquidators may proceed to adjust the rights of contributories *inter se*. Then, and then only, will this question arise. I shall only say that it appears to me that when it does arise it will be a question attended with much difficulty. If this bank had not had the power to sell and purchase and hold its own stock, I should have had very little difficulty in coming to the same conclusion as that to which the Lord Ordinary has come on that general question—that if a person buys stock and puts his name on the register, even in a question *inter socios*, he would be bound by being on the register, because the directors had no right to enter into an arrangement of that kind. But the great peculiarity of this case lies here, that by article 32 of this bank's contract, by which all the partners must be held to be bound, power is given to the directors to purchase stock in the public market or privately; and it is provided that such shares so bought shall be held for behoof of the company in such way and manner as the directors may appoint. That being so, I think a serious question may arise in any future proceedings, namely, whether the circumstance that the company bought stock and put it in the name of an individual will bind the individual so put upon the register, in a question with the company, to remain the partner and have all the liabilities of a partner. I am not prepared to adopt the grounds of the Lord Ordinary in regard to this part of the case, and I merely think it right to say that that question, if it arise, may be a difficult and serious one, and that I concur with your Lordship in thinking it desirable that the interlocutor of the Court should contain the reservation proposed.

The Court refused the petition, and dismissed the action, reserving to the pursuer any claim of relief he might be able to establish against the bank or its shareholders after the debts of the bank had been paid.

Counsel for Pursuer (Reclaimer)—Balfour—Jameson. Agents—J. & J. Ross, W.S.

Counsel for Defender (Respondent)—Kinnear—Murray. Agents—Davidson & Syme, W.S.

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*Wednesday, June 4.**

SECOND DIVISION.

SPECIAL CASE—GREIG AND OTHERS *v.* THE THE LORD PROVOST AND MAGISTRATES OF EDINBURGH.

Poor—Assessment and Recovery—Interest on Arrears—Poor Law Act, (8 *and* 9 *Vict. c.* 83), *sec.* 88—*Summary Remedies not Exclusive of Ordinary Ones.*

The question, whether the municipality of a city owning the markets were liable to be assessed in poor-rates for them, not only as owners but also as occupants, was referred to an arbitrator, and by him, after a long interval of years, given against the municipality. Subsequently a demand was made by the parochial authorities for interest on the arrears of unpaid assessments for which the municipality contended they were not liable, as the parochial board had not availed themselves of summary powers conferred by the Act 8 and 9 Vict. c. 83, sec. 88. *Held* that the summary powers of the statute did not exclude proceedings at common law, and that interest at 2½ per cent. fell to be allowed.

To this Special Case there were two parties—first George Greig, inspector of poor for the City parish of Edinburgh, and second, the Lord Provost, Magistrates, and Town Council of the City. The latter had since 1856 owned the General Markets of Edinburgh, situated near the North Bridge, and under their Act (8 and 9 Vict. c. 83) the parochial board assessed them as owners and occupants for the year ending Whitsunday 1857, and for each subsequent year to 1877. An assessment was also made upon them for school rates since 1874 in accordance with the provisions of the Education Act 1872. The council paid the assessments as owners but denied liability and refused to pay as occupants. In 1863 the two parties to the case agreed to refer the point in question, and a deliverance was eventually issued by Lord Gordon as referee on 14th December 1877, finding that the Town Council were liable to be assessed both as owners and as occupants.

On 19th May 1878 the principal sums in arrear were duly paid, but under express reservation of the question of interest, which had been raised. The form in which the annual notices were sent to the town council contained this clause:—"The last day allowed by the board for payment of the rates is , after which all rates in arrear will be recovered under a Sheriff's summary warrant."

The inspector of poor claimed interest at the

* Decided March 12, 1879.