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Saturday, January 24.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*WRIGHT'S CASE*)—WRIGHT AND ANOTHER (WRIGHT'S EXECUTORS) *v.* THE LIQUIDATORS.

Husband and Wife — Donation — Revocation — Public Company—Liability of Husband's Executors where he Died without Revoking Gift of Shares to his Wife.

A wife without the knowledge of her husband had invested part of a legacy, which was left to her without the exclusion of the *jus mariti* or right of administration, in the stock of an unlimited banking company. The husband afterwards came to know that the investment had been made, but did nothing to repudiate it. After his death the bank failed. His name had never been on the register of members, but it was sought to place the names of his executors on the list of contributories. *Held* that on the facts as proved the husband intended to make a donation of the legacy to his wife, and that as he died without revoking this donation his wife only was liable as a contributory.

Donation—Proof.

Observed that donation, whether to a wife or to anyone else, may be proved by parole.

Public Company—Husband and Wife—Where Consent of Husband to Wife's Acts not Given.

Question—Whether a company, registered under the Companies Act of 1862, which knows that it is transacting with a married woman as a shareholder, but takes no steps to get the husband's consent to the wife's acts, is entitled to have the husband made liable as a contributory?

This was a petition by the executors of the late Hugh Wright, planter, Surinam, to have his name removed from the first part of the list of contributories of the City of Glasgow Bank, on which it was placed "in respect of the holding of stock of Mrs Frances Wright, his wife," the amount of the holding being £306. His name was not on the register when the bank failed, but was placed on the list of contributories in the following circumstances:—

Mr Wright was married in 1847 to Miss Frances M'Leod. Shortly after his marriage he left for Surinam, where he resided till his death, returning to this country only for occasional visits. He became a naturalised subject of the Kingdom of the Netherlands, and was domiciled at Paramaribo, in Surinam. Mrs Wright never went to Surinam, but continued to reside in this country. She was a daughter of Mr Hugh M'Leod, who was also domiciled in Surinam, where he died in the year 1843, and under whose will or settlement she was entitled to a provision of £3000, which had been paid to her prior to the date of her marriage. In her father's will there was no exclusion of the *jus mariti* or right of administration of any husband she might marry; and there was no antenuptial contract of marriage between her and Mr Wright; but it was admitted that after he left for Surinam Mr Wright "did not intromit or interfere with the means to which, prior to her marriage, his wife had succeeded under her father's settlement, but allowed her to deal with the same and the income thereof as she saw fit. With part thereof she erected a house in Blackford Road, Edinburgh, the title to which was taken to herself in liferent, exclusive of her husband's *jus mariti* and right of administration, and to her children, born or to be born (certain children then existing being named) in fee, but with a reserved power of sale to herself, which power she exercised in 1877, her husband, at the request of the purchaser, concurring in signing the disposition in favour of the purchaser, and the price being received by her, and expended partly in the erection of another house, and partly in paying the first call upon the City of Glasgow Bank stock after mentioned."

It was further admitted "that in the year 1850 the petitioner Mrs Wright, without the knowledge of her husband, and during his absence in Surinam, purchased from Mr Samuel Easton, of No. 16 Montrose Street, Glasgow, twenty-four shares of £10 each of the capital stock of the said bank, and paid for the same out of the money which had been left to her by her father, and that she was thereafter entered as proprietrix of the said shares in the books of the bank in the following terms:—'Mrs Frances M'Leod or Wright, residing in Edinburgh, wife of Hugh Wright, planter, Surinam.' That in the year 1851 the said petitioner, without the knowledge of her husband, and during his absence in Surinam, purchased ten additional shares of £10 each of the said capital stock, and paid for the same out of the money left to her by her father as aforesaid, and the said purchase was thereafter entered as an additional item in the same account in the books of the bank." [The shares of the bank were in 1860 converted into stock, Mrs Wright's proportion of stock being £306.] "Mr Wright never interfered with the said stock, and, except as above mentioned, his name does not appear on the register of shareholders; and the dividend-warrants were issued in favour of Mrs Wright alone, and the dividends were paid to herself on her own sole receipt, and were used by her as she saw fit, along with the income of the rest of the funds that came from her father's estate, for the maintenance of herself and children, to which her husband also contributed. Mrs Wright and her children occupied the house in Edinburgh mentioned in the petition till it was sold in 1877.

"Some years after the date of the second purchase, when Mr Wright was on a visit to this country, Mrs Wright informed him of the said purchases of City of Glasgow Bank stock. On his return to Surinam he wrote condemning in

the strongest terms, as he had previously done verbally to her, the investment which she had made, and stating that she must abide by it, and judge for herself as to selling or retaining the stock, as he would give no advice regarding it one way or other. Mrs Wright had the said letter in her possession until the month of June 1879, when in course of perusing it the strong language in which it was expressed affected her so painfully that on the suggestion of one of her daughters who was present she threw it into the fire. Mr Wright visited his wife in Scotland three times after the date of the second purchase of the said stock, the last occasion being in the year 1874. On the first two of these occasions Mrs Wright alluded to the bank stock not oftener than once on the occasion of each visit. Mr Wright was displeased, and remarked—'Have done with that, for I will take nothing to do with it; I have nothing to do with your money;' or used words to that effect. Whenever on these visits to Scotland Mrs Wright spoke to her husband about money matters he made the same observation, that he had nothing to do with her money. On Mr Wright's last visit to Scotland in 1874 the subject of the bank stock was not referred to between them. Mr Wright did not at any time require his wife to realise the said stock, she made no promise or proposal to do so, and he took no steps to do so himself.

"Mr Wright died at Surinam on September 26, 1877, leaving a will or deed of settlement dated September 25, 1877, whereby his wife and Alexander Stirling, planter, Surinam, were appointed his executors. The executors have not made any claim to the City of Glasgow Bank stock as part of his estate, and did not include it in the inventory of his estate situated in Scotland. Mr Stirling, one of the executors, was not aware of the existence of the said bank stock."

The transfers and acceptances of the shares above mentioned were in the following terms:—

(1)—Transfer by Samuel Easton to Mrs Wright.

"I, Samuel Easton, of No. 16 Montrose Street, Glasgow, in consideration of the sum of two hundred and ninety-seven pounds sterling now paid to me by Mrs Frances Macleod or Wright, residing in Edinburgh, wife of Hugh Wright, planter, Surinam, hereby sell, assign, transfer, and make over to and in favour of the said Frances Macleod or Wright, her heirs, executors, and successors whomsoever, twenty-four shares of the capital stock of the City of Glasgow Bank Company, of ten pounds sterling each, of which ten pounds sterling have been paid up, with the whole interests, profits, and dividends that may arise and become due thereon; the said Frances Macleod or Wright by acceptance hereof being, in terms of the contract of copartnership of said bank, subject to all the articles and regulations of the said company in the same manner as if she had subscribed the said contract: And we consent to the registration hereof in the Books of Council and Session, &c. . . .

Samuel Easton."

And the acceptance—"I, Frances Macleod or Wright, above designed, do hereby accept of the above transfer on the terms and conditions above mentioned.—In witness whereof, &c. . . .

Frances Wright."

(2)—Transfer by Andrew Gillespie to Mrs Wright.

"I, Andrew Gillespie, accountant, Edinburgh, in consideration of the sum of one hundred and twenty-four pounds sterling now paid to me by Mistress Frances Macleod or Wright, Edinburgh, hereby sell, assign, transfer, and make over to and in favour of the said Frances Macleod or Wright, her heirs, executors, and successors whomsoever, ten shares of the capital stock of the City of Glasgow Bank Company, &c. . . .

And. Gillespie."

And the acceptance—"I, Frances Macleod or Wright, above designed, do hereby accept of the above transfer on the terms and conditions above mentioned.—In witness whereof, &c. . . .

Frances M'Leod Wright."

In these circumstances the petitioners maintained that they were entitled to have Mr Wright's name removed from the list of contributories. They submitted that "he never agreed to become a member or partner of the said bank, the shares in which were bought entirely without his knowledge, and Mrs Wright could not legally make him a partner or shareholder of the bank, or in any way bind him as such in respect of the said stock, and did not attempt to do so."

The respondents stated that they "were not aware when the list of contributories was made up that Mr Wright was dead, and his name was accordingly entered thereon. They are willing to comply with the prayer of the petition by deleting his name from the list of contributories, but they intend to enter the names of the petitioners, his executors, upon the second part of the said list as liable in respect of calls on the said stock to make his estate forthcoming in due course of administration. The respondents are willing that the question of the liability of Mr Wright's estate for calls in respect of the said stock should be tried in this petition."

Argued for the petitioners—Mr Wright gave his wife no authority to make this investment. When he became aware of the investment he did not repudiate it; but he was not bound to do so. He had virtually given the money to his wife, and the gift became absolute by his death. Lastly, the bank chose to contract with Mrs Wright without having even her husband's formal consent.

Argued for the respondents—Mr Wright never agreed to become a shareholder, but when a husband allowed his wife to invest money which was his, in law her act bound her husband only—*Thomas'* case. Mrs Wright had no separate estate, and consequently had no power of contracting for herself. [Lord President—Have you any case apart from the acquiescence inferred from the husband's coming to know of the investment?] Yes. He must be held to have authorised whatever she did, because he left her to deal with the money as she pleased. The registration of the wife's name where she had no separate estate was just the registration of the husband's. [Lord President—But is the acceptance of a wife valid without her husband's consent?] The nullity, if there was one, was cured by the wife becoming *sui juris*, and not repudiating.

Authority—*Thomas'* case, Jan. 31, 1879, 6 R. 607.

At advising—

Lord President—At the time when the liquidation commenced, the stock in question was registered in the name of "Mrs Frances M'Leod or Wright, residing at 13 Blackford Road, Edinburgh, wife of Hugh Wright, planter, Surinam." In making up the list of contributories the liquidators inserted in the first part of that list the name of Hugh Wright, the lady's husband, and proposed to make him answerable as a partner for the amount of stock which stood in the name of his wife. This proceeded upon misinformation or ignorance of the true facts, because Mr Wright had died in September 1877, and what the liquidators ought to have done, following out the view which they took of the liabilities of the parties, was to put his executors upon the second part of the list of contributories, and for the purposes of the question now raised before us that must be taken as what was in fact done, the petition being at the instance of the executors of Mr Wright to have his name removed from the list of contributories and to exempt his estate from all liability in respect of these shares.

The transfers which led to the registration in the terms which I have named above were, one of them, granted by a person of the name of Easton, "in consideration of a sum of £297 now paid to me by Mrs Frances M'Leod or Wright, residing in Edinburgh, wife of Hugh Wright, planter, Surinam," and the conveyance was made "to and in favour of the said Frances M'Leod or Wright, her heirs, executors, and successors whomsoever." The other transference was substantially in the same terms. At the time when these shares were acquired there is no doubt that Mrs Wright was a married woman, the marriage having taken place in 1847, and there being no antenuptial contract of marriage. The money which was employed in purchasing these shares was part of a sum of £3000 which Mrs Wright had inherited as her fortune, and the contention of the liquidators is that, following the ordinary rule, as this money necessarily passed to the husband by the assignation of marriage, the stock purchased with that money was his property, and he was the partner in respect of the shares purchased.

The circumstances of the case are undoubtedly very peculiar. The marriage having taken place in 1847 in this country, we are informed that Mr Wright shortly after that time returned to Surinam, where he was domiciled and carried on his business as a planter, that he only returned to this country after that for occasional visits, and that Mrs Wright was left in possession of her own fortune of £3000, and dealt with it entirely as her own money, and that this was done, not only with the entire approbation and consent of her husband, but apparently at his desire. With a portion of this money she purchased a house, in which she lived. She afterwards sold that house and bought another, and with the balance of her funds she purchased the bank stock in question. Now, it subsequently came to her husband's knowledge that Mrs Wright had purchased this City of Glasgow Bank stock, and although he disapproved of the purchase he did nothing to undo what she had done. In these circumstances it rather appears to me that the important inquiry is—To whom did the money belong which was invested in this purchase? because if it belonged to the husband, and he left it in his wife's hands, with a full permission to her to invest it in any way she pleased, and if he afterwards came to the knowledge that she had invested it in City of Glasgow Bank stock, and did nothing to undo what she had done, it would not be very easy to resist the conclusion that he is a partner of the bank in respect of these shares. Undoubtedly, when a man gives an authority to his wife to invest money in the purchase of bank shares, she is held to act as his agent, and he is the partner in respect of the shares so purchased. Now, if a husband leaves money in the hands of his wife which necessarily falls to be invested, and gives her no instructions as to the mode of investment, it would be very difficult to say that she is not thereby constituted his agent, with a large discretion as to the mode in which she is to invest the money, and whether the investment she makes would in all its consequences be binding upon him from the moment that the investment is made; it seems at least a difficult thing to say that after the investment comes to his knowledge he is not bound by the consequences of the investment. So that if this money is to be held and dealt with as money belonging to the husband, I see great difficulty in resisting the conclusion of the liquidators that he became a partner of the bank in respect of the shares bought by his wife. But, on the other hand, if the money is the wife's, an entirely opposite result would follow; because if the money belonged to her, and she invested it in her own name without the assent of her husband—without his being a party to the transfer or the registration—then I rather apprehend the cases would apply in which we have held that a woman holding bank stock as her separate estate is a partner of the bank in respect of the shares she buys.

Now, that raises a somewhat difficult question, To whom did this money belong? I think it must have belonged to the husband, unless he made a gift of it to his wife, because the assignation of marriage operates *ipso jure*. It requires no act upon the part of the husband to reduce the wife's fortune into his possession if it be moveable estate, but the marriage itself operates the transference, and he becomes just as much the owner of his wife's fortune, if it be personal estate, after the marriage as she was before. And therefore I rather think that the only question is, whether this money was the subject of a donation by the husband to the wife? If it were a donation, it no doubt remained revocable, and so long as he lived he could have revoked it, and if he became insolvent his creditors might have attached the money, because the donation was revocable; but if it was a donation, then his death in 1877 put an end to the power of revocation, and the donation became absolute. Now, there is no deed of gift here—there is no writing on the subject,—but it does not require writing to make a donation of moveable estate between ordinary parties standing in any ordinary relation towards one another, and I am not aware that the rule is different as applicable to donations between husband and wife. I think there may be a donation between husband and wife constituted and proved without writing; and therefore we inquire whether the circumstances of the present case, as we have them particularly disclosed in the minute of admissions, are sufficient to lead us to the conclusion that such a donation was made. There is no doubt that Mr

Wright never touched this money in any way, and that from the day of his marriage he seems to have resolved that he would have nothing to do with it. What his precise motive was, or what the feeling was, which led him to take that course we have no means of knowing, but we have it admitted that he did not intromit with the means to which his wife had succeeded under her father's settlement, but allowed her to deal with the same or any part thereof as she saw fit. Then we are told that the way in which she dealt with it was to convert a considerable part of it into heritage; she bought a house. Heritage in her person did not belong to her husband of course. The mere conversion of a portion of her money into heritage would not prevent her husband from reclaiming it if he had not made a gift of it to her. But then we have a piece of evidence, so to speak, or perhaps, more accurately speaking, we have an important fact in the history of this money immediately following that conversion of the money into heritage, and that is the sale of the heritage. In the conveyance which she took to the house which she bought, she settled it upon herself, exclusive of her husband's *jus mariti* and right of administration, and upon her children in fee, and there were then existing children who were named in the deed, and she also reserved to herself a power of sale notwithstanding the settlement of the fee to the children. Now, that power of sale she afterwards exercised, but the purchaser had a scruple about taking a disposition from her without the consent of her husband, knowing that she was a married woman, and accordingly his consent was obtained, and Mr Wright executed that deed of conveyance to the purchaser from his wife, not as the proprietor of the subject—not as having himself any right in the subject of any kind—but merely as a consenter to his wife's act—in short, as her administrator-in-law. He thereby recognised his wife's full right of property in the house which she had bought, and made it apparent to the purchaser, and to everybody else concerned or who should come to a knowledge of the fact, that he considered this house and dealt with it as being the property of his wife. Now, that house represented a very considerable portion of his wife's fortune, which had come to her as moveable property and had thus been converted into heritage. Then there was another house built by Mrs Wright, and I presume—although it is not very distinctly stated—that the titles were taken in the same way to that new house, and the price which she paid for that house was the price which she had received for the house she had sold; so that in all these transactions she dealt with the property which had come to her by succession, so far as the value of these houses was concerned, as her own undoubted property, and that with the full knowledge and approbation of her husband.

Now, the balance was what was invested in City of Glasgow Bank stock, and this was done in the year 1850 as regards the first portion of it, and it is admitted that the investment was made entirely without the knowledge of her husband. She bought the shares, registered them—as we have seen—in her own name, and the dividend warrants were issued in her name only. The dividends were paid to herself, on her own sole receipt, and were applied in the maintenance of her family. After a time Mr Wright was made aware of this investment also. He had been quite aware of the former investments in house property, but some years after the date of the second purchase of stock, when he was on a visit to this country, we are told that Mrs Wright informed him of the purchases of the City of Glasgow Bank stock. On his return to Surinam he wrote condemning in the strongest terms, as he had previously done verbally to her, the investment which she had made, and stating that she must abide by it and judge for herself as to selling or retaining the stock, as he would give no advice regarding it one way or other. And then we are told further that Mr Wright visited his wife three times after the date of the second purchase, the last occasion being in the year 1874. On the first two of these occasions Mrs Wright alluded to the bank stock not oftener than once on the occasion of each visit. Mr Wright was displeased, and remarked—"Have done with that, for I will take nothing to do with it; I have nothing to do with your money;" and whenever on these visits to Scotland Mrs Wright spoke to her husband about money matters he made the same observation—that he had nothing to do with her money—and the subject of the bank stock was not again referred to.

Now, taking these circumstances, regarding the bank stock in particular, along with the other facts that I have referred to connected with the investment of the money in house property, I think it is not by any means a startling inference to say that as in a question between Mr and Mrs Wright he had really made a gift to her of the £3000 which she had inherited from her father. Of course, as I said before, this was revocable, and he might have revoked it at any time during his life, and of course it would not have been binding as against creditors, but the question is, whether the man being now dead, it was not his firm intention, as expressed in these passages which I have just read, that this money should be hers—that it should not form part of his estate—that it should not be carried by his will to his executors—but that the provisions in his will which he left behind him in favour of his wife should be something quite separate from and independent of that gift which he had made during his lifetime. That is the conclusion at which upon a full consideration of the circumstances I have arrived—not altogether without difficulty certainly, because it raises very peculiar circumstances; but I think the true inference from the facts which we have before us is that this £3000 was gifted by the husband to the wife, and that that gift was confirmed and made absolute by the husband's death in 1877. That being so, I cannot say I think Mr Wright ever became a partner of the bank. No doubt if he had revoked the gift and let these shares stand registered as they were, the result might have been very different. If he had not parted with the shares and undone what his wife had done, he might have made himself a partner of the bank. But then he never did revoke the gift, and consequently no such effect can be operated. I am therefore for granting the prayer of this petition.

Lord Deas—The ground upon which the liquidators claim to put the name of Mr Wright or Mr Wright's executors upon the list of contributories is that Mrs Wright in purchasing and hold-

ing these shares acted as his agent. That is the foundation of the claim made by the liquidators. Now, if the money with which the purchase was made was the husband's, and he, knowing of that purchase, allowed it to stand as it did in the books of the bank, there certainly would arise an important question, whether he did not thereby become liable as a partner of the bank? On the other hand, if the money never was his, or if it had ceased to be his, I do not see that there is any ground whatever of liability against him. A very material question, therefore, in the outset is, whether the money was his or hers? She succeeded to this money before the marriage, upon her father's death in 1843, and we must assume upon the admitted facts that she then got possession of the money and held possession of it at the time of the marriage. We must also assume, I think, in the state of the admitted facts, that at the time of the marriage Mr Wright knew that she had this money. It is not at all likely that a man would marry a wife who had £3000 at her own command without satisfying himself whether she had got it into her possession or not. I therefore assume that from the time of the marriage downwards Mr Wright knew she had got this money, and that it stood, not in his name, but in hers.

Well, if a man can make a gift of money to his wife, revocable it may be—if he can make her a gift after marriage at all,—I think it is very clear that he may make the gift by allowing the money to stand for years in her separate name, disclaiming all power over it, and by saying, as it is admitted here that Mr Wright said over and over again, that he had never touched it, and never would touch it, and that he considered it to be her separate estate. It was not essential that the gift should be a written one. It might be very important to have had written evidence that there was a gift, but the gift may be proved otherwise than by writing. Most assuredly facts and circumstances may be taken into acccount, and here the facts and circumstances admitted in the paper of admissions now before us seem to me inconsistent with any other supposition than that of gift. To insist that a sum of money should remain hers was just as good a way of making a gift as if he had first asserted power over the money and then given it to her. The one is even more distinct than the other. Well, then, she was allowed to invest it, and she did invest a portion of it in the purchase of these shares. In consequence of his not having interfered with it, and it being quite understood that he would not interfere with it, he made no inquiry as to what she had done with it. He became aware, however, some years after 1851 that part of it had been invested in City of Glasgow Bank stock, and all he did then was to intimate distinctly that it was not upon his responsibility, because he had nothing to do with it, meaning plainly that he had made it over to his wife. There cannot be any other inference. The precise date of making the purchase of the Blackford property is not stated. When she took the title to that property to herself in liferent and her children *nominatim* in fee, exclusive of her husband's administration and *jus mariti*, that was an assertion upon her part that the money was hers—an acceptance of the money as hers—and that was acquiesced in by the husband likewise. But the strongest thing of all, in my mind, as evidence of gift, is what took place in 1877, when that property was sold. We have not got the disposition granted when it was sold, but it is admitted that it bore to be with the consent of her husband as her administrator-in-law. How could he become a party to a formal deed as her administrator-in-law if the money was not hers? The thing would have been absurd upon the face of it, and when he signed that deed as her administrator-in-law he thereby formally announced that any right or interest he might have claimed in the property had been parted with to her and that the money and property she possessed were out-and-out hers. I do not see how we can require better evidence than that. But we have what I think material likewise, that—though the bank knew quite well that she was a married woman,—though she was designed in the transfer as a married woman,—they never required the husband to become a party to the purchase or to the holding of these shares. They did not require that anything should be upon the face of the register—and there is nothing upon the face of the register at this moment—to show that either in a question with themselves or with the public he became a partner of the bank. There is no written evidence the public could have looked to as showing that she was acting as agent for him, and that he was the partner, and when we look beyond that everything is the other way. In my opinion, it is very clear that the wife alone was the shareholder, and that the husband had nothing to do with the transfer or the way in which it was carried out.

Lord Mure—In this case, as I understand the admissions, the bank from the year 1850 accepted and dealt with Mrs Wright as the only partner in respect of these shares. The shares were purchased by herself during the absence of her husband in Surinam, and it is matter of distinct admission that the purchase was made without Mr Wright having any knowledge of the matter at all. The transfers were made out in Mrs Wright's favour. In one she is described as the wife of a gentleman in Surinam, and in the other there is no description of her husband at all, and from that period down to 1878 the dividends are paid to Mrs Wright, and those dividends are discharged by her. Therefore, as in a question with the bank, they accepted her as the sole partner of the concern as regards these shares.

Now, that being so, if these shares were bought with the separate estate of Mrs Wright, she was entitled to be held the sole partner of the bank, and she was the sole partner. That was decided in the case of *Biggart*, 6 R. 470. Therefore, as your Lordship has said, the question is—To whom did the money belong? Now, it was originally Mrs Wright's. It was a small part of £3000 to which she had succeeded from her father, and which she possessed at the time of the marriage. There is no deed of gift by the husband to the wife, but I agree with your Lordships in thinking that a donation of money of this sort does not require a deed of gift in writing if the facts and circumstances connected with the administration of the money show clearly that the husband had made it over to his wife and allowed her to use it as her own separate estate. If Mr Wright had been alive, I think his parole testimony would have been admissible to tell what his intentions were, and why he allowed

his wife to deal with that money. He never interfered with her in the management of it during the 30 years between the date of the marriage and the failure of the bank. The very first act she does is to acquire a house with the greater part of the money—for the house she acquired could not have been bought for less than two-thirds of it—and she takes the titles to that house exclusive of her husband's *jus mariti* and right of administration, and resides in that house until she disposes of it in 1877 with the consent of her husband, who, whatever his knowledge may have been of the terms of the title at the date of the purchase, must be assumed, from the date of his putting his name to the deed by which the house was conveyed to the purchaser, to have known and to have acquiesced in his wife's having taken the title in her own name to the exclusion of his *jus mariti*. Therefore I think we have distinct evidence there that Mr Wright knew and acquiesced in the fact that the house was taken exclusive of his *jus mariti*, and approved of that being done. Now, that was done before the acquisition of the bank stock, and the bank stock was acquired in 1850. Well, the question comes to be, when the bank stock was acquired with the rest of the money, whose was that money? Now, the first inference I draw from the fact of the house being bought with the greater part of the money and taken in Mrs Wright's name, is, that Mr Wright believed that she had her money at her own disposal in the one case—she unquestionably had in the other. Then he allows her for all that period of time to deal with the money as her own. The inference is, that as he had given her the large proportion of the money with which the house was bought, he had given her the rest. Then he was no doubt made aware some time after the purchase of the bank stock that she had purchased it, and he expresses his entire disapprobation of it, and advises her to get quit of it, and leaves her to get quit of it or not as she likes. Now, why did he do that? Because he knew well as a man of business that the holding of stock of that description was a perilous matter, and might involve not only the loss of the shares but the loss of the whole fortune of the party who held the shares. That being the foundation of his opinion as to the propriety of Mrs Wright holding the shares, if he had thought that the shares were bought with his money, the inference is that he would have sold them and got quit of them. But instead of that he turns round and says—"It is your doing; you bought them with your own money that I allowed you to keep and deal with as you liked; and I will not interfere with you"—that is to say, he repudiates having anything to do with the shares because they were bought with money he had given to her. That is the only inference I can draw from the strong terms in which he repudiates the whole transaction.

In these circumstances I think the presumptions, upon the whole, are irresistible that the balance of the money after paying the price of the house which was bought was given to Mrs Wright and allowed to be used by her as she chose as her own separate estate; and if that be the fair inference from all that took place, then it is beyond question that she is the only partner of the bank in respect of those shares, and that the names of Mr Wright's executors should be removed from the list of contributories.

Lord Shand—Throughout the argument I thought this a clear case, and I remain of that opinion. I think the bank have failed to show any reason for putting the name of Mr Wright or his executors upon the list of contributories. The stock stood in the name of Mrs Wright alone when the liquidation began, and the question to be determined is, whether that being so, the liquidators are entitled to put on the list of contributories the names of the executors of Mr Wright, her husband? That question appears to me to turn upon the view the Court takes as to the property of this stock, and that again involves the question—To whom did the money to which Mrs Wright succeeded through her father belong? I do not mean to go over the evidence on that point, which has been, I think, pretty fully gone over by your Lordships. There is no doubt that donation may be proved by parole, and that whether it be a donation to a wife or anyone else; and when I look at the fact that Mr Wright for thirty years, from 1847 to 1877, declined to interfere with the £3000 which his wife had as her own at the time of her marriage—was a party to her investing that money in her own name, and taking the title to the heritable property so that she could dispose of it without his signature at all—and that in reference to the investment of the money he would have nothing to do with it, and repeatedly told his wife that he would have no concern with her money—I think it is clear he made a donation to her, and therefore that if his trustees or executors upon his death had made any claim to money, or investments in which it was placed, they would have entirely failed in their claim. That being so, a question might have arisen, if during the husband's life it had been proposed to hold him liable as a partner—for though the money was given as a donation, he still had the control of it, having a power to revoke—it might have been maintained by the bank that as he knew of this investment, and had the power of revoking his donation and recalling what he had done, and yet allowed the money to stand as it did, the bank was entitled to get behind the register and hold him responsible as a partner. I say that might have been maintained, but I think it would have been at least a case of extreme difficulty on the part of the bank. It appears to me, however, unnecessary to express any opinion on that question, because this case in its circumstances is, I think, quite clear. Mr Wright died in October 1877. From that time the gift he had made of this money was irrevocable, and the result was that this stock, the title to which stood in Mrs Wright's name, became hers in property with an indefeasible right. You have therefore a combination from that time onwards of property and title in this stock in Mrs Wright, and Mrs Wright's name alone upon the register. In these circumstances I cannot see any ground upon which the bank can go behind their own register, on which they have the name of the proprietor of this stock, to get at the executors of the husband, who have neither title nor property in it; and upon that ground I think the petitioners are entitled to succeed in their application.

The Court granted the prayer of the petition, with expenses.

Counsel for Petitioners — Trayner — Pearson. Agent—John T. Mowbray, W.S.

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

Saturday, January 24.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

PARKS *v.* ALLIANCE HERITABLE SECURITY COMPANY (LIMITED).

Sale—Debtor and Creditor—Sale by Creditor in virtue of an Ex facie *Absolute Disposition—Articles of Roup.*

A heritable creditor holding, *inter alia*, an *ex facie* absolute disposition of his debtor's property, qualified by a back-letter, sold the property upon ten days' notice, which in terms of his security he was entitled to do in a certain event which happened. The debtor brought a reduction of the sale, on the grounds, *inter alia*, that the creditor only held on a security title, and had failed to give him due notice of the sale, or to advertise it sufficiently in accordance with usage; and further, that the articles of roup were unfair in their conditions, and prejudicial to his interests. The Court *held* (1) that the creditor, holding under an *ex facie* absolute disposition, and there being no stipulation for any formality in connection with the sale, except the notice which was given, was entitled to sell as if he were absolute proprietor; and (2) that though the articles of roup were in some respects open to objection, there was no such defect as entitled the debtor to the remedy he sought —it being observed that an action of damages was still open to him.

Observations (*per curiam*) on the distinction to be drawn between the cases where a creditor holds on an *ex facie* absolute disposition, and where he holds merely under a bond and disposition in security with a power of sale.

Observations upon the requisites of articles of roup; and *opinion* that where a Heritable Security Company was selling certain property in the execution of its business, it was not necessary that the articles of roup should be authenticated by the company seal or by the signatures of the directors.

The pursuers in this action were formerly proprietors of certain heritable property in Glasgow, having acquired it from their father Gavin Park by disposition dated June 30, 1876. In view of building operations which they contemplated upon that property, they obtained from the defenders, the Alliance Heritable Security Company, a loan of £7000. The following deeds were granted by the pursuers in security—(1) a disposition *ex facie* absolute, dated November 3, 1876, on which the defenders were infeft on November 4. This disposition, *inter alia*, provided and declared that the defenders should have all the rights of absolute proprietors in and over the said subjects so long as any part of the said loan of £7000, or of any further advance, and interest and disbursements, should remain unpaid, and that in the event of the pursuers allowing a full half-year's payment of £425, 5s., or any part thereof, to remain unpaid for fourteen days after the date when the same should respectively fall due and be payable—which, in the option of the defenders, should constitute a default within the meaning of the bond—it should be lawful to and in the power of the defenders, on giving to the pursuers ten days' previous intimation in writing under the hands of their managers or secretaries, or one of them, to be in their option delivered personally to the pursuers or transmitted by post to their address as given in the bond, without any other or further intimation or process of law whatever, to sell the said subjects or any part thereof, "and that either by public roup or private bargain, and with or without advertising, and at such time or times and place or places, and in such lot or lots, all as the said company or their foresaids shall think proper, and to grant a disposition thereof in favour of the purchaser or purchasers thereof, binding us or our foresaids in absolute warrandice; which dispositions and all other deeds or conveyances by the said company or their foresaids, alone, in favour of the purchaser or purchasers, shall be good and sufficient to the grantee or grantees, without any consent of us or our foresaids." (2) A back-letter by the company reciting that the conveyance was in security of an advance of £7000. (3) A bond by the pursuers for said sum, repayable by 24 instalments of £425, 5s. on the 15th May and 11th November of each year, and providing that in the event of default the company should have all the rights of absolute proprietors, and be entitled on ten days' previous notice to enter into possession and sell the property. (4) A back-letter by Messrs J. & W. Pollard, stating that £5750 of said loan had been handed to them by the pursuers on deposit accounts for the purpose (1) of being applied with the interest thereof, when the company should think it expedient, in or towards discharging incumbrances affecting the subjects; (2) of paying instalments due on the buildings, as the buildings on the ground went on; and (3) that in the event of the pursuers failing to finish the buildings to the satisfaction of the company's valuator, the money in its hands should be applied in such a way as the company might think proper, towards the completion of the buildings or in repayment of the advance.

The buildings were proceeded with, and were alleged by the pursuers to be finished and worth £9350; the defenders averred that the buildings were only imperfectly finished, and not worth nearly so much.

The pursuers failed to pay the instalment of £425, 5s. due at Whitsunday 1878, and notice was sent to them on 31st May that the property would be advertised for sale. Further notice was sent on 11th June that the property would be sold in ten days, and on 31st July the property was exposed for sale by public roup at the upset price of £7000, and after some competition was sold for £7400 to George Mackenzie, coalmaster, Glasgow, who, however, afterwards brought an action to have it found that the sale could not be