Anna Brown or Carmichael of certain sums of money, which sums were invested in the purchase of £405 of the City of Glasgow Bank stock. In the year 1864 I made a further gift to my said wife of certain sums of money, which sums were also invested in the purchase of £100 of the stock of the said bank; and further, considering that the said gift was *inter virum et uxorem*, and is consequently revocable by me, therefore I do hereby revoke and recall the same. In witness whereof, &c.

JOHN CARMICHAEL."

At advising—

LORD PRESIDENT — It appears to me that the case of *Steedman* which we have just decided rules this case. It is the case of a husband and wife, and the object of the petition is to remove the lady's name from the register of shareholders and list of contributories. The parties were married in 1857, and in the end of the same year they acquired some stock in the City of Glasgow Bank to the extent of 15 shares. There was a second lot of 15 shares acquired in 1858, and a third lot in 1859. Now, as regards two of those lots—the first and the third—the transfer bore that the stock was conveyed upon the consideration of money advanced by the wife exclusive of her husband's *jus mariti*. As regards the transfer of 1858, there was no exclusion of the *jus mariti*. Then in 1864, when the bank issued new stock, an application was made for that new stock by Mr Carmichael in name of his wife, and the stock was allocated accordingly. But there was nothing done with regard to that stock to exclude the husband's *jus mariti*. It is made matter of admission that the stock was purchased by, and the price thereof paid out of, the funds belonging to the said John Carmichael, being savings laid past from his business, which he intended by taking the transfer in his wife's name to settle as a provision to her. It is further admitted that the warrants for the dividends on the stock were signed by him as for his wife, and the dividends were received and applied by him to his own use. The entry in the register of the bank is somewhat peculiar. In the original stock ledger, under date 1857, the entry is—"Mrs Jane Brown or Carmichael . . . . excluding the *jus mariti* of her husband;" but when the stock comes to be transferred to a new ledger in 1869, that exclusion of the *jus mariti* is altogether omitted in the heading of the account, and so it is in the third ledger beginning in 1875. The fact, however, that the stock was registered in her name remains undoubted, and the other fact that the stock was purchased entirely with her husband's funds, and that the dividends were received by him through his wife and applied to his own purposes is also quite undoubted; and that just seems to bring the case precisely within the rule of *Steedman's* case which we have decided. I think it is unnecessary to say more. The same course I think must be followed as in *Steedman's* case—to remove the lady's name and substitute that of the husband.

LORD DEAS and LORD MURE concurred.

LORD SHAND—I am of the same opinion. I think this is a clear case. It is clear—it is admitted indeed—that the stock was purchased with the husband's money. It would be difficult to maintain, if you look at this as a provision—which he certainly intended it to be,—that it was an irrevocable provision because the husband had already fulfilled all his obligations under the marriage-contract, and if revocable he was really the owner. There is no exclusion of the right of administration, even where the *jus mariti* bears to be excluded, and I see nothing to have prevented the husband at any time changing the investment and putting the money into any other stock he thought fit during the marriage. In the third place, for years the bank had the stock registered in the lady's name without any mention of the exclusion of the *jus mariti* at all. I have no doubt, looking to the facts and to the way in which this stock was registered, that the husband is the partner in respect of it.

The Court removed the name of the wife and substituted that of the husband.

Counsel for Petitioners—M'Laren—Trayner. Agents—Macbrair & Keith, S.S.C.

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

Saturday, November 1.

FIRST DIVISION.

[Lord Adam, Bill Chamber.

TAYLOR (WATT'S TRUSTEE) *v.* CHARTERIS AND ANOTHER (WATT'S TRUSTEES).

Bankrupt — Trustee — Discharge — Bankruptcy (Scotland) Act 1856, *sec.* 103—*Acquisition of New Estate subsequently to Trustee's Discharge.*

A bankrupt acquired new estate subsequently to the discharge of the trustee in the sequestration, and was afterwards discharged himself, but without composition and without the consent of certain of his creditors. He at once assigned it to his marriage-contract trustees. The trustee was then reappointed upon his own petition. The Court *held* that he was thereupon entitled to reduce the new estate into possession in terms of section 103 of the Bankruptcy (Scotland) Act 1856, the creditors not being barred by lapse of time or by acquiescence.

The estates of Samuel B. Watt & Co., and Samuel Beveridge Watt as sole partner of that firm and as an individual, were sequestrated by the Sheriff of Lanarkshire on the 29th June 1875, and Mr James Taylor, C.A., Glasgow, was confirmed trustee on the 19th July following. The estate yielded a dividend of 4s. 10¾d. in the £, and after dividing that sum amongst the creditors the trustee was discharged on 11th October 1878. Subsequently on 7th April 1879 the bankrupt was also discharged, without a composition and without the consent of certain of his creditors, of all debts contracted by him or by his firm before the date of the sequestration.

Through the death of a relative upon 14th February 1879 the bankrupt had become entitled

to the sixth part of moveable estate to the amount of £26,000, as one of his next-of-kin. On his becoming aware of this succession Mr Taylor was re-elected trustee on the 18th June following, and he then presented this petition, in which he prayed the Lord Ordinary "to declare all right and interest competent to the said Samuel Beveridge Watt in the estate of the said deceased . . . . to be transferred to and vested in the petitioner as trustee foresaid as at the death of the said Samuel Beveridge Watt's succession thereto, in terms of the Bankruptcy (Scotland) Act 1856."

To this petition answers were lodged by the trustees under the antenuptial contract of marriage entered into between the bankrupt and his spouse, dated 24th March 1879, which set forth that "By assignation, dated 24th, and intimated 25th March 1879, Samuel Beveridge Watt assigned to the respondents All and Whole the rights and interests and claims of every description, present, future, and contingent, then belonging or competent, or which might at any time thereafter belong or be competent, to him in and against the estate of his deceased uncle Patrick Sandeman Beveridge, for the ends, uses, and purposes mentioned in the said contract of marriage entered into between him and the said Miss Grace Hill Moscrip Campbell.

The Lord Ordinary (ADAM) granted the prayer of the petition, finding "that no sufficient cause had been shown by the respondents why the prayer of the petition should not be granted."

The respondents reclaimed, and argued—It would be said that the bankrupt had been completely divested of his estate and was not re-invested. But how was that consistent with the provision at the end of section 103 of the Bankrupt Act 1856 regarding the mode in which the trustee was to get a title to *acquirenda?* That plainly showed that *acquirenda* did not vest in the trustee in the same way that the original estate vested, and consequently the bankrupt had not been divested. The authorities bore out this construction — *Fisken* v. *Thomson; Mein* v. *Turner.* Those were cases of a second sequestration no doubt, but there was virtually a second sequestration here, and the respondents were entitled to rank *pari passu* therein—or rather preferably—for the succession was assigned as an alimentary fund.

Authorities—*Fisken* v. *Thomson*, June 7, 1845, 7 D. 842; *Mein* v. *Turner*, Feb. 15, 1855, 17 D. 435.

Argued for the petitioner—The discharge of the bankrupt was without a composition, and consequently he was not retrocessed in his estate. The trustee had been discharged, and that might prevent the active title being in anyone, but that was of no moment—the bankrupt was completely divested and had not been re-invested. The cases cited by the reclaimers went on a different principle, viz., that where the creditors under the first sequestration permitted the bankrupt to trade, they could not be heard to object to later creditors, who had traded on the faith of the bankrupt being free, claiming a share of the trade *acquirenda.* There were also questions of international law in *Mein* v. *Turner.*

Authorities—*Thomson*, Dec. 17, 1863, 2 M. 325; *Trappes* v. *Meredith*, Nov. 3, 1871, 10 M. 38.

At advising—

LORD PRESIDENT—We have had a very good argument from the bar in this case, but I see no reason to doubt the soundness of the Lord Ordinary's interlocutor.

The sequestration of Mr Watt's estate was awarded in June 1875, and although the trustee was discharged and the bankrupt was discharged, there cannot be the least doubt, I apprehend, that for certain purposes the sequestration was still a subsisting process. The bankrupt succeeded to certain funds in February 1879, and these funds he assigned away by a deed—or rather by two deeds—which he executed in March of the same year. At both dates he was still undischarged.

The 29th section of the Bankrupt Statute 1856 provides that the judge shall "award sequestration of the estates which then belong or shall thereafter belong to the debtor before the date of the discharge, and declare the estates to belong to the creditors for the purposes of this Act." And in like manner section 103 provides in this way for acquisitions made by the bankrupt after sequestration—"If any estate, wherever situated, shall, after the date of the sequestration and before the bankrupt has obtained his discharge, be acquired by him, or descend or revert or come to him, the same shall *ipso jure* fall under the sequestration, and the full right and interest accruing thereon to the bankrupt shall be held as transferred to and vested in the trustee as at the date of the acquisition thereof or succession, for the purposes of this Act." And then follows a provision or machinery for enabling the trustee to reduce the newly acquired estate into his possession for the benefit of the creditors in the sequestration.

Now, the application of these two sections of the statute to the present case does not seem to admit of any doubt. The estate here has come to the bankrupt by succession after the date of his sequestration but before his discharge, and it consequently falls *ipso jure* under the sequestration, and the trustee is empowered to reduce it into his possession for behoof of the creditors. The fact that Mr Watt was subsequently discharged does not appear to me in the least to affect the question, for all that is necessary to render the application of the statute clear is that the acquisition of the estate should take place before the bankrupt has obtained his discharge.

No doubt if after his discharge the creditors had shown no disposition to avail themselves of their rights by reducing the newly acquired estate into the possession of the trustee, and had allowed the bankrupt to retain possession, there might in these circumstances and by lapse of time have been a bar to their afterwards claiming it. And in like manner there are cases in which it has been assumed that if creditors allow an undischarged bankrupt to enter into trade again, and to acquire stock and induce other persons to transact with him on the footing that he is entitled to go into the markets as if *sui juris*, they may not be entitled to prevent these new creditors from ranking on the newly acquired estate. Principles of equity come in here to qualify the rules of the bankrupt statutes, which being themselves founded on

equity, must yield to stronger equities. But here the facts are quite simple, and no blame can be imputed to the creditors, who presented their petition as soon as they became aware that the bankrupt had succeeded to the property. I am therefore of opinion that the cases quoted have no application, and that the Lord Ordinary's view is perfectly sound.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court adhered.

Counsel for Petitioner (Respondent)—Asher—C. S. Dickson. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Respondents (Reclaimers)—Keir—Harper. Agent—George Andrew, S.S.C.

Saturday, November 1.

SECOND DIVISION.

[Lord Craighill, Ordinary.

BAINES & TAIT *v.* COMPAGNIE GENERALE DES MINES D'ASPHALTE.

Agreements and Contracts—Where War suspended Completion of Contract—Commission on Work done—Supplementary Contract.

Under a contract for asphalt work B. & T. were entitled to 5 per cent. commission on the amount of the contract. The works were to be completed on 1st October 1877, three causes only being recognised as sufficient excuse for delay—ravages of war, inundations, and shipwreck. In consequence of war the works were stopped uncompleted in 1877. In 1878 the contractors entered into a new convention with their employers, without the knowledge of B. & T. to perform the remainder of the work, the new convention containing conditions similar to the original contract. B. & T., claimed damages for breach of contract in respect of non-payment of commission on the work executed under the new convention, which was refused on the ground that the original contract came to an end by lapse of time, and that what was embodied in the convention was a new contract with which B. & T. had nothing to do. *Held (rev.* Lord Craighill, Ordinary) that the war did not put an end to the whole contract, but merely suspended it; that the convention of 1878 must be considered as supplementary to the original contract for the purpose of carrying out its terms; and that therefore B. & T. were entitled to commission.

Agreements and Contracts—"Payment to be made in Bonds"—Whether Market or Nominal Value to be taken.

B. & T. were to be paid commission, one-fourth in money and three-fourths in bonds. At a certain date they had been largely overpaid in money and underpaid in bonds. Taking the bonds at their market value, B. & T. had been fully paid; at their nominal value a balance remained due to them. *Held* that the payments that had been made having been payments to account, the final adjustment must be carried out on the footing of the commission being payable one-fourth in money and three-fourths in bonds.

Process—Action of Damages.

In an action of damages for breach of contract for non-payment of commission on work to be executed, liability for which was disputed, the Court in the circumstances found, not that a sum of damages was due, but that the pursuers were entitled to commission.

Remarks per Lord Gifford on "undisclosed commission."

This case has already in one of its stages been reported, March 15, 1879, 6 R. 846, and 16 Scot. Law Rep. 471. Messrs Baines & Tait, iron merchants, London, sued the Compagnie Generale des Mines d'Asphalte, and W. O. Callender, London, John Young, London, and T. S. Lindsay, accountant, Edinburgh, partners thereof, for £296 stg., as alleged balance of commission past due and £4000 damages for breach of contract. The breach alleged was the non-fulfilment of a contract for asphalt work in the town of Jassy, in Roumania, upon the price of which the pursuers alleged they were to receive commission.

The following narrative is taken from the opinion of Lord Gifford:—"The contract under which the commission was claimed was embodied in letters passing between Mr W. O. Callender, one of the partners of the Asphalte Company, and as representing the company, and Mr A. G. Tait, one of the partners of the pursuers' firm. The principal letter embodying the agreement to pay commission, and which is still the binding contract between the parties, is dated 31st December 1872, and is in the following terms:—It is addressed by Mr Callender to Mr Tait.—'London, 31st December 1872—Messrs Baines & Tait—Dear Sir,—In the event of your being successful in securing for me the contract for the Asphalt Work in the town of Jassy, I agree to pay you a commission of 5 per cent on the same, such commission to be payable from time to time as the payments for work are made to me. Should you prove unsuccessful in obtaining the contract, I agree to pay you One hundred pounds for your expenses in going there.—Yours truly (signed) W. O. Callender. *P.S.*—I give you full power as to expenses. It is understood that in event of your non-success you receive fifty pounds over and above expenses. (Intd.) W. O. C.'

"The pursuers were successful in securing for the Asphalte Company the contract for asphalting the streets of Jassy. The principal contract with the municipality of Jassy was dated 22d May 1873. It is a complicated document (in French) containing a great variety of provisions and stipulations, but none of the provisions raise any question in the present action or any material question relative to the pursuers' commission excepting the provision in the 4th article by which it is stipulated that the works should be completed by the 1st October 1877, and that only three cases would be admitted as sufficient reason for their non-completion within the stipulated period. The three cases are called in the contract 'les trois cas suivants de force