not, either at the end of twelve months or at the end of a reasonable time thereafter, or a reasonable time after the death of the testator, the partners of the bank are entitled to have living shareholders on their register in place of the name of a deceased shareholder with his executry estate only standing there to meet the liabilities. And if executors put the management of an executry into the hands of an agent, and are aware that stock is being held for a period of years, I think they must be also held to be aware that there may be liabilities in the course of being incurred in the carrying on of such a bank business for which they may be becoming personally responsible. I hold that they are bound to make themselves to some extent acquainted with the provisions of a contract of copartnery of a company of which the deceased was a member, and particularly in relation to the footing on which they can for a period of time retain an interest with the other partners in the concern. To take the present case, if these executors had not been put on the register at the time they were, it may be presumed, I think, that at the end of twelve months, or within a short time thereafter, those in the management of the bank would have required either that the shares should be sold or that the executors should themselves become partners and so go on the register. But as the executors were already on the register and were each half-year recognising their position as shareholders by signing dividend warrants for the profits becoming due, those in the management of the bank were precluded from requiring that anything further should be done with regard to these shares. They could not require the shares to be sold, because the executors had taken them up. In that way, relying on the fact that the executors were upon the register, the other shareholders went on dealing with them, and creditors of the bank were entitled to rely upon the same circumstance. That being so, it appears to me that apart altogether from the facts, which I think here go clearly to show that these executors knowingly adopted the act of their agent—apart altogether from that—and looking to the general authority which the agent had—looking to the fact that the agent did put these gentlemen on the register, and that dividends were drawn for a period of years—I am of opinion that they are now barred, in a question with the shareholders or creditors of this bank, from demanding that their names shall be removed from the register.

It is said here that because of the intention to sell, which becomes very clear from the terms of a minute dated a few months before the bank failed, there should not be responsibility. But if a mere intention to sell were held to be sufficient to take off the effect of such acts as I have referred to, there seems to be no limit as to the time for which that might go on. In this case it was for four years. It might just as well be for eight or ten years, the trustees always waiting for a proper investment. I think it would be out of the question to say that executors should be so entitled to deal with stock.

It appears to me that this case raises no question between the trustees and the beneficiaries, but I think it right to say that I could scarcely concur with what has fallen from my brother Lord Deas as to the responsibilities of the trustees in that respect. I think under the eighth provision of this deed, which required that these trustees should as soon after the death of the testator as convenient proceed to realise the estate as it was left by the deceased and put it upon a safe class of securities, it would be very difficult to say that they had fulfilled their duty or obeyed the instructions of the truster.

The Court refused the prayer of the petition.

Counsel for Petitioners—M'Laren—Jameson. Agents—Carment, Wedderburn, & Watson, W.S.

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

Friday, October 24.

FIRST DIVISION

[Lord Rutherfurd Clark, Ordinary.

ADDIE & SONS *v.* HENDERSON & DIMMACK.

Arbitration—Disqualification—Where Arbiter also Referee.

A & H entered into a minute of agreement in 1872, whereby, *inter alia*, H was allowed to work minerals within a certain area, subject always to the opinion of G, a civil engineer, as arbiter. In 1878 G (who acted as standing engineer to A) advised him in an action against H in regard to coal workings in a distinct but neighbouring area. H subsequently having objected in 1879 to G acting as arbiter under the agreement of 1872, *held* that G was not disqualified in the circumstances from so acting.

This was a suspension and interdict raised by Messrs Robert Addie & Sons, ironmasters at Langloan Iron-works, Coatbridge, against Messrs Henderson & Dimmack, coal and ironmasters, Drumpellier, Coatbridge, who were tenants under Mr Buchanan of Drumpellier of certain coal and other minerals situated in the vicinity of the Langloan Canal and basin.

On 10th May 1872 the parties to this cause had entered into a minute of agreement with a view of settling certain litigations then in dependence between them. The second article of the agreement was as follows:—"The respondents (Messrs Henderson & Dimmack) shall have right to work the coal and other minerals, if any, let to them by said lease, beyond said area, and within the red lines marked G H I K L M N O on said plan, being a portion of the area which forms the subject of the second of said processes of suspension and interdict, subject to this restriction only, that they shall not be entitled to remove any of said coal and other minerals which in the opinion of Mr John Geddes, mining engineer, Edinburgh, whom failing Mr James M'Creath, mining engineer, Glasgow, will have the effect of injuring the Langloan Canal and basin or banks thereof, delineated on said plan, so that the same, or any of them, cannot be restored to such a condition as to be as available for use by the complainers as they respec-

tively are at present: It being hereby provided and declared that Mr Geddes, whom failing Mr M'Creath, and any assistants or others appointed by them, shall at all times have unrestricted access to the respondents' mineral workings, and to the working plans and surveys thereof, and Mr Geddes, whom failing Mr M'Creath, shall have power, by any writing under their hands, to prohibit the workings of such coal and other minerals, if any, within said area as will in his opinion have the effect foresaid."

By the tenth article it was provided that—"Any questions arising under this agreement shall be referred to William Watson, Esq., advocate, whom failing to Alexander Asher, Esq., advocate." Early in 1879 the complainers, having become seriously alarmed with the results of the respondents' workings under the area mentioned in article 2, appealed to Mr Geddes as referee under that article, and on 28th April 1879 Mr Geddes accordingly pronounced an order finding the proceedings complained of to be injurious, and prohibiting their continuance. Messrs Henderson & Dimmack notwithstanding carried on their works, and Messrs Addie & Sons raised this suspension and interdict accordingly to have them interdicted from working within the area mentioned in the second article, at least till they should receive Mr Geddes' permission so to do.

The respondents pleaded, *inter alia*, that "The second clause in the agreement founded on does not apply to the matters alleged"—the complaint alleging injury not to the Langloan Canal and its basin and banks, but merely to a tunnel through which the canal passes; and further that Mr Geddes was disqualified from acting as arbiter or referee, he having given professional advice and assistance to Messrs Addie during an action raised by them against the respondents on 2d December 1878, and founded on the said agreement, in which they sought to have certain underbuilding executed by the respondents within an area in the mineral field from which they had excavated coal, and to have payment for the coal so excavated.

On 17th June 1879 the Lord Ordinary (Rutherfurd Clark) pronounced an interlocutor granting the interdict craved, to which his Lordship added the following note:—

"*Note.*—1. The respondents maintained that the case stated by the complainers did not fall within the operation of the second article of the agreement, because they did not allege any apprehension of injury to the canal and basin and banks, but only to the tunnel through which the canal passes. The Lord Ordinary is of opinion that this argument is founded on too literal a construction of the agreement.

"2. They further contended that Mr Geddes was disqualified from exercising the functions conferred upon him by the article above mentioned. The complainers answered that this question could not be tried in this process. The Lord Ordinary has felt some doubt upon the point; but considering that the authority of Mr Geddes is a quality of the interdict which is asked, he thinks that he is bound to decide it. It can be tried in this process as well as in any other, and without any inconvenience.

"In the opinion of the Lord Ordinary the respondents have stated no relevant case of disqualification. They say that the complainers have consulted Mr Geddes or his firm professionally. But the question on which he was consulted is not shown to have any relation to the present. Indeed, it appears to the Lord Ordinary to be entirely different."

The respondents reclaimed, and urged the plea of disqualification.

The complainers replied that the area forming the subject of the proceedings of 1878 being distinct from that mentioned in article 2 of the agreement of 1872, Mr Geddes lay under no disqualification.

Authorities—*Trousdale & Son* v. *North British Railway Company*, 12th July 1864, 2 Macph. 1334, and 15th Nov. 1865, 4 Macph. 31; *Mackenzie* v. *Clerk*, 19th Dec. 1828, 7 S. 215; *Dickson* v. *Grant*, 17th Feb. 1870, 8 Macph. 566.

It was stated at the bar that in 1872 Mr Geddes was in the position of "standing engineer" to Messrs Addie, and Mr M'Creath was in a similar relation to Messrs Henderson & Dimmack.

At advising—

Lord President—In this case there seem to have been two pleas maintained in the Outer House by the reclaimers, who were the respondents there. The first was that the case of the complainers did not fall within article 2 of the agreement, but this was not urged before us. The other plea was that Mr Geddes, to whom an appeal was made to say whether the working of a certain portion of the minerals would or would not have the effect of injuring the Langloan Canal and basin, was disqualified from acting under what is called the "reference." Now, it is necessary to look into the nature of the agreement, which was for the purpose of settling certain litigations pending between the parties. The second head provides—[*reads article* 2, *as quoted above*]. Now, there were certain workings going on within this said second area, and the complainers resorted to Mr Geddes to know whether these workings could in his opinion be allowed to continue without injuring the canal and basin. Mr Geddes was quite clear that injury would be caused, and this note of suspension and interdict was presented to prevent Messrs Henderson & Dimmack from so working.

It is said that Mr Geddes was "referee" under this agreement, and perhaps it is true in one loose sense of the word; but he was not an arbiter for carrying out the purposes of the agreement generally. On the contrary, there is a clause of reference appointing two other gentlemen to settle "any questions arising under it." All that is left to Mr Geddes, or failing him to Mr M'Creath, is to say whether the workings by Messrs Henderson & Dimmack under the area designed in article 2 will or will not be injurious to the canal. I think it is most natural that to a party making arrangements of this nature the opinion of his general adviser should be conclusive in a reference of that kind, and from the explanation which we have had given from the bar it is obvious that both parties were acting on this kind of understanding. Mr Geddes had been the general adviser of Messrs Addie, as Mr M'Creath had been of Messrs Henderson & Dimmack, and nothing could be more natural

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

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

LORD MURE concurred.

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

The Court adhered.

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

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

Friday, October 24.

FIRST DIVISION.

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

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

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

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

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

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