than for the parties to refer as they have done to the opinion of Mr Geddes, whom failing of Mr M'Creath. To say that because in another matter not necessarily connected with this one Mr Geddes has been working for Messrs Addie he is therefore disqualified here, is to say he was disqualified from the beginning because he was the consulting engineer of that party. I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD DEAS—I do not entertain any doubt that this question may be competently tried and decided in this action, and I have equally little that there is no disqualification. It is the most common thing in the world in questions of this sort for each party to name his own engineer as arbiter in case of dispute, and it is as competent as it is common so to do.

LORD MURE concurred.

LORD SHAND—I am of the same opinion; I am so quite independent of the relations either of Mr Geddes or Mr M'Creath to the parties before the raising of this action. It was agreed that the workings in question were to be allowed only so far as Mr Geddes or Mr M'Creath thought they would not be injurious. Messrs Addie have called upon Mr Geddes to intervene; and what is the objection to his doing so? It is objected that since the agreement in 1872 a dispute has arisen between the parties as to another subject altogether. But why should not Mr Geddes give his decision? The area, it is true, is somewhat the same in each case, but the grounds of dispute are quite distinct, and I cannot see why because Mr Geddes has advised Messrs Addie on the one occasion he should be disqualified from acting as referee upon the other.

The Court adhered.

Counsel for Complainers (Respondents)—Asher—Mackintosh. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Respondents (Reclaimers)—Balfour—J. P. B. Robertson. Agent—T. J. Gordon, W.S.

Friday, October 24.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*HILL'S CASE*)—MRS JANET HILL AND HUSBAND *v.* THE LIQUIDATORS.

Minor—Quadriennium utile—*Husband and Wife—Liability of Husband for Wife's Antenuptial Obligations—Companies Act* 1862 (25 *and* 26 *Vict. cap.* 89), *sec.* 78—*Where Wife became a Trustee before Marriage while still a Minor, and did not Challenge during the* Quadriennium utile.

The beneficiaries under a trust-deed were assumed as trustees in 1865. One of them—a daughter of the truster—was at that date a minor. In 1867, being still a minor, but within a few months of majority, she was present at a meeting of the trustees, and signed the minutes to the effect, *inter alia*, that certain stock in a bank of unlimited liability which was part of the estate should be transferred to the names of the trustees. In 1871, on the day of her marriage, when the *quadriennium utile* had nearly expired, she was present at and signed the minutes of another meeting of trustees in which the beneficiaries ratified the previous actings of the trustees. She subsequently attended two other meetings in 1872 and 1876. Her husband was not shown to have been directly informed that his wife was a trustee under her father's trust-deed.

Upon the failure of the bank *held*, (1) that the wife's name fell to be placed on the list of contributories, inasmuch as her trust acts as a minor were valid provided they were not set aside during the *quadriennium utile;* and (2) that the husband's was also rightly placed there in terms of section 78 of the Companies Act 1862, which provided that "If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly."

This was the sequel of the case of *Bell and Others* (*Lang's Trustees*) v. *The Liquidators of the City of Glasgow Bank*, decided in the Court of Session January 22, 1879, *ante*, vol. xvi. p. 249, and in the House of Lords May 20, p. 500. In that case the House of Lords, while affirming the judgment of the Court of Session that the trustees generally were personally liable, pronounced an order with reference to one of the trustees—Janet Lang or Hill—that "as to the appellant Janet Hill, her name should *in hoc statu* be removed from the list of contributories without prejudice of the right of the liquidators to apply to the Court to place upon the list the names of her husband and herself, but reserving to the last-named parties all competent objections." The liquidators accordingly presented a note to the Court for authority to alter the register of members and list of contributories; and for an order to add to the first part of the list of contributories the name of Mrs Hill as holder of £855 of stock standing in her name; and also the name of her husband Robert Hill "in respect of the stock standing in her name." That note was passed, and this petition was then presented by the spouses to have their names removed.

The petition contained, *inter alia*, the following statements:—"The said Robert Hill was not aware at the time of his marriage, nor was it until October last, when the City of Glasgow Bank suspended payment, that he became aware that his wife was one of her father's trustees, nor did she ever acquaint him with the fact, although she attended a meeting of her father's trustees on September 26, 1872, and signed the minute of meeting of the trustees with her married name without the consent of her husband. He was not aware until October last that his wife had any interest whatever in bank stock, and he gave no authority to anyone to make his wife or himself

a member of the company of the City of Glasgow Bank. The obligations undertaken by the petitioner the said Mrs Janet Lang or Hill were null; her loss of personal standing by marriage had the effect of nullifying her separate acts where her husband's interests were concerned; and her acts were null because they were not consented to by her husband. Alternatively, the petitioner the said Robert Hill humbly submits that in the case of a married woman acting as a trustee there is an implied exclusion of the *jus mariti* and right of administration of her husband. The husband (in the present case the petitioner Robert Hill) is neither entitled to the perception of the income of the subject nor to the administration and disposal of the capital. The said Robert Hill was no party to the transfer of the stock in favour of his wife and the other trustees. The bank never put his name on the register. He was never held out to the public, in the only authentic record under the Act of 1862, as being a person on whose credit the bank was entitled to rely. He never got any notice from the bank that he was a member; and he was not aware that his name had been included in the list of contributories until he received a letter from the agents for the liquidators, dated June 11, 1879, calling his attention to the paragraph in the note before referred to, in which his name appears. He humbly submits that the implied exclusion of his *jus mariti* should be held effectual to prevent his becoming a contributory in virtue of the legal assignation of marriage."

Mrs Hill was born on the 15th November 1846, and was married to Mr Hill on the 27th June 1871. There was no marriage-contract.

A proof was led in the case, the purport of which appears from the opinions of the Court *infra*. The following among other documents connected with Mr Lang's trust were founded on by the liquidators:—

"*Greenock*, 18*th May* 1865.

"At a meeting of the trustees held this day at No. 12 Union Street, there were present Messrs John Bell and Archibald MacCallum. Mr MacCallum laid before the meeting deed of assumption nominating and assuming Mrs Lang, Mr John Lang, and Misses Margaret, Agnes, and Janet Lang, to be trustees along with the said John Bell and Archibald MacCallum in the management of the trust-estate, and the said Mrs Lang, John Lang, Margaret, Agnes, and Janet Lang being called in, severally accepted, and by their subscription hereto do hereby severally accept, of the office of trustee accordingly. The said deed of assumption was directed to be engrossed in the sederunt book.

"John Bell.	Margaret Park Lang.
"Agnes M. Lang.	John Lang.
"Archd. MacCallum.	Agnes M'C. Lang.
	Janet M. Lang.

"*Greenock*, 17*th April* 1867.

"At a meeting of Captain Lang's trustees held at 12 Union Street this date—*Present* Mr John Bell, Mr Archibald MacCallum, Mrs Lang, the three Misses Lang, and Mr John Lang—there was submitted to the trustees a vidimus of the estate account brought down to 11th February 1865, which having been examined, was found correct and approved of. Also another vidimus of same account brought down to 6th February 1867, which was also found correct. It appeared that the whole amount of the estate, according to the price of bank stocks at 1st March 1867, was £3266, 5s. 9d. The meeting taking into consideration that the whole of the stock held by the trustees stands in the name of the original trustees, several of whom are now dead, it was unanimously agreed that the stock be transferred to the surviving original trustees and the assumed trustees, and Mr Lang was instructed to have this done forthwith. The children of the truster having expressed a wish to obtain a small advance to account of their shares of the trust-estate, which desire being considered reasonable, it was unanimously agreed that an advance of £20 sterling be made to each of Margaret, Agnes, and Janet Lang on account of their respective shares accordingly. The said advance to be made from the sum of £400 odds lying in the Bank of Scotland.

"Archd. MacCallum.	Margaret. P. Lang
"John Bell.	Agnes Lang.
"Agnes Lang.	Janet Lang.
	John Lang.

"*Greenock*, 12 *Union Street*, 27*th June* 1871.

"At a meeting of trustees held here this date, on the occasion of Miss Janet Lang's marriage, Mrs Lang on her behalf applied for sum of one hundred pounds (£100) towards cost of her marriage outfit and other expenses. It was agreed to grant this sum in the circumstances, Mrs Lang and all parties consenting; taking Miss Janet Lang's receipt for it as a payment to account of her interest in the estate, and Mr John Lang agreeing to pay it out of the £300 borrowed by him, as per minute of 14th May 1867.

"Arch. MacCallum.	John Lang.
"John Bell.	Margaret P. Lang.
"Agnes Lang.	Agnes Lang.
	Janet Lang.

"*Greenock*, 12 *Union Street*, 27*th June* 1871.

"We, the undersigned, being all the children of the marriage between the deceased Captain James Lang and Mrs Agnes Meikle MacCallum or Lang, his spouse, having examined the foregoing sederunt book, do hereby severally ratify and confirm all the acts and intromissions of the trustees therein specified, and express our thanks for their attention and consideration.

"Arch. MacCallum.	Margaret Park Lang.
"John Bell.	Agnes Lang.
"John Lang.	Janet Lang.

"*Greenock*, 26*th September* 1872.

"At a meeting of the trustees held this day within the house of Mrs Lang, Union Street, Mr Lang submitted a state of the trust-account and the trust funds, the capital as at June amounting to £4266, 18s. 9d., which having been examined was found correct. He also tabled the scrip of the bank stock, showing that the same had been transferred into the names of all the trustees, original and assumed, as directed at a previous meeting.

* * * * *

In testimony whereof this minute is subscribed by Mrs Agnes Lang, Mr John Bell, Mr Archibald MacCallum, Mr John Lang, Miss Margaret and Agnes Lang, and Mrs Robert Hill (*nee* Janet Lang).

"Agnes M. Lang.	John Lang.
"John Bell.	Margaret Park Lang.
"Arch. MacCallum.	Agnes Lang.
	Janet Lang Hill.

"*Greenock, 9th June* 1876.

"Meeting of trustees held this date in house of Mrs Lang, 12 Union Street, Greenock—*Present* Mrs Agnes Lang, Mr John Bell, John Lang, Margaret P. Lang, and Mrs Robert Hill (*nee* Janet Lang). The minutes of last meeting read and sustained. Mr Lang submitted the usual annual statement of the trust-funds, and the annual values of the trust-estate as at June each year, which were examined and approved of.

"On 16th January 1874 the Clydesdale Bank had issued additional stock, giving a preference to present shareholders in the proportion of stock held. The sum required for this advantage being gained was £96. Mr Lang had therefore paid back to the estate out of the £600 held by him the sum of £100 (thus reducing the amt. as held by him to £500), and out of this £100 the additional investment in Clydesdale Bank stock had been made. The trustees approved, and record the reduced sum as at Mr Lang's *debit* to be the £500 as stated. In testimony whereof this minute is subscribed as usual.

"John Bell.	John Lang.
"Agnes M. Lang.	Margaret Park Lang.
	Janet Lang Hill."

Argued for the petitioners—(1) To undertake the obligations of a trustee—or obligations generally—after the banns had been proclaimed was in fraud of the husband's rights unless he consented; and similarly, unless her husband consented, a wife could not during marriage become a trustee. Now here Mr Hill had never given his consent. Nothing had been proved to show that he knew his wife was one of her father's trustees. He knew of course that his wife was a beneficiary, but he knew nothing about the provisions of the deed. (2) Further, Mrs Hill's actings during minority were not reducible merely—they were absolutely null. For the trustees in taking this bank stock were acting *ultra vires*, and doing so they had induced the beneficiaries to share, and so indemnify the illegal obligation. Then (3) Mrs Hill had done nothing to adopt this null act after majority and before marriage. The only possible act of this sort was on the day of her marriage, when she could hardly be expected to attend to such matters. Besides, her signature was ambiguous. It was on a receipt stamp, and therefore was rather a receipt for the £100 given to her than a signature *qua* trustee.

As regarded the husband, he was not liable. The 78th section did not apply. *Biggart's* case showed that equity might introduce exceptions to the strict letter of the section; and here there were equitable grounds for another exception. The husband was entirely ignorant that his wife was a trustee.

Authorities—*Spreul* v. *Stewart*, Jan. 27, 1764, 1 Br. Sup. 709; *Stoddart*, June 30, 1812, F.C.; *Watson* v. *Darling*, May 11, 1825, 1 Wils. and Sh. 188; *Laird* v. *Milne*, Nov. 16, 1833, 12 S. 54; *Murison* v. *Dick*, Feb. 10, 1854, 16 D. 529; *Biggart's* Case, Jan. 15, 1879, 16 Scot. Law Rep. 226; *Pemberton*, 1857, 26 L.J., Q.B. 117; Bell's Comm. i. 32, 5th ed.; Fraser on Husband and Wife, 626; Lewin on Trusts, 707; Macqueen on Marr. and Div. 325.

Argued for the liquidators—A minor had capacity to act—his acts were reducible merely on the ground of lesion, and within the *quadriennium utile*. Here there was no averment of lesion, and the *quadriennium utile* had passed; and apart from the question of minority and marriage Mrs Hill's liability was undoubted. She knew that she was a trustee, and that the trust-estate included City of Glasgow Bank stock. It was said that her character of trustee came to an end with her marriage. That was doubtful, but assuming that it did, her marriage and consequent resignation had never been intimated to the bank, so that she remained liable—*Sinclair's* Case. Besides, on the evidence the husband either knew or ought to have taken steps to ascertain his wife's position with reference to her father's trust; and so must be held to have consented to her acting as trustee. Lastly, he himself was liable under sec. 78 of the Companies Act. But apart from that section he was liable for a debt of his wife validly contracted before marriage. He was liable as the husband, not of a trustee, but of a partner.

Authorities—*Duncanson* v. *Duncanson*, 1715, M. 8928; *Wilson* v. *Laidlaw*, June 29, 1816, 6 Paton's App. 223; *Stewart* v. *Snodgrass*, Dec. 20, 1860, 23 D. 187; *Sinclair*, Jan. 23, 1879, 16 Scot. Law Rep. 225; *Dalziel and Wishart*, March 14, 1879, 16 Scot. Law Rep. 453; *Luard*, 1860, 29, L.J., Chan. 269; Fraser on Parent and Child, 345, 383, 409; 2 Bell's Comm. 24.

At advising—

Lord President — All the main facts of the present case were before us when on the 22d of January last we disposed of the petition of *Bell and Others* (being the trustees of the deceased Mr John Lang), 16 Scot. Law Rep. 249. The present petitioner Mrs Hill was one of those trustees, all of whom were found by the judgment of the Court in that previous petition to have been well registered as partners of the bank in respect of the shares held in trust under Mr Lang's settlement. There was no distinction of any kind attempted to be made between the different trustees there except in so far that Bell was the sole surviving original trustee and the others were assumed trustees; but that made no difference in the result. In particular, it was not suggested to the Court on either side of the bar that Mrs Hill's case differed from those of her brother and sisters or her mother, who were the assumed trustees. But after the case was taken to the House of Lords by appeal, it seems to have come out somehow or other that at the time when Mrs Hill became a trustee and a partner of the bank in respect of those shares she was in minority, and it was therefore naturally suggested that that was a matter which ought to be considered in dealing with her case specially, and I see the Lord Chancellor in moving the affirmance of our judgment made these observations, 16 Scot. Law Rep. 500—"With regard to Janet Lang, it is to be observed that she was not of age at the meetings of the trustees in 1865 and 1867, and she cannot therefore be held bound by what passed at those meetings. She was of age at the time of the meeting of 26th

September 1872, and she was then married to her present husband Robert Hill, and he is no party to this appeal, and was not a party in the Court of Session. It is possible that besides the minute of 26th September 1872, a previous minute, dated 27th June 1871, made after she became of age and before her marriage, may have to be considered with regard to her liability, but if she is to be placed upon the list of contributories, her husband's name ought, under the 78th section of the Companies Act of 1862, to be placed along with her, and the question of her liability should be decided in his presence." Accordingly the judgment of the House of Lords bears that "as to the appellant Janet Hill, her name should *in hoc statu* be removed from the list of contributories, without prejudice to the right of the liquidators to apply to the Court of Session to place upon the list the names of her husband and herself, but reserving to the last named parties all competent objections." Following out that judgment, the liquidators did apply to the Court to have the names of Mrs Hill and her husband placed upon the list of contributories, and that being done, the present petition has been presented by the spouses to have their names removed.

Now, the sole ground upon which that petition is supported is that Mrs Hill was in minority at the time when she became a partner of the bank. It is necessary, however, to observe one or two facts for the purposes of completely realising the position in which Mrs Hill is placed. The truster died in 1850, and he appointed four trustees, of whom three accepted. The beneficiaries under the trust were his widow, one son, and three daughters, and among other items of his personal estate there were 40 shares of the City of Glasgow Bank. Now, while the original trust subsisted — I mean before there was any assumption of new trustees — a meeting took place on 4th March 1852, at which "the trustees being met to consider the propriety of investing the trust-funds, and Mrs Lang having strongly urged them to invest the money in the purchase of shares in the City of Glasgow Bank and in the Clydesdale Bank, Mr M'Callum (who was one of the original trustees) as the law-agent of the trustees desired to have it minuted that they were duly advised by him that it was illegal for the trustees to purchase shares in or become partners of any banking or commercial company whatsoever, and that they could not do so without incurring personal responsibility for any loss that may result to the trust from such copartnership; and the matter having been discussed, it was agreed to purchase the shares according to Mrs Lang's wish, on the condition that she undertakes to relieve the trustees and to keep them scaithless in the matter, which by her subscription hereto she agrees to do accordingly."

In pursuance of this resolution an additional number of shares in the City of Glasgow Bank was purchased—to the amount of 55, I think—and the whole of those shares (both those left by the truster and those purchased by the trustees), were held until the stoppage of the bank. But at a more recent time it occurred to the remaining original trustees, and apparently also to the beneficiaries under the trust, that as the trustees had assumed so much liability in purchasing those additional shares beyond their power, they should have associated with them as trustees the parties who were interested as beneficiaries, and that seemed to be a very reasonable proposal, and the consequence was that in the year 1865 there was a meeting of trustees, at which Mr M'Callum, agent, "laid before the meeting a deed of assumption nominating and assuming Mrs Lang, Mr John Lang, and Misses Margaret, Agnes, and Janet Lang (now Mrs Hill) to be trustees along with the said John Bell and Archibald M'Callum in the management of the trust-estate, and the said Mrs Lang, John Lang, Margaret Lang, and Janet Lang being called in, severally accepted, and by their subscription hereto severally accept, of the office of trustee accordingly. The deed of assumption was directed to be engrossed in the sederunt book." Now, that minute is signed by the two surviving original trustees and by the four assumed trustees, being the whole beneficiaries under the trust, and from that time the trust subsisted as constituted by that deed of assumption. The result was that shortly afterwards, as we have it now stated, the alteration in the constitution of the trust was intimated to the bank, and the whole trustees, original and assumed, thereafter remained as the registered partners of the bank in respect of those shares.

Now, with regard to Janet Lang's position at this time, she undoubtedly was in minority. She was born on 15th November 1846, and therefore she did not attain full age till 15th November 1867. But it is somewhat remarkable that in the month of April 1867—that is to say, about seven months before her attaining majority—she was present at a meeting of trustees at which the instructions were given for registering the four assumed trustees along with the original trustees as partners of the bank in respect of those shares, and she herself signs that minute. It is not immaterial certainly in a question of this kind that she was then *majoritati proxima*—very near attaining her majority.

But independently of that altogether, I think there are very sufficient grounds for coming to the conclusion that Miss Janet Lang was quite competently made a partner of this bank as a trustee, and quite competently assumed as a trustee although she was undoubtedly so far under age. The position of a *minor pubis* is very well understood in the law of Scotland. A *minor pubis* is certainly subject to no legal incapacity to do anything. A person in pupillarity is under incapacity, and no act done by him can have any effect whatever. But in capacity ends with the attainment of puberty, and it may be said generally that after that time a minor is just as capable of contracting obligations, and of doing any other thing inferring liability, as is a person of full age. There is, however, some qualification necessary upon that general statement of the law. In the first place, a minor who has curators cannot do certain acts without the consent of his curators, but a minor who has no curators may do all those things that I have been mentioning, and the circumstance that he has no curators will not make his acts one bit the less effectual in law than if they had been done with the consent of curators. Again, every act of a minor is effectual, only subject to this qualification, that it is liable to be reduced after he attains majority, and within four years after his attainment of majority, upon the ground of minority, but that again requires the explanation

that there must be distinct lesion of the minor; and it is also absolutely indispensable as a condition of this remedy that the reduction of the transaction should be brought within four years of his attaining majority—*intra quadriennium utile.* If that be not attended to, the remedy is altogether gone, and the act of the minor stands as unchallengeable as if it had been done by a person of full age. Among the other things that a minor can do without curators if he has none, and with consent of curators if he has them, is the contraction of personal obligation, and particularly of the obligations of a deed of copartnership. There is nothing to prevent a *minor pubis* from engaging in trade, either in an ordinary trading company consisting of a few partners, or in a joint-stock company, and his act in becoming a partner of such a concern is just like any other act contracting a personal obligation. It is perfectly valid, subject to the qualifications which I have just explained.

Well, then, what is the position of Miss Lang? In 1867, within seven months of her majority, she concurred with the whole other parties interested in this trust in directing their names to be registered as shareholders of the City of Glasgow Bank; and then the next thing she does is upon the 27th of June 1871, by which time she was not only of full age, but considerably beyond the attainment of full age—indeed within a very few months of the expiry of the quadriennial period; and at that time, instead of contemplating the challenge of this transaction by which she became a partner of the bank, she ratifies and confirms that among the other acts and proceedings of the trustees by a minute dated 27th June 1871. Now, it is said that this was done upon the day of her marriage—that she may have done it inadvertently—that she did not know what she was doing. But I am afraid it is quite impossible to receive suggestions of that kind. We have been constantly told that when people did the things which made them partners of this banking company they did not know what they were doing, and it seems to be inferred from that that what they have done is not to be followed by its necessary legal effects; but we have rejected that suggestion. Now, here was a lady of full age, in a position, if she thought fit, to challenge the transaction by which she had been made a partner of the bank—for this was still within the *quadriennium utile,* although very near its expiry—but instead of challenging the transaction, she ratifies and confirms it. She is married to her husband on that same date—the 27th of June 1871—and after that she as a trustee attends meetings of the trust. On the 26th of September 1872, after the expiry of the *quadriennium utile,* she attended the meeting at which the law-agent tabled the scrip of the bank stock—that is to say, the certificate of registration—showing that the same had been transferred to the names of all the trustees, original and assumed, as directed at the previous meeting; and then at a subsequent time in 1876 she has presented to her, along with all the other trustees, an annual statement of the trust-funds and the annual value of the trust-estate, giving the various items of which the estate consisted, and showing that she and the other trustees held this stock. Now, it appears to me that in these circumstances Mrs Hill, instead of availing herself of the privilege which undoubtedly belonged to her when she came of age, of challenging this transaction, did everything that she then could to confirm it, and so she remained accordingly a partner of this bank along with the other trustees.

But it is said that she could not act as a trustee any more than she could accept of a trust after her marriage without the consent of her husband. That may be so. It may be that a married woman although under no incapacity to act as trustee, and that a minor married woman although under no incapacity to act as trustee that I am aware of, must have the consent of their husbands in order to do so. But what is the state of the fact here as we have it in evidence? Her husband knew perfectly well that she attended those family meetings as a person interested in the administration of the trust. If he desired further information he could easily have got it. But he certainly acquiesced in her taking a part in the administration of the family affairs outwith his knowledge altogether, and it will hardly do for him now, after all that, to say that what she did after her marriage could not be effectually done without his consent.

But further, suppose that he is entitled to maintain that much more unequivocally than I think he is, of what avail would that be in the present case if I am right in saying that what the lady did during her minority and before her majority is perfectly valid and effectual unless challenged within the *quadriennium utile?* The rule of law which excludes challenge beyond that time does not extend the challenge on the ground that the minor or minor's husband is ignorant of the right of challenge. There is no case of that kind in our law. On the contrary, the rule is strict and inviolable—the challenge must be within the four years, or it cannot be at all—and therefore that itself is in my opinion quite sufficient for the decision of this case, and I have no hesitation in arriving at the conclusion that Mrs Hill's name must remain on the register of shareholders, and that under the 78th section Mr Hill's name must also be allowed to remain on the register.

I omitted to mention that I deal with Mrs Hill as a minor without curators. In point of fact, the original trustees under Lang's settlement were nominated tutors and curators of the children, but they never accepted. That seems quite clear. No doubt curators without a formal acceptance may make themselves answerable as such by acting as curators; but I am not at all aware that they did act as curators, unless indeed by joining in those proceedings which made the whole trustees partners of this bank they may be said to have been acting as the curators and advisers of Miss Janet Lang. But if they did so, then she became a partner of the bank with the advice and consent of her curators, and so in either way the result is the same.

Lord Deas—Your Lordship has stated the facts of this case so correctly that I need not repeat them at any length. It appears that in 1865 Mrs Hill was assumed to be a trustee under the late Mr Lang's trust-deed. She was then undoubtedly in minority, and so she was when she accepted that trust on the 18th of May of that year. Upon the 17th of April 1867 she was present and signed a minute of meeting of the trustees agreeing that the stock in question

should be transferred to them, including herself. Then again, upon the 27th of June 1871, when she was major, and before she was married, she signed a minute of that date. The marriage took place on the same day, but after this minute of meeting had been signed and she recognised all that had been done by the trustees. Then upon 26th September 1872, after she had been both married and major, she signs a ratification of the actings of the trustees in regard to the registration of the bank stock in the names of the trustees, the scrip—that is to say, the certificate—being laid before the meeting. Now, I do not know that it is necessary much to consider here what a *minor pubis* may do or may not do. I do not think there is any authority for holding that the acts of a *minor pubis* are nullities. They stand rather in the position of acts, as your Lordship has pointed out, which may be reduced within the *quadriennium utile* upon the ground of lesion. If they are not reduced, it is impossible to say that they are nullities. But in this case Mrs Hill not only does not reduce within the *quadriennium utile*, but after the *quadriennium utile* has expired, and after she is both married and major she expressly upon 26th September 1872 ratifies all that the trustees have done, including the registration, the certificate of which is laid upon the table. I do not see how it is possible to hold that she should be relieved from the position of being registered as one of the proprietors with the other trustees of that particular stock, and therefore I came to the same result at which your Lordship has arrived.

Lord Mure—I concur entirely in the opinion which your Lordship has delivered. It is quite plain that this lady accepted the office of trustee, and that she gave directions along with the others that the stock should be transferred to her along with the other trustees. There is therefore no doubt that she is responsible to be put upon the register along with the others, unless the question raised as to her minority, which was mooted for the first time in the House of Lords, is sufficient to free her from responsibility. I agree with your Lordships that it is not. The act of a minor—a person between 14 and 21—is good, and is not necessarily null unless challenged; and not only did she not challenge it, but she allowed the four years to expire without taking any steps or raising any question about it. I therefore agree with your Lordship in thinking that in law it is now too late for her to raise the objection which she proposes to take to the acts to which she was a party during her minority.

Lord Shand—I am of the same opinion. The counsel for the petitioners have directed much of their argument to questions as to the powers of minors to become and act as trustees, and the power of married women to act as trustees without the express consent of their husbands. But it appears to me that it is not necessary to rest the decision of this case on any considerations affecting the capacity of minors to act as trustees or the effect of their actings—questions which might perhaps be raised between the beneficiaries. It has been settled finally by the case of *Muir and Others* that partners, though described as trustees on the register of the bank, are yet personally liable as shareholders to the other partners and to the creditors of the bank, and Mrs Hill being on the register, the question to be determined in this application appears to me to be simply one of partnership between her and her fellow partners and the creditors of the bank, who have the full rights of those partners. Now, it is settled that minors may effectually enter into business, and may effectually enter into ordinary trading transactions and mercantile business generally, and particularly minors close on the age of majority. And that being so, it appears to me practically to afford the solution of this question. This lady being within seven months of majority, at a meeting held on 7th April 1867 consented that the stock which stood in the name of certain persons as trustees should be transferred so as to stand not merely in the names of the original trustees, but in the names also of those who had been assumed, including herself; and she therefore in fact consented to become a partner of this bank and have her name put upon the register as such. It appears that she had curators appointed to her by her father, for the original surviving trustees were nominated her curators in the deed of settlement. It does not appear whether those parties expressly accepted the office of curators. If they had done so, then they were consenting parties to her act. If they did not consent to act as curators, and she was without curators, her act would equally be effectual. So there was no original vice (if I may say so) or nullity in the act of becoming a partner of this bank. It is true, as your Lordship has noticed, that within the *quadriennium utile*—within four years after she attained majority,—if there had been sufficient ground, she might have brought an action to set the transaction aside. I think a very difficult question would have been raised in any such action—whether there had been that lesion which was necessary in order to the reduction of the registration of the petitioner as a partner,—but one cannot help seeing that at that time, being then of age, supposing she had a desire to be rid of this liability, she had only to bring this matter before the trustees and have the investment changed, or if that was not agreed to, she had the means of resigning the trust and getting rid of the liability, or requiring that the trust estate should be put into a different condition if she was to remain in the trust. But in place of taking any such step—in place of taking the benefit of the *quadriennium utile* and asking to be restored against this act if it was in any true sense to her lesion as at that date—or resigning this trust and so getting rid of the liability, in the first place on the 27th of June 1871, upwards of three years after she had become major, she was a party to a minute confirming all the acts of the trustees, including of course that by which she had allowed her name to be put upon the register, and, as your Lordship has pointed out, at a subsequent date in 1872 the scrip was tabled at a meeting at which she was present. These acts plainly show that there was both knowledge and approval, instead of what I think would have been essential, repudiation of the registration and steps taken to have it undone. Laying out of view altogether the minute of September 1872, which is dated sometime after the marriage, and to which I think she was a party with her husband's

knowledge, we have in June 1871, before she married him, a minute which I think expressly adopted the act putting her upon the register, and adopted that act after she had become major. In these circumstances I am of opinion with your Lordship that the name of Mrs Hill must remain on the register.

On the question whether Mr Hill's name has also rightly been placed there, section 78 of the statute appears to me to be conclusive. It is there provided that if any female contributory marries, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not been married, and he shall be deemed a contributor accordingly. At the date of her marriage Mrs Hill was bound absolutely in the full liabilities of a partner. The result is, that being a female contributory with this liability, under the statute her husband becomes liable to contribute to the assets of the bank the same sum as she would have been liable to contribute if she had not married, and therefore I think he comes under equal liability with his wife, and his name has been rightly put upon the register.

On these grounds I think that the names of both petitioners must remain on the register.

The Court refused the petition with expenses.

Counsel for Petitioners—M'Laren—Trayner. Agents—Morton, Neilson, & Smart, W.S.

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

Saturday, October 25.

FIRST DIVISION.

[Exchequer Cause.

CAMPBELLS *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Property and Income Tax Act 1842 (*5 and 6 Vict. c.* 35), *sec.* 60—*Inhabited House Duty Act* 1851 (*14 and 15 Vict. c.* 36)—*Competency of Proof where subject to be Assessed partly Heritable and partly Moveable.*

A hotel was let on lease at a rent of £500, the tenant to pay interest on sums spent on improvement. Subsequently, and during the currency of the first lease, a second containing numerous additional stipulations, and assigning to the tenant certain rights of stabling accommodation and delivery over to him of certain horses and tools, was substituted for it and the rent fixed at £1000. *Held*, it being stated that part of this rent was paid for moveable subjects, that it was competent to prove how much was paid for the heritable and how much for the moveable, that such sum might be deducted from the £1000 before fixing the assessment under the Property and Income Tax Acts.

This was a Case stated to the Court of Exchequer by the Commissioners for the Lorn district of Argyllshire in a judgment by them under the Property and Income Tax Acts confirming the assessment made by the assessor under Schedule A of the Property and Income Tax Act 1842 (5 and 6 Vict. c. 35), and subsequent Acts, and under the Inhabited House Duty Act 1851 (14 and 15 Vict. c. 36), for year 1878–1879.

The Property and Income Tax Act 1842, sec. 60, and Schedule A, enacted that "the annual value of lands, tenements, hereditaments, and heritages charged under Schedule A shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment, but if the same are not let at rack-rent, then at the rack-rent at which the same are worth to be let by the year."

The Inhabited House Duty Act 1851, sec. 1, and Schedule A thereto annexed enacted, that "for every inhabited dwelling-house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of twenty pounds or upwards by the year, there shall be charged for every twenty shillings of such value the sum of sixpence."

In 1876 Donald Campbell, proprietor of the Caledonian Hotel, entered into negotiations with Alexander Campbell with a view to a lease of the hotel, and a lease was executed between them for the period of ten years at a rent of £500, with entry at Whitsunday 1876, and in respect of certain improvements to be executed by the proprietor the tenant obliged himself to pay interest on the sum to be so expended at the rate of 7½ per cent., to be paid termly with the rent. This lease was dated 6th and 12th February 1877, and did not include the stables of the hotel, and the tenant further bound himself not to engage in any coaching or posting business during the currency of the tack.

In the course of the year 1877 improvements to the value of £2000 were completed, and by the time of their completion the parties had entered into a new arrangement whereby the proprietor Donald Campbell had disposed to the tenant Alexander Campbell his whole interests in certain coach companies in the district, consisting of the stock of horses and coaches belonging thereto and the stabling accommodation in connection with it. The parties deemed it advisable in the circumstances to cancel the then existing lease and execute a new lease in which all the matters between them should be embodied, and a new lease was accordingly executed, in which an annual rent of £1000 sterling was stipulated to be paid by the tenant. The subjects included in this new lease were the Caledonian Hotel, the coaches and horses therein specified, and stables in Tweeddale Street, which were required by the tenant as additional stabling accommodation. The stables in Tweeddale Street were in no way connected with the hotel. The basis upon which the sum of £1000 of annual rent was fixed was explained to the Commissioners, and by them stated in the Case to be as follows:—"The former rent was £500, and the cost of the improvements was stated to be about £2000, the annual interest of which, at seven and one-half per cent., yielded £150, which interest, being added to the rent stipulated in the first lease, made a total new rental for the Caledonian Hotel of £650. The said Donald Campbell's interest in the said coach-