special general meeting was (in the circumstances which brought this clause into operation) actually called for the purpose contemplated by the clause (for winding up is dissolution) on the 5th of October by the manager under the authority of the directors; and the circumstances were such as to make it certain, beyond the possibility of doubt, that the alternative course contemplated by the deed could not and would not be taken. The directors in issuing that notice under the deed were clearly acting in the due discharge of their duty as the common agents of all the then shareholders, however much they might have previously departed from their duty in any other respects. What was the consequence? Under the deed itself there was from that moment an inchoate dissolution, subject only to a contingency which could not happen, but which, even if it had been possible, would not have prevented the notice from having the effect of an inchoate dissolution until it actually happened. From the time when the machinery for dissolution created by the deed was so put in motion (and which would naturally prevent the creditors from pursuing other remedies equally effective which they might otherwise have immediately put in force by presenting a petition for compulsory winding-up under the Companies Act of 1862) I consider that the bank was, by the very terms of the common contract, incapable of continuing its business, and that the directors could thenceforth do nothing except on the footing of dissolution. They were, therefore, right in refusing to accept or register any transfer, &c., the whole arrangements of the deed for changes in the constitution of the partnership being of a kind to which the obligation to dissolve necessarily put an end.

Lord Blackburn—My Lords, the City of Glasgow Bank closed its doors on the 2d of October; on the 5th October the directors convened an extraordinary general meeting for the 22d of October, for the purpose of passing resolutions to wind up the bank voluntarily, and on that day the resolutions were passed. The appellant was a person whose name stood on the register, and who had taken steps to transfer his shares; and after the 5th October, and before the 22d October, brought the transfer to be registered. The directors refused to do so, not on any special ground applicable only to this particular transferror, but on the general ground that under such circumstances they were not warranted in registering any transfer of bank stock.

The present proceeding is under the 35th section of the Act of 1872, and the first question, which if decided in favour of the respondents disposes of this and also of some other cases, is, Whether a refusal of the directors under such circumstances to register any transfers during the interval between the stoppage of the bank and the holding of the meeting on 22d October was a rightful refusal or was a default? This is, I think, a new question, not decided by any authority either in English or Scottish law which I have been able to discover.

If either those who framed the Act of 1862, or those who framed the deed of copartnership, had thought of providing for such a case, I cannot much doubt that it would have been expressly declared that it should not only be in the power, but should be the duty of directors to act as those did; but it has not been provided for expressly. I have felt more hesitation than either the Court below, or I believe any of your Lordships, as to how far we can properly import a condition which, however just and expedient, is not in terms expressed. But I have come to the conclusion that we must hold that the directors had authority to do this.

The board of directors are constituted the managing body of the company, and as such are agents of necessity, having authority to act for it in all cases of emergency where there is not time to consult their constituents. And therefore when the bank stopped payment they were acting strictly within their implied authority when they closed its doors and convened the extraordinary meeting; and it seems to me that no such meeting could properly and effectually be convened if all or any of the shareholders who were on the register and liable for its debts could use the necessary interval so as to escape from that liability. The maxim *Quand alioquid, mandatur, mandatur et omne per quod pervenitur ad illud*, is, I think, founded in reason, and applicable to these cases. And consequently, I think that, having come to the conclusion that authority was given to the directors to convene the meeting, I am bound to conclude that authority was also given to them to suspend the registration of all transfers till the result of the meeting so convened was known.

I consequently agree that this appeal must be dismissed, with costs.

Lord Gordon—My Lords, I am of the opinion expressed by my noble and learned friend on the woolsack, and I concur in the motion which he has proposed.

Interlocutor appealed against affirmed, and appeal dismissed with costs.

Counsel for the Appellant—

Counsel for the Respondents—Kay, Q.C.,—Benjamin, Q.C.,—Davey, Q.C.,—Kinnear.

Tuesday, May 20.

(Before the Lord Chancellor (Cairns), Lord Hatherley, Lord O'Hagan, Lord Selborne, and Lord Gordon.)

CITY OF GLASGOW BANK LIQUIDATION—
—(*KER'S CASE*)—ALAN KER (FYFE'S TRUSTEE) *v.* THE LIQUIDATORS.

(In Court of Session January 24, 1879, *ante*, p. 285)

Public Company—Winding-up—Circumstances from which Authority to Register inferred.

The name of a trustee under a marriage-contract was by the instructions of the agent to the trust entered along with the names of his co-trustees in the register of members of a joint-stock company. The trustee himself never by any formal writing accepted office,

nor did he directly authorise his name to be placed upon the list of shareholders. He, however, shortly after the marriage signed as trustee a warrant authorising payment of the dividend, and he accepted in the same capacity the transfer of some railway stock belonging to the trust. On more than one occasion he expressed a wish to resign, but without actually resigning. On the dissolution of the marriage he sent a formal declinature of office, which was accepted and acted upon by the other trustees.

Held (*aff.* judgment of Court of Session) that in the circumstances as proved he had by his actings accepted the office of trustee, and had assented to the transfer of stock into his name, and that even if he had resigned the trusteeship afterwards, which he had not, the resignation was inoperative, as it had not been communicated to the bank.

This was an appeal at the instance of Mr Alan Ker against a judgment of the First Division of the Court of Session refusing a petition at his instance, in which he sought to have his name removed from the list of contributories of the City of Glasgow Bank. The circumstances of the case are sufficiently narrated in the report of the case in the Court of Session, *ante*, p. 285, and in the opinions of their Lordships in the House of Lords (*infra*).

At delivering judgment—

Lord Chancellor—My Lords, in this case the name of the appellant appeared on the register at the time of the winding-up as holder of shares in the bank as a trustee under the marriage-contract of Mr and Mrs Fyfe, dated the 2d of October 1855. Two questions have been raised upon the appeal—first, did he ever accept the trust of this settlement? and, secondly, if he did, did he authorise the shares in the bank to be transferred into his name, or did he know they had been so transferred?

With regard to the acceptance of the trust, I think it clear that he did accept it. The evidence is both documental and verbal. As to the documentary evidence, it is not derived from the marriage-settlement itself, for the marriage-settlement is not executed by any of the trustees, but in the month of March following (1856) there is a transfer by Mrs Fyfe, as executrix of one Bogle, to the four trustees of the settlement—Neilson, Hall, Welsh, and the appellant—of certain Glasgow and South-Western Railway stock, and the transferees are described as "trustees nominated under and by virtue of the said antenuptial contract of marriage," and the appellant and his co-trustees agree in that capacity to take the shares. This deed is signed by the appellant, and his signature is witnessed by Mr M'Clure, the law-agent of the trust. This alone would seem to me to be conclusive. There is, however, the further written evidence of a dividend warrant of the 7th of August 1856, running thus:—"Pay to Mrs Fyfe, or bearer, £9, 2s., being dividend . . . on 30 shares of the City of Glasgow Bank standing in the name of trustees for Mr and Mrs Fyfe under marriage-contract." This is signed by the appellant and his co-trustees, each adding the word "trustee" to his name. There is further the letter of the 20th February 1868, written to Mr M'Clure at Greenock by the appellant from Liverpool. Mr M'Clure had called a meeting of the trustees upon the death of Mr Fyfe. The appellant writes:—"Dear Sir, I am very sorry to hear from Mr Fyfe's son of the death of his father. He says you wish to have a meeting of the trustees under the marriage-settlement to-morrow. I regret, however, that I cannot go north at present."

With regard to the parole evidence I need not go beyond that of Mr Ker himself. He nowhere says that he did not accept the trust. He was a merchant at Greenock, and the agent there of the Glasgow Bank. He must have known perfectly well the meaning of the dividend warrant, and all he says about it is—"I did not know that I was registered as the owner along with my co-trustees of these shares. I did not know that my individual name was there, but I knew that the 30 shares were registered in the names of Mr and Mrs Fyfe's trustees. I signed the warrant as one of Mr and Mrs Fyfe's trustees." Then he says—"After I removed to Liverpool I met the late Mr J. Welsh, and had a conversation with him about this marriage. He said to me—'Now that Fyfe is dead, there is no use of your being on the trust, or of my being on it. We run no risk, but we may as well be off it. Write me a note on the subject.' I have a very distinct recollection of writing to him to the effect that being away from Greenock, and being of no use to the trust, I begged to get my name removed." I need hardly say that this evidence is only consistent with the idea of the appellant having been a trustee of the settlement.

I now come to the circumstances under which his name was placed on the register. It appears that this was done through Mr M'Clure, who wrote to Neilson, one of the trustees, at Glasgow. Neilson is now dead, but his letter, dated the 10th March 1856, states that he had called at the City Bank, and expected to have the matter closed next day, having left the marriage-contract at the bank. On the 12th of March 1856 he writes thus—"City Bank, new certificate in trustees' favour received." It is to be observed that the bank stock having been included in the marriage-settlement it would become the duty of the trustees, and of their legal agent, to provide in some way for the perfecting of the title by the trustees to the stock, and for preventing any improper dealing with it by the original owner. Whether a transfer of the stock into the names of the trustees was the only way in which this could be done it is unnecessary to consider. It clearly was one of the ways; and the action of Mr M'Clure in obtaining a transfer of the stock, if it was not sanctioned beforehand by the appellant, might naturally be approved by him after he knew it. The dividend warrant, to which I have already referred, clearly shows that he did know it on the 7th of August 1856, if not sooner, and he made no objection to it. His position as agent of the bank would make him familiar with the meaning of the warrant, and he does not in his evidence deny that this was the case. He says—"From having signed the warrant, I conclude I must have known that there was City of Glasgow Bank stock under the marriage-contract, but it had escaped my memory;" and further on he says, in the words I have already quoted—"I did not know that I was registered as the owner along with my co-trustees of these shares; I did not know that my individual

name was there, but I knew that the 30 shares were registered in the names of Mr and Mrs Fyfe's trustees. I signed the warrant as one of Mr and Mrs Fyfe's trustees." He was a trustee, he signed as a trustee, and he knew that the shares were registered in the names of the trustees. My Lords, I can readily believe that Mr Ker, being at a distance from Greenock, may have subsequently forgotten much about this; but unfortunately the facts cannot be got over, and they appear to me clearly to establish both his trusteeship and his assent to the transfer of the stock into his name.

It was attempted to be argued that in 1868, after the death of Mr Fyfe, the appellant by letter of the 4th of April 1868, resigned the trust, and that the other trustees afterwards acted as if they were the sole trustees. I should doubt whether the letter in question bore the formal character of a resignation of the trust; but even supposing it to have been a resignation, it was not in any manner intimated to or acted upon by the bank, and the case in that respect comes under the authority of the previous decisions of your Lordships.

On the whole, I have to move your Lordships that the interlocutor appealed from be affirmed, and the appeal dismissed with costs.

Lord Hatherley—My Lords, after the decisions which have already been come to by your Lordships, there is really no question of law remaining for decision in this case. The facts are plain and conspicuous. I am of opinion that the appellant became a trustee, and that he sanctioned the entry of his name upon the register as the owner of the shares.

Lord O'Hagan—My Lords, this is a peculiarly hard case; but the decisions at which your Lordships have already arrived appear to me conclusively to establish the appellant's liability.

It would be idle to repeat the full statement of all the facts which has been made by the Lord Chancellor. They result in this, that although the settlement of Mr Fyfe was not executed by the appellant, he was named in it as a trustee, described himself as such under his own hand, acted as such in accepting the transfer of railway stock, and by the dividend warrant of the 7th August 1856, at once demonstrated his knowledge that the bank shares had been vested in him and his co-trustees, adopted the acts by which they were vested, and assumed all the responsibility arising from the possession of them. That document seems decisive against him, unless he subsequently got rid of the responsibility of which it was the evidence. But he never got rid of it. He never resigned the trust which he had accepted. He seems to have desired to resign it, and to have suggested his resignation, but the desire and suggestion were not carried into effect; and the correspondence shows, in its reference to the proposed meeting of the trustees and otherwise, that he did not regard himself as relieved from this trust. Even if there had been a resignation, it was not, confessedly, communicated to the bank; it was not used to remove his name from the register, so that creditors and shareholders might know of the loss of such security as it had afforded them; and it would have been ineffectual to nullify that security. I do not rely on the effect of his position as agent at Greenock, which appears to have been regarded in the Court of Session as strengthening the case against him; but, on the grounds that he accepted the transfer, and by no subsequent act denuded himself of the liability that they imposed upon him, I feel reluctantly obliged to concur in the proposal of my noble and learned friend.

Lord Selborne—My Lords, I agree.

Lord Gordon—My Lords, I concur.

Interlocutor appealed against affirmed, and appeal dismissed, with costs.

Counsel for Appellant — Higgins, Q.C. — M'Learn. Agent—Andrew Beveridge, Solicitor.

Counsel for Respondents—Kay, Q.C.—Benjamin, Q.C.—Davey, Q.C.—Kinnear. Agents—Martin & Leslie, Solicitors.

Tuesday, May 20.

(Before Lord Chancellor (Cairns), Lord Hatherley, Lord Selborne, and Lord Gordon.)

CITY OF GLASGOW BANK LIQUIDATION—(*TENNENT'S CASE*)—HUGH TENNENT *v.* THE LIQUIDATORS.

(In Court of Session, Jan. 22, 1879, *ante*, p. 238.)

Public Company—Partnership—Reduction of Contract—Fraud—Recission of Contract—Commencement of Winding-up—Act 25 *and* 26 *Vict. c.* 89 (*Companies Act* 1862), *secs.* 18, 38, 84, 130.

A shareholder in a joint-stock bank, which was registered under the Companies Act of 1862, raised an action of reduction of his contract, alleging that he had been induced to purchase stock through the fraudulent misrepresentations of the directors and the manager. The summons was served on the day before that on which it was resolved to wind-up voluntarily, but after the bank had stopped payment, and after the directors had published a notice summoning a meeting of shareholders for the purpose of passing a resolution to wind up voluntarily, and also after certain men of business, who had been appointed by the directors to make an investigation into the affairs of the bank, had published a report which showed that there was a deficit of over £5,000,000.

In a petition by the shareholder to have his name removed from the register of members and the list of contributories, and to stop calls—*held* (*aff.* judgment of Court of Session) that after the advertisement of the notice of meeting the directors were not entitled to make any alteration in the *status* of the shareholders, whether by a transfer or by a repudiation of shares which would affect the rights of creditors of the company.

Observed by the Lord Chancellor (Cairns) that the question whether a contract to take shares in a company can be rescinded on the ground of fraud up to the date of the commencement of a winding-up must always de-