

any general rule extending beyond the particular facts of the present case. The bank stopped payment on the 2d of October, and never resumed business, its stoppage being caused by its insolvency. It is admitted that the Directors knew at the time of the stoppage that the insolvency of the bank was irretrievable. On the 5th of October the directors convened an extraordinary general meeting of the shareholders by advertisement for the 22d, for the purpose of considering, and, if thought fit, passing extraordinary resolutions under the Companies' Act for the purpose of winding-up the bank voluntarily by reason of its insolvency. These were steps taken by the directors of the bank as the agents and representatives of the shareholders, and there was imposed upon the shareholders whatever responsibility may fairly be inferred from the steps so taken. Now at this time, and for several days after, indeed, until the 21st of October, the appellant was to all intents and purposes a shareholder in the bank, not having taken any steps to disaffirm his contract, and the directors during this time were, and were acting as, his agents.

I have already had occasion to point out to your Lordships in other cases what appeared to me to be the necessary consequence of the steps which the directors thus took. The bank having stopped payment, and its insolvency being well known, it was scarcely within the bounds of possibility that, if nothing had been done by the directors the creditors, or some one creditor, should not, within a few days after the 2d of October, have presented a petition for the winding-up of the bank, and with the presentation of such a petition the winding-up of the bank would have commenced, and the repudiation of any share would, according to the case of *Oakes v. Turquand*, have become impossible. It was the action of the directors taken in the interest of the shareholders, including the appellant, and taken under the authority of the 46th article of the deed of the company, which, by holding out to the body of creditors the prospect of a voluntary winding-up, stayed the hands of the creditors from proceeding to a compulsory winding-up; and, in my opinion, it became impossible, after the advertisement of the 5th of October, for the body of shareholders in the company, whose agents the directors were, to make any alteration in their *status*, whether by a transfer or by a repudiation of shares, which would affect the rights of creditors in the company.

This consideration alone seems to me to be sufficient to dispose of the present appeal, and I have to move your Lordships that the appeal be dismissed, with costs.

LORD HATHERLEY—I agree, my Lords, in the statement of facts which has been made by my noble and learned friend, and in the conclusions he has drawn from them.

LORD SELBORNE—My Lords, I entirely agree.

LORD GORDON—I concur.

Interlocutor appealed against affirmed, and appeal dismissed with costs.

Counsel for Appellant—

Counsel for 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, Lord Blackburn, and Lord Gordon.)

CITY OF GLASGOW BANK LIQUIDATION—
(*NELSON MITCHELL'S CASE*)—NELSON
MITCHELL, PETITIONER *v.* THE
LIQUIDATORS.

(In Court of Session December 21, 1878, *ante*,
p. 155.)

*Public Company—Sale of Bank Stock—Registering
Sale after Stoppage of Company—Companies Act
1862, sec. 35.*

A sale of bank stock was made upon a stock exchange on 28th and 30th September, the settling-day being the 16th October. Before the settling-day the bank, who were the purchasers of the stock, suspended payment. On the 16th October, the bank having previously declined to execute a transfer of the stock, a transfer was tendered to them, but they declined to accept or register it. On the 22d a winding-up resolution was passed, following upon a notice of motion to that effect issued to the shareholders by circular on the 5th.

In a petition at the instance of the seller to have his name removed from the list of contributors in respect that the bank was real proprietor of the stock—*held* (*aff.* the judgment of the Court of Session) that in the circumstances the directors were neither bound nor entitled to make the required alteration upon the register, and there was thus no ground for the contention that there had been "default" or "unnecessary delay," under section 35 of the Companies Act 1862, in respect of their neglect to do so.

Opinion reserved as to the effect of the 1st section of Leeman's Act (30 Vict. cap. 29) upon the validity of the sale of stock in question, it having been averred that the brokers' contract did not "set forth the person or persons in whose name or names" the stock stood as registered proprietor at the date of the sale.

This was an appeal at the instance of Mr Nelson Mitchell against a judgment of the Court of Session, who had refused a petition at his instance praying to have his name removed from the list of contributories to the City of Glasgow Bank. The circumstances are sufficiently detailed in the report of the case in the Court of Session, *ante*, p. 155, and in the opinions of their Lordships in the House of Lords (*infra*).

At delivering judgment—

LORD CHANCELLOR—My Lords, the appellant in this case sold on the Glasgow Stock Exchange certain stock belonging to him in the City of Glasgow Bank. The sales were made on the 28th and 30th September 1878, the settling-day being the 16th of October. The brokers who bought for the bank—and there is no doubt that the bank had authority to buy their own stock under their

deed—were the purchasers. Before the settling-day came, the bank, as your Lordships know, stopped payment. On the 16th of October a deed of transfer of the stock was tendered by the appellant to the bank, of course without any expectation of receiving from the bank the purchase-money for the stock—the bank refused to accept or register the transfer, and the name of the appellant was put on the list of contributories.

Two questions were raised in the appeal—*first*, Whether there was a valid contract for the sale of the stock, having regard to the provisions of the 30th Victoria, chapter 29; and *secondly*, was the company in default for not accepting and registering the transfer? The Court of Session has decided both points against the appellant.

My Lords, on the first point, viz., the effect of the 30th Victoria, chapter 29, I have not been satisfied by the arguments of the appellant, either during the first argument or during the further argument which has taken place to-day, that the decision of the Court of Session was erroneous; but it appears to me unnecessary to decide that question, because I have no doubt that on the second point this case is not materially distinguishable from those already decided by your Lordships, and that, for the same reasons which were given in them, it would have been improper for the bank to have accepted or registered the transfer on the 16th of October, and therefore that the name of the appellant rightly remains upon the register, and was rightly included on the list of contributories. I propose to move in this case that the appeal be dismissed with costs.

With regard to the suggestion now made, that the admissions entered into between the parties are erroneous in stating that the whole sum of £2500 stock was registered in the appellant's name on the 2d of October, whereas the transfers to the appellant of £500, part of the said sum, were not registered or recorded until some days after the 2d of October, I express no opinion whatever as to what ought to be the consequence of that fact, if it be a fact; but your Lordships may perhaps be disposed to say that the dismissal of this appeal should not prejudice any applications which the appellant may make to the Court of Session on this score.

LORD HATHERLEY—My Lords, I quite concur in the motion which has been made by the noble and learned Lord on the woolsack.

LORD O'HAGAN—I agree.

LORD SELBORNE, LORD BLACKBURN, and LORD GORDON concurred.

Interlocutor appealed from affirmed with a declaration, and appeal dismissed with costs.

Counsel for the Appellant—Higgins, Q. C.

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—
(BUCHAN'S CASE)—JOHN BUCHAN v.
THE LIQUIDATORS.

Public Company—Winding-up—Trustees and Executors—Liability of Executor where Part of Executory Estate Consists of Shares in Joint-Stock Company—Personal and Representative Liability.

In the case of a testator holding shares in a joint-stock company, his executor may (1) have the shares transferred to his own name, and thereby become a partner in the company, or, in the event of his not desiring them so transferred, he may (2) have a reasonable time allowed him to sell the shares and to produce a purchaser who will take a transfer.

Opinion (per Lord Selborne) that where an executor merely produces his confirmation for the purpose of having it recorded in the books of a joint-stock company in which the testator held stock, and receives it back again with a certificate describing him as holder of the shares in terms having reference to his character of executor, he does not thereby necessarily incur personal liability, whatever entries may have been made in the company's books, and notwithstanding the subsequent receipt of dividends by him for a series of years.

Opinion (per Lord Selborne) that trustees have not, in any proper sense of the word, a representative character, but that executors have.

Robert Gibson, cooper in Peebles, under his trust-disposition and settlement appointed Walter Thorburn, Thomas Spalding, and William Turnbull trustees and executors of all his estate, including £540 City of Glasgow Bank stock. By codicil, dated 31 May 1851, William-Turnbull, one of these trustees, having died, he appointed the present petitioner, John Buchan, writer in Peebles, trustee in his stead, but did not nominate him executor. Gibson died on 30th May 1854, and after his death, the petitioner and the other parties named were confirmed as trustees and executors, and their confirmation was expedite. The agent of the trust, Mr John Bathgate, on 2d November 1854 sent the confirmation to the City of Glasgow Bank, with this letter—"I send you confirmation in favour of the trustees of the late Robert Gibson, and will thank you to transfer the sixty shares of your stock standing in his name to that of the trustees." They were accordingly entered in the stock ledger of date the 3d November 1854 as "Walter Thorburn, merchant, Peebles, Thomas Spalding, nurseryman there, and John Buchan, writer there, executors of the late Robert Gibson, Peebles, as per confirmation at Peebles 12th October 1854." Thorburn died in 1867 and Spalding in 1871, and on 20th March 1872 the petitioner assumed two other trustees along with himself, who continued to act until 22d October 1878, on which date the petitioner executed a