succession under the late General's will, to consider those 16 years' services; though I do not in the least degree, not for an instant, blame them for having resisted this claim, because this settlement, as it is called, is of a very peculiar nature. It is not only leaving him £500, the two gold watches, and the mourning, but leaves him all the furniture of the house—the furniture of the dining room, drawing room and bed rooms, and even of the vestibule, is all left to this servant; therefore, I do not at all wonder that they disputed this instrument. I do not in the least degree throw any blame upon them for having so disputed it; but, though these parties have been brought here, and have been put undeniably to expense, and cannot in the least degree (the poor man suing here *in formâ pauperis*, as I suppose he did in the Court below) recover any part of their costs, nevertheless, I should hope and trust that they would take all these circumstances into consideration.

Interlocutor affirmed.

A. Simson, *Appellant's Solicitor.*—Maitland and Graham, *Respondents' Solicitors.*

APRIL 28, 1854.

W. DUNCAN and OTHERS (Brechin Gas Co.), *Appellants, v.* THOMAS HUNTER WHITSON, *Respondent.*

Copartnery—Construction—Transfer of Shares—Presumption—Obligation—*It was provided by the articles of copartnery of a gas company, that no partner should hold more than twenty shares. A. W., who held twenty shares, purchased twenty more in name of his brother T. H. W., who was then abroad, but who had left a commission and factory in favour of A. W., in terms sufficient to cover the transaction. T. H. W. was duly entered in the register of shareholders, and the dividends were paid to his brother for him. On his return to this country he repudiated the purchase, and declared that the shares were not his, but his brother's. The company thereupon required A. W. to find some other person willing to undertake the responsibilities of a shareholder. Before any new holder of these shares was found, T. H. W. wrote a letter recalling his repudiation, and expressing his willingness to undertake the responsibilities attaching to a copartner.*

HELD (affirming judgment), 1. *That the company's requisition did not amount to such an acceptance of T. H. W.'s repudiation as to bar his subsequent retractation; that, as he was now willing to undertake the responsibilities of a partner, the company were bound to receive him as such, and to pay the dividends to him.* 2. *That it was not relevant to aver that this was a mere device on the part of A. W. to evade the conditions of the contract of copartnery, by holding twenty additional shares in his brother's name.*[1]

The defenders appealed against the judgment on the following grounds :—"1. In the circumstances, it was to be taken as an established fact, that the respondent was not originally the owner of the stock in question; and he was barred from maintaining that he was originally the owner; and nothing had occurred sufficient to confer on him any subsequent right to it. 2. The respondent, as he was not, and never had been, a partner of the company, was not entitled to sue for dividends on its stock."

The respondent supported the judgment for the following reasons :—"1. The appellants have no legal interest in maintaining the pleas upon which their defence is rested; the only interest they could maintain, which is that of having a separate partner as holder of twenty shares of stock, is attained by the very fact of the receipt of dividends by the respondent as proprietor. 2. The respondent, having been admitted and registered as a partner in the books of the company, is entitled, as in a question with the company, to the privileges and advantages of a partner. 3. It is not competent to impugn the claims of the respondent without a reduction of the register. 4. The respondent having all along been liable as a partner, in consequence of the acts of his mandatory, and all that was required by the appellants having been accomplished by his adoption of the shares, and ratification of the acts of his commisssioner before any pretext of forfeiture, the appellants were barred from rearing up any pretended forfeiture. 5. The respondent having been recognized as a partner subsequent to the challenge, and nothing having subsequently happened to deprive him of his status, the refusal of payment of his dividends was illegal. 6. The resolution of the general meeting of the 31st July 1843 was illegal, and the attempted execution of such a resolution a contravention of the contract of copartnery."

---

[1] See previous report 23 Sc. Jur. 546. S. C. 26 Sc. Jur. 417.

Sol.-Gen. Sir R. Bethell, and *Anderson* Q.C., for appellants; *Rolt* Q.C., and *R. Palmer* Q.C., for respondent.

The arguments turned entirely on the conduct of the parties, and the construction of the letters in evidence.

LORD CHANCELLOR CRANWORTH.—My Lords, this is one of those unfortunate cases, of which, I have already had occasion to remark, sometimes we have, unhappily, too many specimens from that part of the United Kingdom north of the Tweed, namely, an enormous and expensive litigation, going through a great number of years, for a most inadequate object. This litigation commenced in the month of January 1845. The object was to recover three sums of £8 10*s.* It must, however, be admitted, that was not all; for, on the success or failure of that might depend the right of the parties to continue to receive annually £8 10*s.*, or whatever else might be the dividend upon certain shares in a gas company in a town in Scotland.

The suit was instituted by Mr. Thomas Whitson; and what he alleged by his summons was, that he was the holder of 20 shares in the company, of which he had been the holder since 1837—that the dividends had been regularly paid to him, or rather to his brother, as agent for him, up to a certain day in 1841 or 1842—that three dividends had accrued due, they being payable on the 1st of August, at the time when the suit was instituted in January 1845, which dividends had not been paid. The object of the suit was to compel the company to pay him those dividends. The company objected to the payment of those dividends; and they object, because, they say, that by the terms of the partnership the original capital, which was £1800, divided into 360 shares of £5 each, had been apportioned amongst certain persons, and that by § 3 of the contract it was declared, that "no partner shall hold more than 20 shares of the capital stock; and in case any of the partners shall acquire more, by succession or otherwise, he shall be bound to dispose thereof within two years after acquiring right thereto; and failing his doing so, the extra stock so held shall then fall and belong to the directors, for the benefit of the company; and the directors shall be entitled so to declare, by a minute entered in the books of the company."

Now, the first question is—What is the meaning of that clause? for, on the very surface of it, it admits of two constructions. On the part of the company, it is said, it means absolutely to prohibit any party being interested, legally or equitably, either by original purchase, or by succession, or in any other way, either in his own name or in the name of any trustee for him, in more than 20 shares. Not so, says the pursuer, the present respondent—that is not the meaning. The meaning only was, that for every 20 shares there shall be a partner in the books, which would secure for the 360 shares a partnership stock of £1800; and when that stock was augmented, as it was, would secure more; and as a great number, probably, would not hold the full amount of 20 shares, it would secure an extensive partnership, each of whom would be responsible for the liabilities of the company.

Now, unfortunately, we have not the deed before us; much light might have been thrown on what was the real meaning, if we had had that instrument. Mr. Anderson says, it was incumbent on the pursuer to have brought forward that deed if he thought it material to his case. I cannot agree in that remark. There can be no doubt it was for the pursuer to bring forward in his case everything necessary to make out his case; but the pursuer makes out his case by saying, "I was a shareholder, and these dividends have become payable, and I therefore claim the dividends." That is the case of the pursuer. If the company met that case by saying there was something in the deed which prevented your claiming the dividends on those 20 shares, then, I think, it would have been incumbent on them to bring forward the instrument in its integrity, in order to enable your Lordships to construe it; and, I think, therefore, that whatever doubt or difficulty there may be in the construction, is to be attributed, not to the pursuer, but to the original defenders, the present appellants.

Now there are two modes in which this clause may be construed. It may mean, as is contended for by the appellants, that, under no circumstances, shall any one, either in his own name, or any other name, hold more than 20 shares. It may mean, as has been suggested by the respondent, in any event, that there should be such a number of partners, as that for every 20 shares there should be a partner. Now, which construction ought your Lordships to put upon it? I think, in the state of doubt in which we are placed, it is fair to say, that the construction put upon it by the company is that which your Lordships may safely adopt; and I cannot entertain the least doubt but that the meaning the company put on it—that which they held out to Alexander and Thomas Whitson—was only that there might be somebody responsible for every 20 shares. If that be so, then the judgment below was correct, and I come to that conclusion upon looking at the facts of the case chronologically. Mr. Alexander Whitson lived in Scotland, and was originally an owner himself of 20 shares in this company. His brother was a mariner abroad; and the speculation appearing likely to be a prosperous one, the secretary of the company, in the beginning of January 1837, at the time when the stock was extended, proposed to Mr. Alexander Whitson to take more shares—that is, to get some friend to take them for him. Certainly, if it turned upon that letter only, I believe at that time Mr. Gordon did not

think any one could lawfully, in strictness, hold any shares in the name of a trustee for him. I think that that is the fair interpretation of his letter. He says—"We have still a few shares remaining at the disposal of the directors; and although we cannot allot any more in your name, (as you already hold the maximum number allowed by the contract,) probably you have some friend who may wish to take a few shares in what, I have no doubt, will ultimately turn out an excellent investment." If I am to interpret that, I think he did mean, not knowing exactly what the legal construction was, to suggest to Mr. Alexander Whitson to take them in the name of a friend: if that friend chooses to have them, let him have them; if not, that will be an affair between you and your friend—as far as the company is concerned that will not be looked into. I think that was the suggestion he meant to make, doubting, however, whether that was strictly in compliance with the deed of partnership or not. Upon that Mr. Alexander Whitson, who, it seems, had a sort of power of attorney to act for his brother, who was a mariner at sea, agrees to take, first 10, and afterwards 10 more, viz., 20, in the name of his brother, the present respondent, Mr. T. Whitson. He agrees to take these shares and pay the money. I have not the least doubt that the real transaction was this—that Alexander meant to take them in his brother's name for himself, probably with the reservation, that if his brother chose to have them he might have them. There was no very definite meaning about it. The sum was extremely small. They did for some time pay a very considerable per centage; they were only £5 per share, and the whole sum paid would not be more than £100. The matter was not of very great importance, but he took them, I daresay, with that sort of doubtful feeling as to what would be the result of it—Alexander meaning his brother to have them if he liked; if not, he would take them himself. For four or five years the dividends were regularly paid to Alexander, both upon his own shares and on his brother's shares; and the brother is said to have returned about the year 1837. That is probably so; but I should be very loth to decide upon that as a matter of fact, there are so little data upon which to form a judgment. The great probability is, that if he returned in 1837, he must have known that the shares were standing in his own name—that is a very legitimate inference. The gas company paid their dividends to Mr. Alexander Whitson, who, I suppose, lived in the town or in the neighbourhood, and received his receipts, which was perfectly satisfactory to them. Then, there was some alteration intended in the company, and a circular was sent to all the shareholders, intimating that a general meeting would be held on 4th July 1842. That circular was sent round, among other shareholders, to the present pursuer, Mr. T. Whitson, treating him as being a holder of shares. In answer to which it was said, and there is some truth in the suggestion, that if this letter had had a postage stamp on it, this litigation would never have arisen; but, unfortunately, it was sent to Mr. Whitson, who seems to have taken a huff at the letter not being prepaid. He says—"I beg to inform you that I have nothing to do with it. There are several shares put down in my name. These do not, or ever did, belong to me, but to my brother Mr. Whitson of Parkhill; so, for the future, you may save yourself the trouble of sending me any more circulars. I also beg to state, that had I been aware of the contents of the above mentioned letter before I opened it, that I should not have received it, as I make a point of not receiving any letters which are not prepaid." This opens up a little angry discussion between the parties, but the inference from it is irresistible, that he knew that the shares were in his name—that he had nothing to do with them—that they were his brother's shares, and that his brother was the person to whom they ought to apply. Now, what ought the company to have done, if they meant to have said—"You have no business, Mr. Alexander Whitson, to hold more than twenty shares; the deed prevents that"? They mislead him, because they send to him, very shortly after the receipt of this letter, signed by the manager of the company, in which is copied an extract from a resolution which had been passed by the board of directors. The letter of the 11th July, from the manager of the company to Mr. Alexander Whitson, says—"I beg to call your attention to the annexed extract from the minutes of the directors of the 7th curt. There were laid before the meeting a letter from T. H. Whitson, Esq., of 12 Rose Terrace, Perth, denying that he held any shares; and a letter from Alexander Whitson, Esq. of Parkhill, requesting a remittance of his own dividends and Mr. T. H. Whitson's. The directors request the treasurer to write Mr. Alexander Whitson, that the shares in the name of T. H. Whitson must be transferred to some person who admits his responsibility for the affairs of the company before any dividend can be remitted." I think the meaning of that was—they are now standing in the name of the person who says that he repudiates it altogether—that, though he knows of it being in his name, he has nothing to do with it, and never has had. That is not the footing on which the company chose to stand, because they choose to have one partner, at least, responsible for every 20 shares. You must get them transferred to some one who will acknowledge his responsibility. That is what I meant by saying that, in a doubt of what the true meaning of the deed is, we must take as against the company their own interpretation. That letter, of course, reached Mr. Alexander Whitson, and he writes in answer:—"I regret to think that Mr. T. H. Whitson of Perth should have given your directors so much trouble, instead of communicating with me personally. It was at the suggestion of Mr. Gordon that I agreed to take the additional stock standing in his name—a regulation of the

company precluding me from holding more than 20 shares ; but I distinctly admit to the full my responsibility for his Mr. T. H. W.'s shares ; which explanation will, I trust, prove satisfactory to the gentlemen composing your direction." He thought the difficulty was cleared up by his admitting his responsibility in respect of his 20 shares. The company very truly say—That is not sufficient, because, holding a single share, you are responsible to the last shilling you possess in the world. We do not get any additional responsibility from you because you hold 40 shares instead of 20 shares. It is to meet that case, that we require that there shall be a partner for every 20 shares ; therefore that will not do.—That is what I conceive passed in the minds of the directors. In consequence of that, a few days after that, the manager writes this letter on the 21st July, to Mr. Alexander Whitson :—" I duly received your letter of 13th current. A meeting of the directors was held on the 18th, but I omitted to bring your letter before the notice of the meeting. I have, however, shewn it to some of the individual directors, and I have reason to believe that it will not be considered satisfactory, inasmuch as I conceive the directors will think it requisite that the shares at present in the name of Mr. T. H. Whitson will require to be held in the name of some person different from yourself, who would undertake the responsibility attaching to the holding of these shares. Having omitted to lay your letter before the meeting of the directors, I have thought proper to write to you on the subject." That is all misleading him, if the construction is such as the appellants now contend for, because the irresistible inference from that letter is, not that you cannot be the holder of those 20 shares in the name of somebody else, but it must be in the name of some other real person who shall be responsible, in addition to the responsibility that we already have from you. In consequence of that, I suppose, on the 1st of August, a new dividend became due. Being a matter of very small amount, no one thought much about it ; but on the 6th December following, Mr. T. H. Whitson, at the instance, no doubt, of his brother, writes to the directors, telling them to pay the dividends to his brother Alexander ; and I think that the fair inference from that, as put by Mr. Rolt and Mr. Palmer, is, that he meant to consider them as in his name, because his direction as to whom the dividends were to be paid would be nonsense, were it not that that was evidence that he admitted that he was entitled to receive the dividends. When he wrote to them,—" Pay the dividends for the future to Alexander," that was, in fact, an adoption of himself as one of the partners in the concern, because otherwise it was a nonsensical direction. He writes on the 6th December, telling them to pay the dividends to his brother Alexander, to which he is answered by the manager :—" I received your favour, dated 6th December, desiring me to pay the dividend due on the shares of the Brechin Gas Light Company, standing in your name, to Alexander Whitson, Esq. of Parkhill. I beg leave to say, that there will be a meeting of the directors this week, or early in the next, and I shall lay your letter before them ; and if I am instructed to the effect of remitting him the money, it shall be done immediately ; and if otherwise, I shall let you know. I may just say, that, on looking at the minute of the directors of 7th July last, of which Mr. Alexander Whitson has an extract, that I am afraid they will not be inclined to pay it." That was the extract saying that the shares must be transferred to the name of some person other than himself—some responsible person other than Mr. Alexander Whitson. Now, I confess, I think the reasoning upon the subject that was passing in the minds of these persons was very natural and very proper. They would know, in point of law, that these shares were standing in the name of Thomas—if they were put by Alexander in the name of Thomas without his assent —that he did not agree that they should stand in his name—that in truth the only person responsible was Alexander ; therefore they were, in fact, standing in Alexander's name, though in their books they had written them in the name of Thomas. It is therefore, he says, that he thought the directors would require them to go into some distinct name. Now I think that was a mistake, because, if all they required was the liability of some person other than Alexander, the moment that Thomas had agreed to admit that they were in his name, with his assent, that was an independent name. Probably they did not look minutely, in a very accurate lawyerlike way, into the case—they thought it should go into the name of some one whom they called an independent person. So the matter stands. The manager writes again, telling them that the suggestion of the 7th July must be complied with, which is, that the shares must be transferred into some independent name—some person capable of holding them according to the terms of the contract ; not at all meaning to retract what they had said before, that if that is done, that is to be the same as if some one held them for you. In answer to that, what Mr. Thomas Whitson writes is this :—" I beg to withdraw my letter to you of the 27th June 1842, and request you will pay Mr. Alexander Whitson any past or current dividend due on the shares of the Brechin Gas Company, standing in my name." Now, what is contended for is, that that was an absolute acceptance of them—that that is the only interpretation that can be put on it. I think that is a very legitimate construction. I think the consequence of that was, that he did admit to the company that the shares were properly standing in his name—that he was, as between him and them, the owner of the 20 shares—" I withdraw anything I said which is at variance with such a suggestion—treat me as the owner, and dispose of the dividends accordingly."

My Lords, that being so, it appears to me that the judgment which the Court of Session came

to was the correct judgment; consequently the advice that I should humbly tender to your Lordships is, that it should be affirmed. I quite agree with what has been said by Mr. Anderson, that it is the duty of your Lordships to decide these cases, whether they relate to small matters or to large matters, simply and singly upon the view of what is the correct law, and what are the real rights of the parties. We have no right to say, because we feel that repugnance which every one must feel when such little matters are brought into litigation, that we ought to stretch the law upon the one side or the other in the least, and we are bound to look at it just as if it were £800,000 instead of £8 10*s*. But be that as it may, acting upon that principle, nevertheless I must say, that I rather rejoice at coming to the conclusion that this appeal should fail, because it is really a matter of scandal that appeals upon such trifling matters, which are hardly worth the journey of the agent to London, should, so often as they do, encumber your Lordships' House.

Interlocutors affirmed with costs.

Maitland and Graham, *Appellants' Solicitors.*—Richardson, Loch, and Maclaurin, *Respondent's Solicitors.*

MAY 15, 1854.

W. P. R. SHEDDEN, *Appellant*, v. R. S. PATRICK, W. C. PATRICK, and W. PATRICK, *Respondents.*

Alien—Naturalization—Marriage—Legitimation—Service—Res Judicata—Reduction of Judgment of House of Lords—Process—Statutes 7 Anne, c. 5; 4 Geo. II., c. 21—*A man born in Scotland, and who afterwards succeeded to an estate there, went to America in* 1763, *where, with the exception of a short visit to Scotland in* 1769, *he remained till his death in* 1798. *On deathbed he solemnized a marriage with a female with whom he had had illicit intercourse, and who had borne him several children in New York, among others a son, born about* 1794. *A nephew in Scotland, who, failing legitimate issue of the deceased, (who left no settlement of Scotch heritage,) was heir to the Scotch estate, was duly served and retoured to it in* 1799. *The son and his factor* loco tutoris *brought a reduction in the Court of Session, in* 1801, *of the service, on the ground that, having been legitimated by the marriage of his parents, he was the nearest heir; but the Court of Session, in* 1803, *dismissed the case, and the House of Lords (on the ground, as alleged, that the pursuer was an alien,) affirmed the judgment in* 1808. *In* 1848 *the son within three days of the elapse of* 40 *years subsequent to the date of the judgment of the House of Lords, again brought a reduction of the service, &c., and of the judgments of the Court of Session and House of Lords, partly on the ground that they had been obtained by fraud and collusion of the factor* loco tutoris *and others, and partly on the ground of* res noviter, *to the effect that it was lately discovered that his father was a domiciled Scotsman, and that the pursuer, being legitimated, was entitled to his succession.*

HELD *that, even supposing the pursuer to have been legitimated* per subsequens matrimonium, *yet, being born illegitimate, (that is, having at his birth no father, in the eye of the law,) out of the allegiance of the Crown of Great Britain, he did not come within the scope of the statutes as to naturalization; that he was therefore not entitled to sue in this country; and that such was the substance of the previous judgment in the House of Lords.*[1]

The late William Shedden of Roughwood, father of the pursuer, and uncle of the defender William Patrick, in 1763, when about fifteen years of age, left Scotland for America, where, with the exception of a short visit to Scotland in 1769, he remained, carrying on business as a merchant till 1799, when, the war of independence having broken out, he retired to Bermuda. On the conclusion of the peace in 1783, he returned to New York, and there formed a connection with a person named Anne Wilson, of which were born the pursuer and a daughter. He continued to reside in New York till 13th November 1798, when he died, having solemnized a marriage with Wilson on the 7th of the same month. He left a deed of settlement appointing certain parties in America (of whom John Patrick, William's brother, was one) his executors, and conveying his property to his children in equal portions. The deed made no mention of the heritable property in Scotland. William Shedden also left a letter, dated 12th November 1798, addressed to the defender William Patrick, stating that he had married Anne Wilson; that one of his children was a boy; "I have ordered my executors to send him to you." The letter contained a remit-

[1] See previous report 11 D. 1333D: 12. 696; 14 D. 721; 22 Sc. Jur. 318; 24 Sc. Jur. 331. S. C. 1 Macq. Ap. 535: 26 Sc. Jur. 420.