life. There is nothing to be collected from the recital shewing an intention on the part of Major Somerville to make provision for the children in case his wife should die in his lifetime, and so he should never be called on to make provision for her. The deed, construed according to the literal meaning of the words, carries into full effect the recited intention; and I see no reason for endeavouring to extend its operation beyond what the language literally construed imports. On these grounds, I have come to the conclusion, that the decision of the Court of Session was right.

I will only add, that the doctrine of the English Courts, to which we were referred by Sir R. Palmer, in such cases as *Key* v. *Key*, 4 De Gex, M. & G. 70, and *Howgrave* v. *Cartier* (3 V. & B. 79), even if the rule of construction there acted on, and which had been established with great hesitation by Lord Thurlow and Lord Eldon, is to be acted on in Scotland, does not apply to the present case. In all those cases the Court of Chancery felt itself warranted in holding, that the object of the will or settlement must have been to make an absolute provision for all the children attaining twenty-one, though the language seemed to indicate the surviving of the parents as a condition precedent. No such doctrine can, in my opinion, be attributed to the deed now under consideration.

LORD WESTBURY.—My Lords, I regret that I cannot concur in the opinion of my noble and learned friends, but as this is a question not involving any general principle or point of law, but turning entirely upon the construction of a private instrument, I abstain from stating my reasons at length. It would be useless with regard to the decision itself, and if there be any validity or force in the reasons, it would only have the effect of weakening the confidence of parties in the judgment to which they must submit.

Sir Roundell Palmer.—I do not know whether your Lordships will allow me to say a single word on the subject of costs. Your Lordships will recollect, that this is a family case arising under the provisions of a will. The property in substance goes to the parties for their own life, though with remainder to their children, and over in case there should be no children. I do not know whether your Lordships will think that should be considered with reference to the question of costs.

Mr. Anderson.—There is no question upon the construction of the will. It is upon the marriage settlement.

LORD CHANCELLOR.—I do not know what my noble and learned friend thinks upon the subject of costs. Of course I intended to put the question to the House, "that the appeal be dismissed with costs." I do not know whether my noble and learned friend is of that opinion?

LORD CRANWORTH.—My Lords, I am sorry to say, that that is my opinion. I have always an inclination, in family suits, to make the costs of the parties come out of the estate, but this is not an ambiguity created by the testator.

Interlocutors appealed from affirmed, and appeal dismissed, with costs.

Appellants' Agents, J. T. Mowbray, W.S.; Loch and Maclaurin, Westminster.—*Respondents' Agents*, J. Shand, W.S.; Simson and Wakeford, Westminster.

MAY 20, 1867.

MRS. MARY NISBET or DIGGENS and HUSBAND, *Appellants*, *v.* WILLIAM ROBERT GORDON, *Respondent.*

Marriage Contract—Clause of Conquest—Wife's Conquest—Succession—*In an antenuptial marriage contract between D. and Mrs. D., D. assigned a policy of insurance to trustees, etc., and Mrs. D. transferred to them certain bank-stock, also "all sums of money, goods, gear, and effects, and heritable and moveable estates which she may conquest or acquire during the marriage." Her father died, and by his marriage contract she became entitled to a sum of £1500; and her share of his intestate succession was upwards of £17,000: these sums Mrs. D. succeeded to during the marriage.*

HELD (affirming judgment), *That the word "conquest" in the above clause was used in a popular sense, and included the above sums which Mrs. D. succeeded to, and therefore that her trustee was entitled to hold them under the trusts of the marriage contract.*[1]

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[1] See previous report 3 Macph. 609; 37 Sc. Jur. 299. S. C. L. R. 1 Sc. Ap. 136; 5 Macph. H. L. 75; 39 Sc. Jur. 434.

This was an appeal from an interlocutor of the Second Division as to the construction of a marriage contract. Mrs. Mary Wilhelmina Nisbet or Diggens and her husband raised an action against the trustee of her marriage contract, concluding for declarator that a sum of £1500 and her share of her father's estate were vested in her notwithstanding her marriage contract.

The condescendence set forth, that Francis John Diggens, Commander in the Royal Navy, in 1860, married Miss Mary Wilhelmina Nisbet, eldest daughter of Ralph Compton Nisbet, Esq. of Mainhouse, in the county of Roxburgh, and previously the parties executed a marriage contract appointing William Robert Gordon, solicitor in Banff, and others, the trustees of the marriage. By such marriage contract, the intending husband assigned to the trustees a policy of insurance on his life with the Standard Insurance Company, dated in 1854, for a sum of £200, and entered into the usual covenant to pay the premium. This sum was settled on his intending wife and the child or children of the intended marriage. The husband also obliged himself and his heirs and executors to pay his widow £50 for mournings if she survived him; and he also assigned to her such household furniture, etc., as might belong to him at the time of his death. There were no other provisions in the contract by the husband in favour of the wife.

On the other hand, Miss Nisbet assigned to the marriage trustees some bank shares of the North of Scotland Banking Company, amounting to £250; and then followed this clause: "And the said Mary Wilhelmina Nisbet hereby further assigns, dispones, conveys, and makes over to the said trustees all sums of money, goods, gear, and effects, and heritable and moveable estates of every description, wheresoever situated, which she may conquest or acquire during the subsistence of the said intended marriage." And she assigned all sums of money then standing to her credit in the banks.

The marriage took place, and on 2d November 1863 the lady's father died, leaving a considerable fortune. By her father's marriage contract he was bound to pay to the children of his marriage a sum of £3000; and as only two daughters survived, Mrs. Diggens was entitled to half that sum. Mr. Nisbet, as regards the rest of his estate, died intestate; and his estate of Mainhouse, in Roxburghshire, was of the value of £18,500, subject to a burden of £7500. He had also some house property in Banffshire, and personal estate in England and Scotland to the amount of £23,000.

The sole accepting trustee of Mrs. Diggens' marriage, the present respondent, claimed to hold all the sums which Mrs. Diggens thus succeeded to, and consequently, that such property would be subject to the trusts declared by such contract, which were in favour of the children. On the other hand, Mrs. Diggens and her husband claimed to have this money paid over to them absolutely free from the restrictions of their marriage settlement; and hence the husband and wife brought this action against their trustee to have it so declared.

Lord Ordinary (Ormidale), on construing the marriage contract, held, that the pursuers were entitled to succeed. On reclaiming petition, this judgment was unanimously reversed by the Second Division, who held, that the words had not been used in the technical sense, but in a popular sense, and comprehended everything which the wife might succeed to during the marriage; and, that this was clear from the fact, that it was the wife who entered into the obligation, which was an unusual thing, and from the relative circumstances of the parties—the husband having no property, and the wife herself having nothing but her expectations. The Court therefore assoilzied the defender from the conclusions of the action.

The pursuers appealed against the interlocutor of the Second Division.

The Attorney General (Rolt), *Sir R. Palmer* Q.C., and *Anderson* Q.C., for the appellants.—The Lord Ordinary was right, and the Second Division wrong, in the construction of this marriage contract. It is well settled, that the word "conquest" in such contracts includes only what one acquires by industry or other singular title, and excludes what comes by succession—Menz. Conv. 440; Erskine, iii. 8, 14; iii. 8, 43; Bank. i. 5, 12; Bell's Pr., § 1975; M. 3047—3075. If, then, the word has a definite technical meaning, there is no reason why that meaning should not be given to it here. It is said, that it ought not to receive the same meaning here, because this is a clause of conquest on the part of the wife and not of the husband; but a wife may earn money as well as her husband, as an authoress, artist, actress, and so forth. Here the husband renounced his *jus mariti*, and therefore the wife's earnings would remain her own. If a husband acquires money *jure mariti*, this does not come within the term "conquest"—*Mercer* v. *Mercer*, 1 Fo. Dict. 197, M. 3054; *Rae* v. *Fraser*, 23d Jan. 1810, F. C. The same meaning should be given to the word where the wife has by the contract separate estate, and is precisely in the same situation as to it as the husband is as to his own estate. It is also said, that the fact of there being a trust excludes the technical meaning of the word "conquest;" but this cannot change the character of the subject matter. At all events the sum of £1500 cannot be treated as conquest, for the father's marriage contract under which it was payable had already secured that sum to the wife before her marriage, and, therefore, it cannot be said to have been acquired during her marriage.

Giffard Q.C., and *Young*, for the respondent.—Though the word "conquest" may have a technical meaning in clauses on the husband's side, still it is an entire novelty for a wife to enter

into such an obligation, and there being no instance of any such case, or of any technical meaning being attributed to the word when used in reference to the wife, there is no reason why a technical meaning should be imported here. In strictness, whatever a wife earns becomes her husband's, *eo instanti*, and differs in no respect from what she gets by succession or legacy. Hence, when a trust is interposed, it is natural, that no distinction should be made between what she earns and what she gets by legacy. The word "conquest," therefore, would more properly be used in the popular sense of mere acquisition or coming into possession—whether of sums already secured by contract or existing as mere expectations. Even when used in reference to the husband, the word has a flexible meaning—*Duncan* v. *Raes*, 15th Feb. 1810, F. C.; *Douglas* v. *White*, M. 3049; *Prestongrange*, M. 3054. A conveyance in trust is incompatible with a clause of conquest—Erskine, iii. 8, 43; Bell's Dict., "Conquest." As to the parties here having contemplated, that the wife might, as an artist or actress, have earned large sums, the supposition is too extravagant as a basis for construction. The technical meaning, therefore, leads to so many absurd consequences, that the popular meaning may be taken to be that which was intended, and, if so, the Second Division was right in holding, that the legacies of the wife, as well as what came to her by virtue of her father's marriage contract, were included in the term "conquest." Indeed, the fact of the lady having large expectations at the time of her marriage points to the same conclusion.

Cur. adv. vult.

LORD CHANCELLOR CHELMSFORD.—My Lords, the question to be determined upon this appeal is the proper construction of a clause in an antenuptial contract of the appellants, dated 4th January 1860, whereby the wife assigned, disponed, conveyed, and made over to the trustees, of whom the respondent is the sole acting trustee, "All sums of money, goods, gear, and effects, and heritable and moveable estates of every description, wheresoever situated, which she may conquest or acquire during the subsistence of the intended marriage."

Under the marriage contract of Mrs. Diggens' father and mother, the father, after binding himself, and his heirs and executors, to pay to his wife, in case she survived him, an annuity of £150 for securing such annuity, bound and obliged himself to settle and vest a heritable bond for £3000 in trustees, the interest to be paid to himself during his life, and after his death to be applied in payment of the widow's annuity, and the principal sum, after the death of both the parties, to go to the child or children of the marriage, but in such proportions, and at such times, as the father might direct by a writing under his hand, and failing of such writing, to be divided equally amongst the children of the marriage.

There were two daughters of the marriage. The father having survived his wife, by a deed of direction dated the 11th July 1855, appointed one half of the £3000 above mentioned to the appellant by her then name of Mary Wilhelmina Nisbet, reserving his own liferent; and the deed contained these words—"I dispense with the delivery hereof, and declare these presents to be good, valid, and effectual, although found lying by me or in the custody of any other person to whom I may intrust the same undelivered at my death."

The father died intestate on the 2d November 1863, leaving heritable and moveable estates of considerable value, to which the appellant and her sister became entitled in equal moieties.

The questions upon the appeal are, whether the sum of £1500 appointed to the appellant by the deed of direction of the 11th July 1855, and moiety of her father's heritable and moveable estates, belong to the respondent as trustee under the marriage contract of the appellants, as having been conquested or acquired during the subsistence of the marriage.

In the construction of every instrument, whether will or deed, words must *primâ facie* be assumed to have been intended to be used in their ordinary sense, and if they have a technical meaning, that meaning must likewise prevail, unless it is apparent from the context, or from the whole purview of the instrument, that they require a different interpretation.

The word "conquest" is a word of technical signification, and according to Mr. Bell, in § 1974 of his Principles of the Law of Scotland, when used substantively in marriage contracts, comprehends whatever is acquired, whether heritable or moveable, during the marriage by industry, economy, purchase, or donation, but not what comes by succession, or legacy, or accession to a subject already acquired.

The ordinary provision of conquest inserted in marriage contracts, applies only to the husband's acquisitions during the marriage. Lord Cowan, in his judgment in this case, says, a provision made by a wife of her conquest during the marriage is unprecedented, and so far as any known style of contract of marriage can be relied on, or any reported decision on questions of the kind discloses, there is no instance on record of a wife providing in general terms, or specifically, conquest in its limited sense to her husband and children.

A wife (as was observed in argument) may acquire considerable sums during the marriage, by the exercise of her musical or literary talent, or by carrying on business; but, as the Lord Justice Clerk remarks, she cannot in any legitimate sense conquest or acquire anything, because whatever she acquires of moveable property passes to her husband, and if any heritable estate

comes to her by succession, that would not be conquest, and if by donation, that would be the very opposite of conquest of the marriage.

Of course, provision might be made respecting a wife's acquisitions during the marriage, under the term "conquest" in a marriage contract, if it was clear, that the word was meant to be used in the same technical sense as when applied to a husband's acquisitions. But the absence of any precedent of a deed in which a wife has made provision for her conquest, in the same sense in which a husband's conquest is provided for, raises a presumption, that when the technical word is found in a clause in a marriage contract, dealing with the wife's property, it is not intended to be used in its strict and technical sense.

The word in the present case is not used substantively, but as a verb, as to which Mr. Bell (*Prin.* § 1975) says: "The word 'conquest' is also sometimes used as a verb, 'what we shall conquest or acquire,' or its meaning is qualified by descriptive words, and the extent varies with the expression." By this I understand, that the word "conquest," when used as a verb, is more flexible than when used as a substantive. Being then at liberty to depart from the technical sense of the word, if there is a manifest intention, that it was not to be technically applied, the question arises, whether in the deed itself sufficient grounds are not to be found for the adoption of a different construction.

In an ordinary provision of conquest the husband is the absolute proprietor, during his life, of everything which comes under that denomination, and may dispose of it during his lifetime for onerous causes, but not gratuitously. Every acquisition made by the wife during the marriage belongs to him, unless his *jus mariti* is excluded. There is nothing in the smallest degree analogous to this in the marriage contract of the appellants. The whole of the wife's heritable and moveable estates of every description, which she may conquest or acquire, are assigned to trustees, and they are empowered, with the consent of the wife alone, to sell any of the heritable estates and convert them into money, both the parties binding themselves to execute all deeds necessary for vesting the heritable estates in the trustees. The husband is deprived of the power of touching the smallest portion of the property, and instead of the wife being the absolute proprietrix of it, as in the case of a husband with respect to his conquest, she is restricted to a command over a sum of £2000 for herself, or as a loan to her husband on security, and in case the husband survives, the trustees with his consent may advance to a child or children any sum not exceeding £2000.

Such a trust as this is entirely at variance with a provision of conquest. From the nature of the deed in its constitution of this trust, and from the character of its provisions, I am satisfied that the words "conquest and acquire" were not used in a strict technical sense, but were meant to comprehend everything which might fall to the possession of the wife during the marriage. This will include the £1500 acquired under the deed of direction of the 11th July 1855, as well as the moiety of the father's heritable and moveable estates. I therefore differ with the Lord Ordinary, and agree with the opinion of the Judges of the Second Division, and think their interlocutor ought to be affirmed.

LORD CRANWORTH.—My Lords, by the antenuptial marriage contract of the appellants, Mary Wilhelmina Nisbet and Francis John Diggens, dated in 1860, the appellant, Mary Wilhelmina Nisbet, assigned to trustees, *inter alia*, all sums of money, goods, gear, and effects, and heritable and moveable estates wheresoever situate, which she may conquest or acquire during the subsistence of the said intended marriage, on certain trusts afterwards declared. By the marriage contract of her parents, Ralph Compton Nisbet and Mary Cameron, a sum of £3000 had been settled on the children of that marriage, to go to them in such proportions as the father should direct. The said Ralph Compton Nisbet survived his wife, and died in 1863, leaving issue only two daughters, of whom the appellant, Mary Wilhelmina Nisbet, was one. By a deed of direction, dated in 1855, Ralph Compton Nisbet directed, that the trustees who held the £3000 should, after his decease, pay over one half thereof to his daughter, now Mrs. Diggens. This deed was not delivered as a deed, but was kept by him in his repositories. It contained, however, a clause declaring, that it should have full force at his death, notwithstanding the want of delivery. Mr. Nisbet left considerable property at his death in 1863, both heritable and moveable, to which his two daughters became entitled in equal shares, as heirs portioners and next of kin. The question for decision is, whether the £1500 so directed to be paid to Mrs. Diggens, and her share in the heritable and moveable estate of her father, were duly assigned by her to the trustees appointed by the antenuptial contract entered into on her marriage. The question turns entirely on the point, whether the property to which she so became entitled passed under the description of heritable and moveable estate which she might conquest or acquire during the subsistence of the marriage. The Court below held that it did; but the appellants dispute the correctness of that decision, on the ground, that property to which she succeeded as heir portioner and next of kin of her father, or to which she became entitled under her father's deed of direction, is not *conquest* according to the Scotch law. It cannot be disputed, that, when in a marriage contract the intended husband makes, in the ordinary form, a provision of conquest in favour of his wife or children, the word "conquest" has a well established definite meaning,

which, I assume, would not include any part of that to which Mrs. Diggens became entitled on her father's death.

A provision of conquest seems to have been an ancient mode of making a settlement for the benefit of wife and children, sufficient probably in early times, but ill suited to the exigencies of the present day. It was founded, as I collect from the opinion of the Lord Justice Clerk, on the hypothesis, that the spouses were bound together in a sort of partnership to endure during the marriage, and then, at the death of the husband, the result of their gains during the marriage, whether from frugality, industry, or purchase, was to be ascertained. This was analogous to the profits of a commercial partnership, and the result was treated as the "conquest" on which the contract of the husband, in favour of his wife and children, attached.

But it is impossible to attribute to the word "conquest," as used in this marriage contract, the same meaning as that which attaches to it in an ordinary provision of conquest by a husband. What is to constitute conquest, properly so called, cannot be ascertained till the death of the husband, but here, the assignment of what the wife shall conquest or acquire, operates immemediately on the accruing of her title to the property assigned. It is all to be held by trustees during the marriage on trusts irreconcilable with her retaining, or her husband retaining, any power or control over it. The argument, however, of the appellants was, that though the incident of conquest, properly so called, to which I have referred—I mean its leaving everything under the husband's control until his death,—might be inapplicable to the assignment contained in this settlement; yet it would be right to interpret the words "which she may conquest or acquire" as embracing only such things as constitute conquest properly so called. Now it is admitted on all hands, that a provision of conquest by a husband does not extend to or affect any heritable or moveable estate which comes to him during the marriage by succession or legacy, and therefore, reasoning by analogy, the appellants contend, that the words used in this antenuptial contract ought not to be taken as extending to the share of her father's heritable and moveable estate, to which she has succeeded on his death. I cannot agree to this argument. If no technical meaning is to be attributed to the words "conquest or acquire," no one would hesitate to say, that a married daughter, when her father dies and leaves a large property which descends on her, acquires that property during marriage. She certainly acquires it at some time, and if she does not acquire it during the marriage, when does she acquire it?

No authority has been produced to shew, that any technical meaning has ever been attributed to these words, "conquest or acquire," except in the case of a provision made by the husband, when, from the nature of the contract into which he is entering, the word "acquire" cannot have its ordinary meaning. Even if it were necessary to adduce arguments to shew, that the word "acquire" ought to have its ordinary meaning attributed to it, there are cogent arguments on the face of the deed leading to that conclusion. In the first place, the assignment here is by the intended wife, not by the husband, and it is highly improbable that a lady, one of two only daughters of a gentleman of fortune, should, on her marriage with an officer in the navy, think of entering into an engagement to settle what she should earn during the marriage by her own personal talents or exertion. Arguments were ingeniously put to shew, that she might during the marriage, as an authoress or an artist, earn large sums, to which she might intend her contract to refer. This seems to me highly improbable, and quite inadequate to justify the Court in giving to the words used a technical, instead of their ordinary, meaning. Besides which, as was truly said at the bar, all which a married woman might earn would from time to time, as it might be realized, become the property of the husband. But what seems to me to shew conclusively, that it is not to earnings or acquisitions in the nature of conquest technically interpreted, that the deed referred to, is the circumstance, that the property assigned is to go to the trustees, who are to deal with it during the marriage in the mode prescribed by the contract. This is inconsistent with conquest in its technical sense. It was admitted, that there is no authority for holding, that a provision of conquest had ever been made the subject of an assignment to trustees, and I am persuaded, that no such case does or can exist; such a trust would in fact be inconsistent with the nature of conquest. On these grounds, I think, that the decision of the Court below was right.

It was argued, however, that different principles may be applicable to the £1500 to which the wife was entitled under her parents' marriage contract, and the deed of direction executed by her father. The argument was, that though the precise amount to which she eventually became entitled was not ascertained till after the death of her father in 1863, yet she had an absolute indefeasible title to some part of the £3000 secured by the marriage settlement of her parents to their children, and so it was contended she could not be said in any sense to have acquired that sum during the marriage. But this is a very subtle refinement. She had not any part of the £3000 at the time of the marriage, and it is reasonable to understand her contract as extending to everything not then in her possession, but which should come by any means during the marriage. She makes over to the trustees a small sum of bank stock of which she was possessed at the time of the marriage, and the reasonable construction of the language used is, that she meant to deal with all, of which she should afterwards become possessed, in the

same mode in which she dealt with that which she already possessed. My opinion is, that the interlocutor of the Inner House ought to be affirmed.

LORD WESTBURY.—My noble and learned friends who have preceded me have stated their reasons for affirming this interlocutor so fully, and to my mind so satisfactorily, that it is unnecessary that I should weary your Lordships by a repetition of them. I concur entirely in affirming the interlocutor.

LORD COLONSAY.—My Lords, I entirely concur in the conclusion at which your Lordships have arrived. The attempt in this case to put on the word "conquest" the particular construction which the appellants contend for, is, to my mind, a perfect novelty. The word "conquest" here occurs in a marriage contract, and it is introduced into that marriage contract with two accompanying circumstances, which prevent me from giving to it the interpretation, that the appellants contend for. In the first place, it has reference to what may be acquired by the wife. That in a marriage contract is a novelty, and it would be very difficult of application—I would say almost impossible of application—if the word "conquest" be taken in the sense in which it is understood in reference to a provision of "conquest" in a marriage contract. In the second place, it is an immediate conveyance to trustees to be operative during the subsistence of the marriage. That again is entirely inconsistent with an ordinary provision of conquest in a marriage contract. These two circumstances seem to me to take the word "conquest" out of the interpretation which the appellants contend for. I am not quite certain, whether the appellants contend for the interpretation of "conquest" in this marriage contract in the same sense in which "conquest" provided by a husband is understood, or in the limited sense in which the word conquest is held to be applicable to heritable rights; but it is necessary for their case to put upon the word "conquest" the meaning for which they contend; and they endeavour to make that particular meaning of the word "conquest" communicate itself to the next word "acquire," so that the word conquest is to have this extraordinary, unusual, and unprecedented application in a marriage contract, and it is to destroy the ordinary meaning of the word that next follows it. I think these considerations are sufficient to shew, that the word "conquest" here was not used in the sense for which the appellants contend. Indeed, I think the use of the word here was simply a mistake, because, in the strict technical sense, it would lead to a construction contrary to all precedent, contrary to law, and it might, I think, lead to contending for impossible consequences. But if you get rid of the technical meaning of the word, the meaning of the contract itself, and the purposes and objects of the parties, are perfectly plain. It was intended to carry whatever was acquired by the wife during the subsistence of the marriage. I therefore think, that the judgment of the Court below was perfectly right.

Sir Roundell Palmer.—Will your Lordships permit me, as you have said nothing about expenses, to recall to your recollection the fact, that the Court below thought this a case in which no expenses should be given, and no expenses were given.

LORD WESTBURY.—My Lords, it has never been your Lordships' habit to give encouragement to appeals; and such encouragement would be given if, where no costs were given in the Court below, your Lordships adopted the course of not giving expenses on appeal. I think you ought not to do so. This is not a case of ambiguity arising on a will. And, certainly, I do not think that encouragement should be given to appeals, as would be done by the relaxation in such a case as this of the ordinary rule, that, unless under very exceptional circumstances, the costs follow the judgment.

LORD CRANWORTH.—My Lords, I concur with my noble and learned friend.

Interlocutors affirmed, and appeal dismissed with costs.

Appellants' Agents, A. Morison, S.S.C.; W. Robertson, Westminster.—*Respondent's Agents*, Morton, Whitehead, and Greig, W.S.; Martin and Leslie, Westminster.

MAY 20, 1867.

THE WESTERN BANK OF SCOTLAND, *Appellants*, *v.* ROBERT ADDIE of Viewpark, *Respondent; et è contra.*

Company—Misrepresentation—Restitution—Repetition of price of Shares—Manager and Directors as Agents—*A. raised an action against the liquidator of a joint stock banking company to reduce a purchase of shares, and claiming restitution on the ground of fraudulent representations contained in the reports of the directors, by which he was induced to purchase, or alternatively claiming damages. The liquidator pleaded, that A. had duly become a shareholder, that the*