satisfactory grounds in his short and distinct note.

Lord Shand—I do not think there is any difficulty in this case on either part. In regard to the first point, the term used—"bank stock"—is of the most general description. If it had been proposed to limit the trustees to any particular class of bank stock, that could have been readily and easily done, and I think would have been done. We are familiar with cases in which trustees are tied down to a particular class of bank stock, and if the words here had been "the stock of any bank incorporated by royal charter or incorporated by Special Act," or any limiting terms of that description, the argument would have been sound. But in the absence of any such limiting expressions, I think the parties were right in holding that the terms used included stock in a joint-stock banking company such as the City of Glasgow Bank. The ground on which the argument was mainly rested was that the different stocks mentioned in the same clause were of a class rather of securities than of purchase of any stock which would infer personal liability, and that is quite true, but at the same time the term used is so general as to include bank stock of any kind, and I cannot doubt that it was so intended—the truth being that a great many people having had much confidence in the stability of joint-stock bank companies have only lately realised that bank stock is not of the proper nature of a security.

In regard to the second point the conclusions are limited. It is conceded by the conclusions that the defenders are entitled to relief in so far as they have made or may make payments, but the Court is asked to declare that they shall have no relief beyond that. I agree with your Lordship in holding that to be unsound, and I think the principle upon which the question turns, as brought under our notice very properly by Mr Asher, is well stated in the English cases. Trustees who become shareholders are partners in a question between them and the bank, but in a question between them and the beneficiaries the beneficiaries are truly the partners. It follows that the beneficiaries are bound to relieve the trustees to the full extent of their liability, and that as soon as the liability opens or arises, and that trustees who are in possession of the trust-estate are therefore entitled to realise the estate in order to meet that liability. A trustee becomes liable in calls which generally are not payable for some time after the call is made, but the moment the liability arises he is entitled to require that it shall be met by the true partners providing funds for his relief. A trustee is not bound to advance anything from his own funds, nor is he bound to submit to distress or diligence against him. There is no sound principle to support the contention that he must first pay away his own estate, and that his relief shall be limited to the amount he had then paid. Being entitled to total and immediate relief, it follows that the proposal in the conclusions of the summons cannot possibly receive effect in a question with the defenders, the trustees under Mr and Mrs Cuningham's marriage-contract.

I agree also with Lord Deas in holding that the bank can by diligence compel the trustees to make the right of relief available to them. The liability for calls lays the persons of the trustees as well as the whole of their estate open to diligence at the bank's instance. Part of that estate is the trustees' right of relief against the beneficiaries, and their right to employ the remainder of the trust-funds or estate in payment of the calls, and as a condition of refraining from diligence or granting trustees a discharge the bank is, I think, entitled to an assignation of the trustees' rights against the trust-estate and the beneficiaries.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Mackintosh—Jameson. Agents—Maclachlan & Rodger, W.S.

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

Saturday, July 19.

SECOND DIVISION.

SPECIAL CASE—PULLAR'S TRUSTEES *v.* PULLAR OR MACOWAN AND OTHERS.

Husband and Wife—Marriage-Contract—Conveyance of Wife's Acquirenda—*How far Effectual.*

Two ladies by their respective antenuptial marriage-contracts assigned to trustees all their *acquisita* and also all their *acquirenda*, their father being in one case expressly a party to the deed, and in the other causing it to be drawn up under his special directions. At the father's death he left sums of money to be held by his trustees as "portions" for these daughters and provisions for their issue, and a like sum in the case of another daughter married without a contract. He further left special legacies of £3000 to each of his three daughters, whom failing to their children. *Held* that in the case of the two daughters who had marriage-contracts the testator's trustees were bound to pay the special legacies of £3000 to the marriage-contract trustees, and were not entitled to pay these sums to the ladies on their own receipt or on that of themselves and their husbands.

Observations (*per* Lord Gifford) on the effect of provisions as to *acquirenda* in an antenuptial contract of marriage.

This was a Special Case submitted for the opinion and judgment of the Second Division by (1) The trustees of the late John Pullar, dyer in Perth; (2) Mrs Grace Pullar or MacOwan, his daughter, and her husband; (3) Mrs Eliza Pullar or Baxter, another daughter, and her husband; (4) Mrs MacOwan's marriage-contract trustees; and (5) Mrs Baxter's marriage-contract trustees. Mr John Pullar died on 16th December 1878 leaving a trust-disposition and settlement dated 20th July 1876, and codicil dated 30th October 1878, and survived by a widow, six sons, and three daughters. Mrs MacOwan was married in 1865, and Mrs Baxter in 1874, both having executed antenuptial contracts of marriage, to the first of which Mr Pullar was a party, while for the latter he gave special directions to the family agent.

Under Mrs MacOwan's marriage-contract her husband's *jus mariti* and right of administration were renounced, and he became bound to insure his life for her benefit, and her father undertook to pay £1000 to the marriage-contract trustees for the purposes of the trust, but undertook no further obligation. Mrs MacOwan by the contract assigned to the trustees all property "of every description now pertaining and belonging to her, or that she may succeed to or acquire during the subsistence of the marriage, with the exception of the provisions hereby settled on her, and of any articles of household furniture or plenishing, whether of a useful or ornamental character, that may belong to her at the date of her marriage, or which she may acquire hereafter."

There was also power given to the wife to confer on her husband a liferent of one-half of the funds conveyed by her interests. Mrs Baxter's marriage-contract was in similar terms, though, as already mentioned, Mr Pullar was not a party to it. The testator's eldest daughter Mrs Phibbs was married in 1862 without a marriage-contract. On 2d November 1876 Mr Pullar, to enable Mr and Mrs Baxter to buy a house, advanced £1050 on their own receipt without intervention of their marriage-contract trustees. The title-deeds were taken in Mr Baxter's name.

Mr Pullar by his above-mentioned trust-disposition disposed of his whole estate, and made provisions for his widow and whole children. By the eighth purpose he gave to each of his three daughters, whom failing to her children, legacies of £3000, payable six months after his decease, and declared that all advances made by him after 1st May 1876, on any account whatsoever, should be reckoned as part of the provisions or bequests thereby made, and deducted therefrom. By the ninth purpose he directed his trustees to set apart out of his trust-estate and hold three several sums of £10,000 each "as portions" for his daughters and provisions for their issue, but declaring that they should have power in their discretion to transfer to any trustees nominated by either of his daughters in any separate contract of marriage or deed of settlement made by her in the trusts contained in his testamentary settlement any sum of money settled under this ninth purpose. The codicil of 30th October 1878 qualified both purposes by relieving the legacies of £3000 from deduction for quarterly advances and by enlarging the portions of £10,000 to £12,000 each.

It was stated in the case—"The first parties are ready and willing to pay the two sums of £3000 provided in the eighth purpose of the trust-deed to Mrs MacOwan and to Mrs Baxter, in conformity with what they believe from personal communings with him to have been the testator's intention, provided they can competently do so. On the one hand, it is maintained that the said £3000 is a legacy provided for each daughter, and payable directly to her on her own receipt, or on a receipt signed by herself and her husband; and it is suggested, on the other hand, that the respective marriage-contract trustees of said daughters are alone entitled to uplift and give a discharge for said two sums or legacies of £3000, in respect that the said respective marriage-contracts of said daughters transferred the whole property acquired prior to date, and to be acquired after date, to their said respective trustees."

The question of law was—"Whether the first parties are entitled or bound to pay the said legacies of £3000 to the second and third parties respectively on receiving a discharge from the beneficiaries themselves, or a discharge from them concurred in by their respective husbands?" or, "Whether they are bound to pay said legacies to the fourth and fifth parties respectively?"

Authority cited—*Thurburn's Trustees* v. *Maclaine and Others*, 30th November 1864, 3 Macph. 134.

At advising—

Lord Gifford—The question in this case is, Whether two special legacies of £3000 each bequeathed by the late Mr John Pullar, manufacturer and dyer in Perth, to his daughters Grace, the wife of the Rev. Mr MacOwan, and Eliza, wife of the Rev. Mr Baxter, by his trust-disposition and settlement of 1876 do or do not fall under the conveyance by these ladies of their whole *acquirenda* contained in their respective antenuptial contracts of marriage.

The two contracts of marriage are, so far as regards the present question, in very nearly the same terms, and although the late Mr Pullar is a party to Mr and Mrs MacOwan's marriage-contract, and is not on the face of the deed a party to the antenuptial contract of Mr and Mrs Baxter, I do not think that this makes any difference in the present question. It appears to me that there is no room for any distinction between the two cases. Both must be decided in the same way.

In the antenuptial contract between Mr and Mrs MacOwan dated in 1865, Miss Grace Pullar, the intended spouse, in consideration of the marriage and of the provisions undertaken by the husband and by her father, assigns, dispones, and makes over to the marriage-contract trustees the whole estate, heritable and moveable, "of every description now pertaining and belonging to her, or that she may succeed to or acquire during the subsistence of the marriage (with the exception of the provisions hereby settled on her, and of any articles of household furniture or plenishing, whether of a useful or ornamental character, that may belong to her at the date of the marriage, or which she may acquire hereafter"). The conveyance of the *acquirenda* in Mrs Baxter's marriage-contract is in similar terms, but the exception therefrom of provisions, furniture, plate, &c., is expressed with somewhat more detail. Both marriages still subsist.

Now, the conveyance of a wife's *acquirenda* in her antenuptial contract of marriage always receives effect according to its true import. It is most important that it should do so, for its effect is to protect the funds so conveyed from coming under the power of the husband or his creditors, and to secure that they shall be applied by the marriage-contract trustees for the wife's behoof, or for the purposes of the marriage-contract. The marriage-contract is in the highest degree an onerous deed and stipulations in the wife's favour are always quite rightly and reasonably enforced, because they are intended to protect her from her own acts, and from possible imprudent generosity which might lead her to hand over her estate or part thereof to her husband. The *acquirenda* of a married woman are often more important or more valuable than her *acquisita*, for especially if married young her property often consists in great part of successions

which do not open to her until, it may be, long after her marriage, and her conveyance of *acquirenda* is quite as effectual as her conveyance of *acquisita*, and quite as much beyond her own power to recal or alter.

If, therefore, these two legacies of £3000 each left to Mrs MacOwan and Mrs Baxter respectively had come from a stranger or from some collateral relative without any special condition attached to them, there can be no doubt that such legacies would fall under the conveyance in the marriage-contracts, and the marriage-contracts being intimated, the same would be payable, not to the ladies themselves, but to their respective marriage-contract trustees.

The only question, then, in the present case is, Whether there is any peculiarity in the terms of the settlements of the father of the ladies, the late Mr Pullar, or in the circumstances in which the bequests were made, to prevent the general rule from taking effect? Certainly the bequests do not fall under the exceptions contained in the marriage-contract, and the general breadth and force of the conveyance is increased by the very fact that specific exceptions are made therefrom. Now, Mr Pullar's bequest of £3000 each is made in quite general and unlimited terms. He bequeaths £3000 to each of his three daughters in the same terms, and it is not unimportant to note that he makes no distinction between the bequest of £3000 to a third daughter Mrs Phibbs, who was married without a marriage-contract, and the similar bequests to his daughters Mrs MacOwan and Mrs Baxter.

No doubt besides these special legacies of £3000 each he leaves a further provision of £10,000 each, afterwards increased to £12,000 each, in trust for his three daughters, and he empowers his trustees in certain cases to transfer these larger sums to the marriage-contract trustees of his daughters, but he nowhere says that the special bequests of £3000 each shall not fall under the conveyance contained in his daughters' respective marriage-contracts, and this although the late Mr Pullar was a party to one of these marriage-contracts, and was perfectly conversant with the terms of both.

In these circumstances I cannot find any sufficient grounds for holding that the two bequests of £3000 each to Mrs MacOwan and Mrs Baxter do not fall under their respective marriage-contracts. I think they do, and that they fall now to be paid to the marriage-contract trustees.

It is to be observed that there is no exclusion of the *jus mariti* and right of administration of the husbands in Mr Pullar's settlements. The only provision excluding the husbands' *jus mariti* is contained in the marriage-contracts, and the renunciation of the *jus mariti* and right of administration is over *acquirenda* as well as *acquisita* in precisely the same terms as the ladies convey their *acquirenda* as well as *acquisita*. If, therefore, it were held that the legacies of £3000 each do not fall under the conveyance of *acquirenda*, I think it must also be held that they do not fall under the renunciation of *jus mariti*, and the result would be that the sums would fall under the acts and deeds of the husbands—would really become the husbands' absolute property—and would be exposed to the diligence of their creditors. I do not think that this was intended either by the late Mr Pullar or by the parties to the antenuptial contracts. I am therefore of opinion that the first question should be answered in the negative, and the alternative question in the affirmative.

LORD ORMIDALE and the LORD JUSTICE-CLERK concurred.

The Court held the first parties bound to pay the legacies of £3000 to the fourth and fifth parties respectively, and found both parties entitled to their expenses out of the estate.

Counsel for First, Fourth, and Fifth Parties—Campbell Smith. Agents—J. L. Hill & Co., W.S.

Counsel for Second and Third Parties—Dean of Faculty (Fraser)—Thomson. Agents—Thomson, Dickson, & Shaw, W.S.

Saturday, July 19.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(WISHART'S CASE) — JOHN WISHART AND OTHERS (GALLETLY'S EXECUTORS) *v.* THE LIQUIDATORS.

Public Company—Winding-up—Trustees and Executors — Liability of Executor where Part of Executry Estate consists of Shares in a Joint-Stock Company.

The trustees and executors of a deceased shareholder in a joint-stock bank at their first meeting directed their law agent—who was one of their number—"to take all steps necessary to make up a title in the person of the trustees and executors to the heritable and moveable estate left by deceased, and generally to do everything he may think necessary for the preservation of the estate." The minute of the second meeting bore that the agent "had had the confirmation sealed with the seal of the High Court of Probate in England, as required by statute, had exhibited the same to the various companies (except two) in which the deceased held shares, and got the whole stocks and shares transferred to the executors' names, with the exception of the above two, which would be so transferred before the end of the week," and that "the trustees approved of all that had been done." They subsequently, on his advice, resolved to sell the stock of the bank in question, but they had done nothing towards a sale when the bank failed. The confirmation had been sent to the bank by the agent with a request that a new certificate in the names of the executors should be returned, and in consequence their names were entered in the register of members. In a petition for rectification of the register and of the list of contributories by the executors other than the agent, *held* after proof that the agent had acted without authority in